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MERIT SYSTEMS PROTECTION BOARD

5 CFR Parts 1201, 1210, and 1215

Interim Regulatory Changes Regarding Department of Homeland Security Personnel System

AGENCY: Merit Systems Protection Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Merit Systems Protection Board (MSPB or ''the Board'') is revising its regulations to clarify the procedures applicable to MSPB processing and adjudication of cases arising under the Department of Homeland Security's new human resources management system established pursuant to the Homeland Security Act of 2002. As is discussed below, these revisions to the Board's regulations are necessary to reconcile the Board's regulations and procedures with final regulations published by the Department of Homeland Security (DHS) and the Office of Personnel Management (OPM) on February 1, 2005, at 70 FR 5272.

DATES: This rule is effective on November 5, 2007. Written comments should be submitted on or before November 5, 2007.

ADDRESSES: Send or deliver comments to the Office of Clerk of the Board, U.S. Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov*.

FOR FURTHER INFORMATION CONTACT: Matthew D. Shannon, Acting Clerk of the Board, Merit Systems Protection Board, 1615 M Street, NW., Washington, DC 20419; (202) 653–7200; fax: (202) 653–7130; or e-mail: *mspb@mspb.gov*.

SUPPLEMENTARY INFORMATION: On November 25, 2002, the President signed into law H.R. 5005, the Homeland Security Act of 2002 (Pub. L. 107–296), which established DHS and authorized the DHS Secretary and OPM Director to jointly establish a new human resources management system within DHS. Pursuant to this grant of authority, on February 20, 2004, DHS and OPM published proposed regulations (69 FR 8030) for this new human resources system. Thereafter, on February 1, 2005, DHS and OPM published final regulations (70 FR 5272) implementing the new DHS personnel system.

Afterwards, the National Treasury Employees Union, American Federation of Government Employees, National Federation of Federal Employees, National Association of Agriculture Employees, and Metal Trades Department of the AFL–CIO, which collectively represent approximately 50,000 DHS bargaining unit employees, challenged portions of the regulations governing labor-management relations, adverse actions, and the appeals process. One of the provisions of the DHS regulations that was challenged is 5 CFR 9701.706(k)(6), which changes the standard by which the Board may mitigate penalties imposed by DHS. Pursuant to that provision, an arbitrator, adjudicating official or the Board may not modify such a penalty unless it is so disproportionate to the basis for the action as to be wholly without justification. The U.S. District Court for the District of Columbia enjoined the mitigation provision. *NTEU* v. *Chertoff*, 385 F.Supp.2d 1, 32–33 (D.D.C.), modification denied by, 394 F.Supp.2d 137 (D.D.C. 2005). A panel of the U.S. Court of Appeals for the D.C. Circuit reversed on this issue, holding that the question of the mitigation standard's legality was not ripe for judicial review. *NTEU* v. *Chertoff*, 452 F.3d 839, 855 (D.C. Cir. 2006). Therefore, the MSPB's regulations include that mitigation standard.

Subparts F and G of the final DHS/OPM regulations concern adverse actions and appeals and will have a significant effect on the way the MSPB processes and adjudicates appeals of adverse actions by DHS employees. In addition to limiting the types of cases that may be appealed to the Board, the final DHS/OPM regulations make many changes in how the Board will process and adjudicate appeals by DHS employees, including:

Shortened filing deadlines;

Streamlined and limited discovery procedures;

New settlement procedures;

Limitations on the right to a hearing;

Summary judgment and limitation of issues;

Time limits within which the Board must issue decisions;

Procedures for Board review of a decision of the DHS Mandatory Removal Panel (MRP); and,

Changes in certain standards of review.

In order to accommodate these substantive and procedural changes with the least possible confusion and delay, the Board determined to publish the following interim amendments to its regulations. Specifically, these changes involve amendments to 5 CFR part 1201 and the promulgation of new regulations applicable only to appeals, petitions for review, and requests for review of MRP decisions brought by DHS employees. These new DHS-specific regulations are being published in a revised 5 CFR part 1210. The regulations previously found in 5 CFR part 1210 have been moved, redesignated as 5 CFR part 1215, and are otherwise not changed.

A brief summary of the changes contained herein is as follows:

1201.3(a)(19) and (20) are amended and 1201.3(a)(21) is added to reflect the Board's jurisdiction over certain actions taken by DHS (an unrelated housekeeping change is also made to 1201.3(a)(20));

1201.3(b)(3) is amended to reflect the Board's jurisdiction over certain actions taken by DHS and to make clear that 5 CFR parts 1201, 1208 and 1209 apply to proceedings brought under 5 CFR part 1210, except as otherwise provided therein;

1201.11 is amended to state that the regulations of subpart B of 5 CFR part 1201 apply to appellate proceedings covered by part 1210 unless other specific provisions are made in that part;

1201.14(i) is amended to indicate that the Board's rules applicable to electronic signatures by e-filers apply to any regulation in part 1210 that requires a signature;

1201.21 is renumbered and amended to delete an outdated reference to Appendix 1. A new section (1201.21(b)) addresses notice of appeal rights when DHS issues a decision notice to an

employee on a matter that is appealable to the Board.

1201.22(b)(2) is amended to indicate that additional time limits applicable to certain appeals by DHS employees are contained in part 1210.

The debt management regulations formerly in part 1210 are moved and redesignated as part 1215. As is discussed in greater detail below, new regulations regarding appeals by DHS employees are added in part 1210. Parts 1211, 1212, 1213, and 1214 are reserved for future agency-specific regulations.

The new regulations in part 1210 apply to Board proceedings in appeals of certain DHS adverse actions that are covered under subparts F and G of 5 CFR part 9701. Part 1210 consists of four subparts.

Subpart A of part 1210 discusses the scope of part 1210 and the Board's policy with regard to application of part 1210 in a fair and expeditious manner (1210.1); addresses MSPB jurisdiction (1210.2); sets forth the applicability of 5 CFR parts 1201, 1208, and 1209 to appeals by DHS employees (1210.3); defines certain words and terms used within part 1210 (1210.4); describes when and how the Board and/or an adjudicating official may revoke, amend or waive the regulations in part 1201 (1210.5); and adds a savings provision indicating that part 1210 does not apply to adverse actions proposed prior to the date of an affected employee's coverage under 5 CFR part 9701, subpart G (1210.6).

Subpart B of part 1210 sets forth procedures for appeals of actions taken under 5 CFR Part 9701, Subpart F, including agency responsibilities regarding notice of appeal rights (1210.10); procedures for filing an appeal (1210.11); representation by, and disqualification of, representatives (1210.12); burden and degree of proof and affirmative defenses (1210.13); required disclosure and the scope of discovery (1210.14); discovery procedures (1210.15); intervention by the Director of OPM (1210.16); procedures applicable to settlement (1210.17); case suspension procedures (1210.18); the right to a hearing (1210.19); summary judgment (1210.20); and requirements pertaining to the adjudicating official's initial decision, including completion deadlines and interim relief (1210.21).

Subpart C of part 1210 addresses procedures applicable to petitions for review of initial decisions and petitions for reconsideration, including requirements such as who may file and the use of electronic filing (1210.30(a)); time limits applicable to petitions for review, cross petitions for review and responses (1210.30(b)); the proper place for filing petitions for review, cross petitions for review, and responses (1210.30(c)); time limits within which the Board must render its decision (1210.30(d)); the ramifications of the Board's failure to meet such time limits (1210.30(e)); and requirements applicable to an OPM request for reconsideration (1210.31).

Subpart D of part 1210 addresses MSPB review of decisions of the Mandatory Removal Panel (MRP), including jurisdiction and procedures and time limits applicable to a request for review (1210.40); the standard of review and time limits applicable to a decision by the Board (1210.41); intervention by the Director of OPM (1210.42); finality of Board decisions and judicial review (1210.43); and requests for reconsideration (1210.44).

List of Subjects in 5 CFR Parts 1201, 1210, and 1215

Administrative practice and procedure, Government employees.

■ Accordingly, the Board amends 5 CFR Chapter II as follows:

PART 1201—[AMENDED]

■ 1. The authority citation for part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204 and 7701.

■ 2. Section 1201.3 is amended by revising paragraphs (a)(19) and (a)(20) and adding new paragraphs (a)(21) and (b)(3) as follows:

§ 1201.3 Appellate jurisdiction.

* * * * *

(a) * * *

(19) Employment practices administered by the Office of Personnel Management to examine and evaluate the qualifications of applicants for appointment in the competitive service (5 CFR 300.104);

(20) Reduction-in-force action affecting a career or career candidate appointee in the Foreign Service (22 U.S.C. 4011); and

(21) Actions taken by the Department of Homeland Security under subpart F of 5 CFR part 9701, except for those matters excluded under 5 CFR 1210.2(c) and (d). Actions covered include suspensions of 15 days or more, demotions, reductions in pay, removals, or furloughs of 30 days or less, subject to the limitations set forth in 5 CFR 9701.704.

* * * * *

(b) * * *

(3) *Appeals of certain actions taken by the Department of Homeland Security.* Appeals of actions taken by the Department of Homeland Security under subpart F of 5 CFR part 9701, except for those matters excluded under 5 CFR 1210.2 (c) and (d), are governed by part 1210 of this title. Parts 1201, 1208 and 1209 of this title apply to Board appellate proceedings conducted under 5 CFR part 1210, except as otherwise provided therein.

* * * * *

■ 3. Section 1201.11 is revised to read as follows:

§ 1201.11 Scope and policy.

The regulations in this subpart apply to Board appellate proceedings except as otherwise provided in § 1201.13. The regulations in this subpart apply also to appellate proceedings and stay requests covered by part 1209 unless other specific provisions are made in that part. These regulations also apply to original jurisdiction proceedings of the Board except as otherwise provided in subpart D. The regulations in this subpart apply also to appellate proceedings covered by part 1210 unless other specific provisions are made in that part. It is the Board's policy that these rules will be applied in a manner that expedites the processing of each case.

■ 4. Section 1201.14 is amended by revising paragraph (i) to read as follows:

§ 1201.14 Electronic filing procedures.

* * * * *

(i) *Documents requiring a signature.* An electronic document filed by a party who has registered as an e-filer pursuant to this section shall be deemed to be signed for purposes of any regulation in part 1201, 1203, 1208, 1209, or 1210 of this title that requires a signature.

* * * * *

■ 5. Section 1201.21 is revised to read as follows:

§ 1201.21 Notice of appeal rights.

(a) When an agency issues a decision notice to an employee on a matter that is appealable to the Board, the agency must provide the employee with the following:

(1) Notice of the time limits for appealing to the Board, the requirements of § 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(2) A copy, or access to a copy, of the Board's regulations;

(3) A copy of the MSPB appeal form available at the Board's Web site (*http://www.mspb.gov*), and

(4) Notice of any right the employee has to file a grievance, including:

(i) Whether the election of any applicable grievance procedure will

result in waiver of the employee's right to file an appeal with the Board;

(ii) Whether both an appeal to the Board and a grievance may be filed on the same matter and, if so, the circumstances under which proceeding with one will preclude proceeding with the other, and specific notice that filing a grievance will not extend the time limit for filing an appeal with the Board; and

(iii) Whether there is any right to request Board review of a final decision on a grievance in accordance with § 1201.154(d).

(b) When the Department of Homeland Security (or component thereof) issues a decision notice to an employee on a matter that is appealable to the Board, except as provided under 5 CFR 9701.707, the Department must comply with the notice provisions set forth in 5 CFR 1210.10.

■ 6. Section 1201.22 is amended by revising paragraph (b)(2) to read as follows:

§ 1201.22 Filing an appeal and responses to appeals.

(b) * * *

(2) The time limit prescribed by paragraph (b)(1) of this section for filing an appeal does not apply where a law or regulation establishes a different time limit or where there is no applicable time limit. No time limit applies to appeals under the Uniformed Services Employment and Reemployment Rights Act (Pub. L. 103–353), as amended; see part 1208 of this title. See part 1208 of this title for the statutory filing time limits applicable to appeals under the Veterans Employment Opportunities Act (Pub. L. 105–339). See part 1209 of this title for the statutory filing time limits applicable to whistleblower appeals and stay requests. See part 1210 of this title for time limits applicable to appeals by employees of the Department of Homeland Security.

* * * * *

PART 1210—[REDESIGNATED AS PART 1215]

■ 7. Part 1210 is redesignated as part 1215.

PART 1215—[AMENDED]

■ 8. In newly redesignated part 1215, remove ''1210'' and add in its place ''1215'' wherever it may occur.

■ 9. Add a new part 1210 to read as follows:

PART 1210—DEPARTMENT OF HOMELAND SECURITY HUMAN RESOURCES MANAGEMENT SYSTEM

Subpart A—Jurisdiction, Definitions, and Waiver of Rules

Subpart B—Procedures for Appeals of Actions Taken Under 5 CFR Part 9701, Subpart F

Subpart C—Petitions for Review of Initial Decisions and Petitions for Reconsideration

Subpart D—Review of Mandatory Removal Action Appeals

Authority: 5 U.S.C. 1204 and 7701.

Subpart A—Jurisdiction, Definitions, and Waiver of Rules

§ 1210.1 Scope and policy.

The regulations in this part apply to Board proceedings in appeals of certain adverse actions of the Department of Homeland Security that are covered under subparts F and G of 5 CFR part 9701. The Board will apply these rules in a manner that promotes the fair, efficient and expeditious resolution of appeals.

§ 1210.2 Jurisdiction.

(a) *Employees covered.* The Board has jurisdiction over appeals brought by employees covered by 5 CFR 9701.604(c), except for those classes of employees excluded under 5 CFR 9701.604(d).

(b) *Actions covered.* The Board has jurisdiction over appeals from actions taken by the Department under subpart F of 5 CFR part 9701, except for those matters excluded under paragraphs (c) and (d) of this section. Actions covered include suspensions of 15 days or more, demotions, reductions in pay, removals, or furloughs of 30 days or less, subject to the limitations set forth in 5 CFR 9701.704.

(c) *Matters excluded from MSPB jurisdiction*—(1) *Mandatory removal offenses.* Except as stated in paragraph (c) of this section, the Board does not have jurisdiction over first-level appeals from actions taken pursuant to 5 CFR 9701.707 for offenses that the Secretary has designated as mandatory removal offenses. The procedures governing petitions for review of decisions of the Mandatory Review Panel are set forth in subpart D of this part.

(2) *National security suspensions and removal.* The Board does not have jurisdiction over appeals from suspension and removal actions taken by the Secretary pursuant to 5 CFR 9701.613 when he or she considers such actions to be in the interest of national security.

(d) *Effect of status under a retirement system.* If an employee has been removed under subpart F of 5 CFR part 9701, neither the employee's status under any retirement system established by Federal statute nor any election made by the employee under any such system will affect the employee's appeal rights.

§ 1210.3 Application.

Subject to modification and/or waiver by the adjudicating official, the regulations set forth in 5 CFR parts 1201, 1208 and 1209 apply to Board appellate proceedings conducted under this part except as otherwise provided herein.

§ 1210.4 Definitions.

In this subpart:

(a) *Adjudicating official* means an administrative law judge, administrative judge, or other employee designated by MSPB to decide an appeal.

(b) *Demotion* means a reduction in grade, a reduction to a lower band within the same occupational cluster, or a reduction to a lower band in a different occupational cluster under rules prescribed by the Department pursuant to 5 CFR 9701.355.

(c) *Department* means the Department of Homeland Security.

(d) *Director* means Director of the Office of Personnel Management.

(e) *Furlough* means the placement of an employee in a temporary status

without duties and pay because of lack of work or funds or other non-disciplinary reasons.

(f) *Grade* means a level of work under a position classification or job grading system.

(g) *Indefinite suspension* means the placement of an employee in a temporary status without duties and pay pending investigation, inquiry, or further Department action. An indefinite suspension continues for an indeterminate period of time and usually ends with either the employee returning to duty or the completion of any subsequent administrative action.

(h) *Initial service period (ISP)* means the 1 to 2 years employees must serve after selection (on or after the date this subpart becomes applicable, as determined under 5 CFR 9701.102(b)) for a designated Department position in the competitive service for the purpose of providing an employee the opportunity to demonstrate competencies in a specific occupation. All relevant prior Federal civilian service (including non-appropriated fund service), as determined by appropriate standards established by the Department, counts toward completion of this requirement.

(i) *Mandatory removal offense (MRO)* means an offense that the Secretary determines in his or her sole, exclusive and unreviewable discretion, has a direct and substantial adverse impact on the Department's homeland security mission.

(j) *Mandatory Removal Panel (MRP)* means the three-person panel composed of officials appointed by the Secretary for fixed terms to decide appeals of removals based on a mandatory removal offense.

(k) *Pay* means the rate of basic pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind. For the purpose of this subpart, pay does not include locality-based comparability payments under 5 U.S.C. 5304, locality or special rate supplements under subpart C of 5 CFR 9701, or other similar payments.

(l) *Removal* means the involuntary separation of an employee from the Department.

(m) *Secretary* means Secretary of the Department of Homeland Security.

(n) *Suspension* means the temporary placement of an employee, for disciplinary reasons, in a nonduty/nonpay status.

§ 1210.5 Revocation, amendment and waiver of regulations in this part.

The Board or a judge may not revoke, amend or waive a regulation in this Part in a manner inconsistent with the Homeland Security Act of 2002 or 5 CFR Part 9701. Otherwise, the Board or a judge may revoke, amend or waive a regulation in this Part for good cause shown.

§ 1210.6 Savings provision.

This part does not apply to adverse actions proposed prior to the date of an affected employee's coverage under 5 CFR part 9701, subpart G.

Subpart B—Procedures for Appeals of Actions Taken Under 5 CFR Part 9701, Subpart F

§ 1210.10 Notice of appeal rights.

(a) When the Department of Homeland Security (or component thereof) issues a decision notice to an employee on a matter that is appealable to the Board, except as provided under 5 CFR 9701.707, the Department must provide the employee with the following:

(1) Notice of the time limits for appealing to the Board, the requirements of 5 CFR 1201.22(c), and the address of the appropriate Board office for filing the appeal;

(2) A copy, or access to a copy, of the Board's regulations at 5 CFR parts 1201 and 1210, and relevant Department of Homeland Security regulations;

(3) A copy of MSPB Form 185, the MSPB Appeal Form. MSPB Form 185 can be accessed at the Board's Web site (*http://www.mspb.gov*);

(4) Notice of any right the employee has to file a grievance, and that the election of any applicable grievance procedure may result in a waiver of the employee's right to file an appeal with the Board; and

(5) Notice that a copy of the decision notice either must be filed with the appeal or sent to the Board via facsimile or e-mail within one day after the appeal is filed.

(b) The notice must also include a specific statement that the matter was taken under 5 CFR part 9701.

§ 1210.11 Filing an appeal.

(a) *Time of filing.* An appeal must be filed no later than 20 days after the effective date of the action being appealed, or no later than 20 days after the date of service of the Department's decision, whichever is later. A response to an appeal must be filed within 15 days of the date of service of the acknowledgment order. All other submissions to the adjudicating official must be filed in accordance with the time limits set in the Board's acknowledgment order or in any other order issued by the adjudicating official.

(b) *Computation of time.* The time for filing a submission under this subpart is computed in accordance with 5 CFR 1201.23.

(c) *Place for filing.* Appeals, and responses to those appeals, must be filed with the appropriate Board regional or field office. See 5 CFR 1201.4(d), 1201.22(a), and Appendix II to part 1201.

(d) *Decision notice.* A copy of the decision notice either must be filed with the appeal or sent to the Board via facsimile or e-mail within one day after the appeal is filed.

§ 1210.12 Representatives.

Each party has the right to be represented by an attorney or other representative. Either party may file a motion to disqualify a representative at any time during the proceedings.

§ 1210.13 Burden and degree of proof; affirmative defenses.

(a) *Burden and degree of proof*—(1) *Agency.* Subject to paragraph (b) of this section, the decision of the Department must be sustained if it is supported by a preponderance of the evidence.

(2) *Appellant.* The appellant has the burden of proof, by a preponderance of the evidence, with respect to:

(i) Issues of jurisdiction;

(ii) The timeliness of the appeal; and

(iii) Affirmative defenses.

(b) *Affirmative defenses of the appellant.* The decision of the Department must be sustained where it has met the evidentiary standard stated in paragraph (a) of this section, unless the appellant shows that:

(1) There was harmful error in the application of the Department's procedures in arriving at its decision;

(2) The decision was based on a prohibited personnel practice described in 5 U.S.C. 2302(b); or

(3) The decision was not in accordance with law.

(c) *Definitions.* The following definitions apply to this part:

(1) *Preponderance of the evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

(2) *Harmful error.* Error by the Department in the application of its procedures that is likely to have caused it to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is on the appellant to show that the

error was harmful, i.e., that it caused substantial harm or prejudice to his or her rights.

(d) *Efficiency of the service.* Pursuant to 5 CFR 9701.606, the Department may take an adverse action under subpart F of 5 CFR part 9701 only for such cause as will promote the efficiency of the service.

§ 1210.14 Initial disclosures; scope of discovery.

(a) *Initial disclosures.* Except to the extent otherwise directed by order, each party must, without awaiting a discovery request and within ten calendar days following the date of the Board's acknowledgment order, provide the following information to the other party:

(1) The Department must provide:

(i) The Departmental record required by 5 CFR 9701.612; and

(ii) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the Department may use in support of its claims or defenses, identifying the subjects of such information.

(2)(i) The appellant must provide:

(A) A copy of, or a description by category or location of all documents in the possession, custody or control of the appellant that the appellant may use in support of his or her claims or defenses; and

(B) The name and, if known, the address and telephone number of each individual likely to have discoverable information that the appellant may use in support of his or her claims or defenses, identifying the subjects of the information.

(ii) Each party must make its initial disclosure based on the information then reasonably available to the party. A party is not excused from making its disclosures because it has not fully completed the investigation of its case, because it challenges the sufficiency of the other party's disclosures or because the other party has not made its disclosures.

(b) *Scope of discovery.* The parties may seek discovery regarding any matter that is relevant to any of their claims or defenses. However, by motion, either party may seek to limit such discovery because the burden or expense of providing the material outweighs its benefit, or because the material sought is privileged, not relevant, unreasonably cumulative or duplicative, or can be secured from some other source that is more convenient, less burdensome, or less expensive.

§ 1210.15 Discovery procedures.

(a) *Responses to discovery requests.* Prior to filing a motion to limit discovery, the parties must confer and attempt to resolve any pending objection(s). To the extent not inconsistent with this subpart, and subject to modified time limits and procedures that may be set by the adjudicating official, the provisions of 5 CFR 1201.71 through 1201.85 govern discovery in cases under this subpart.

(b) *Limitations on discovery.* (1) Neither party may submit more than one set of interrogatories, one set of requests for production of documents, and one set of requests for admissions. The number of interrogatories or requests for production or admissions may not exceed 25 per pleading, including subparts. In addition, neither party may conduct/compel more than 2 depositions.

(2) Either party may file a motion requesting additional discovery. Such motion may be granted only if the party has shown necessity and good cause to warrant such additional discovery.

§ 1210.16 Intervention.

The Director may, as a matter of right at any time in the proceeding, intervene or otherwise participate in any proceeding under this Part in any case in which the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

§ 1210.17 Settlement.

(a) *Settlement discussion.* Neither an adjudicating official nor the Board may require settlement discussions in connection with any action appealed under this section. If either party decides that settlement is not desirable, the matter will proceed to adjudication. The parties are not prohibited from engaging in settlement discussions on their own.

(b) *Settlement Judges.* Where the parties agree to engage in settlement discussions, these discussions will be conducted by an official specifically designated by MSPB in each case for that sole purpose. That settlement discussions are being held by the settlement judge in no way alters the authority of the adjudicating official, who will continue to process all other aspects of the appeal.

§ 1210.18 Case suspension procedures; use of the Mediation Appeals Program; refiled appeals.

(a) The parties may submit a request for additional time. Requests for such case suspensions must be submitted jointly. Upon receipt of such request, an order suspending processing of the case for a period up to 30 days may be issued at the discretion of the adjudicating official. Suspension periods granted pursuant to this procedure shall not be included when determining whether an initial decision has been issued within the 90-day period specified in section 5 CFR 9701.706(k)(7) and § 1210.21(a) of this part.

(b) If the parties agree jointly to use the Board's Mediation Appeals Program (MAP), the period within which the parties participate in MAP shall not be included when determining whether an initial decision has been issued within the 90-day period specified in 5 CFR 9701.706(k)(7) and 1201.21(a).

(c) If an appeal is refiled after it has been dismissed without prejudice, the 90-day period specified in 5 CFR 9701.706(k)(7) and 1201.21(a) restarts on the date of refiling. For purposes of this paragraph, ''refiled'' has the same meaning as ''filed'' set out in § 1210.21(a).

§ 1210.19 Right to hearing.

(a) An employee with a right of appeal under subparts F and G of 5 CFR part 9701 generally has a right to a hearing. When the adjudicating official finds that material facts are not in dispute, he or she must issue an initial decision without conducting a hearing, as appropriate. See 1210.20(e).

(b) Where the appellant requests a hearing and summary judgment is not appropriate, the adjudicating official may, in his or her discretion, hold the hearing in whole or in part by telephone, videoconference, or in person at the Board's regional or field office or at a designated hearing site listed at 5 CFR part 1201, Appendix III. Although the preferences of the parties and the nature of the issues to be heard and determined will inform the adjudicating official's decision, the ultimate selection rests in the sound judgment of the official. Among the factors that the adjudicating official will consider in deciding whether to hold a hearing in whole or in part by videoconference or telephone are:

(1) The costs of traveling to the hearing site as compared with the costs of traveling to a videoconferencing site;

(2) The distance the parties and their witnesses would have to travel to appear in person; and

(3) Whether appearance by videoconference or telephone of the appellant or his or her witnesses would unduly prejudice the appellant.

§ 1210.20 Summary judgment.

(a) *Motion by a party.* Any party may file a motion for summary judgment if

the party believes that material facts are not in genuine dispute and that the party may be entitled to judgment as a matter of law. Each motion for summary judgment shall be accompanied by a statement separately listing all material facts as to which the moving party contends there is no genuine dispute. The statement shall include references to those parts of the record, including any affidavits, declarations under penalty of perjury, or other evidence attached to the motion, relied on to support the statement.

(b) *Opposition to motion.* An opposition to a motion for summary judgment shall be accompanied by a statement separately listing all material facts as to which the party contends there exists a genuine dispute for hearing. The statement in opposition shall include references to those parts of the record, including any affidavits, declarations under penalty of perjury or other evidence attached to the opposition, relied on to support the statement. The party opposing a motion for summary judgment may not rest on the mere allegations or denials of his pleadings, but must set forth specific facts showing that there is a genuine dispute for hearing.

(c) *Time of filing.* Any party may file a motion for summary judgment no later than 5 days after the time limit for the completion of discovery set in the Board's acknowledgment order, or other time limit set by the adjudicating official. An opposition to a motion for summary judgment shall be filed within 15 days of service of the motion, or at the time specified by the adjudicating official.

(d) *Initiated by adjudicating official.* In addition to the authority set forth in 5 CFR 1201.41(b), if the adjudicating official determines on his or her own initiative that material facts may not be in genuine dispute, he or she may, after giving the parties written notice and at least 15 days to respond in writing, find that material facts are not in genuine dispute. The written notice to the parties shall include a statement separately listing all material facts as to which the adjudicating official believes there is no genuine dispute.

(e) *Decision by adjudicating official.* If, after considering the parties' submissions, the adjudicating official finds that material facts are not in genuine dispute, he or she must grant summary judgment on the law pursuant to 5 CFR 9701.706(k)(5) without conducting a hearing.

(f) *Definitions.* A fact is material if it is capable of affecting the outcome of the appeal. For a dispute to be genuine, there must be evidence sufficient for a reasonable person to find in favor of the nonmoving party.

§ 1210.21 Initial decision by the adjudicating official.

(a) *General.* The adjudicating official must issue a decision after the close of the record and a copy of the decision must be provided to each party to the appeal and to the Director. An initial decision must be issued no later than 90 days after the date on which the appeal is filed. However, failure to meet this deadline will not prejudice any party to the case and will not form the basis for any legal action by any party. See 5 CFR 9701.706(l). A document that is filed with a Board office by personal delivery is considered filed on the date on which the Board office receives it. The date of filing by facsimile is the date of the facsimile. The date of filing by mail is the date on the Board's acknowledgment order, and the Board must issue an acknowledgment order within five calendar days after receiving the appeal. The date of filing by commercial delivery is the date the document was delivered to the commercial delivery service. The date of filing by e-filing is the date of electronic submission.

(b) *Consideration of penalty.* The adjudicating official may modify the penalty imposed by the Department if he or she determines that such penalty is so disproportionate to the basis for the action as to be wholly without justification. In cases of multiple charges, the adjudicating official's determination in this regard is based on the justification for the penalty as it relates to the sustained charge(s). When a penalty is mitigated, the maximum justifiable penalty must be applied.

(c) *Interim relief.* (1) If an employee is the prevailing party in an appeal under this subpart, the employee must be granted the relief provided in the decision upon issuance of the decision, subject to paragraph (b)(3) of this section. Such relief remains in effect pending the outcome of any petition for review unless—

(i) An adjudicating official determines that the granting of such relief is not appropriate; or

(ii) The relief granted in the decision provides that the employee will return or be present at the place of employment pending the outcome of any petition for review, and the Department, subject to paragraph (b)(2) of this section, determines, in its sole, exclusive, and unreviewable discretion, that the return or presence of the employee would be unduly disruptive to the work environment.

(2) If the Department makes a determination under paragraph (b)(1)(ii) of this section that prevents the return or presence of an employee at the place of employment, such employee must receive pay, compensation, and all other benefits as terms and conditions of employment pending the outcome of any petition for review.

(3) Nothing in the provisions of this section may be construed to require that any award of back pay or attorney fees be paid before the decision is final.

Subpart C—Petitions for Review of Initial Decisions and Petitions for Reconsideration

§ 1210.30 Filing petition and cross petition for review.

(a) *Who may file.* Any party to the proceeding or the Director may file a petition for review of the decision by the adjudicating official. The Director may request review when he or she believes that the decision is erroneous and will have a substantial impact on a civil service law, rule, regulation or policy directive. All submissions to the Board must contain the signature of the party or of the party's designated representative. The requirements for an electronic signature are set forth in 5 CFR 1201.14(i).

(b) *Time for filing.* Any petition for review must be filed within 30 days after receipt of the initial decision. Absent evidence to the contrary, the Board presumes that a decision delivered by regular mail is received by the addressee 5 days after its issuance. If regular mail is not delivered on the fifth day following the issuance of the decision, the presumed date of receipt is the next date on which mail is delivered. A cross petition for review must be filed within 25 days of the date of service of the petition for review. Any response to a petition for review or to a cross petition for review must be filed within 25 days after the date of service of the petition or cross petition. The Board may extend the filing period for good cause shown.

(c) *Place for filing.* A petition for review, cross petition for review, responses to those petitions, and all motions and pleadings associated with them must be filed with the Clerk of the Merit Systems Protection Board, Washington, DC 20419, by commercial or personal delivery, by facsimile, by mail, or by electronic filing in accordance with 5 CFR 1201.14.

(d) *Time for decision by the Board.* MSPB must render its decision no later than 90 days after the close of the record before MSPB on petition for review as defined in 5 CFR 1201.114(i).

(e) *Effect of late decision.* The Board's failure to meet the requirement that

decisions be rendered no later than 90 days after the close of the record will not prejudice any party to the case and will not form the basis for any legal action by any party. See 5 CFR 9701.706(l).

§ 1210.31 OPM petition for reconsideration.

(a) If the Director seeks reconsideration of a final Board order, the Board must render its decision no later than 60 days after receipt of the opposition to the Director's petition in support of such reconsideration. The Board's failure to meet this requirement will not prejudice any party to the case and will not form the basis for any legal action by any party. See 5 CFR 9701.706(l).

(b) The Board shall state the reasons for any decision rendered in response to a petition for reconsideration filed by the Director.

Subpart D—Review of Mandatory Removal Action Appeals

§ 1210.40 Filing a request for Board review.

(a) *Who may file.* Any party to the proceeding or OPM may file a request for review. All submissions to the Board must contain the signature of the party or of the party's designated representative. The requirements for an electronic signature are set forth in 5 CFR 1201.14(i).

(b) *Time for filing.* Any request for review must be filed within 15 days after issuance of the MRP's decision. Any party's response to the request for review, cross request for review, or OPM's request for review must be filed within 15 days of the Board's receipt of the request for review. If OPM does not file a request for review, it may intervene within 15 days after MSPB's receipt of a request for review of the record. A party or OPM may submit, and the Board may grant for good cause shown, a request for a single extension of time not to exceed 15 days.

(c) *Record for review.* The Board will establish, in conjunction with the MRP, standards for the contents of the record and the administrative process for review, including notice to the parties and OPM and procedures for the transfer of records from the Department to the Board.

§ 1210.41 Decision of the Board.

(a) *Board review of an MRP decision.* The Board must accept the findings of fact and interpretations of law of the MRP and sustain the MRP's decision unless the party appealing the MRP's decision shows that the MRP's decision was:

(1) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(2) Caused by harmful error in the application of the MRP's procedures in arriving at such decision; or

(3) Unsupported by substantial evidence.

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

(1) *Harmful error.* Error by the MRP in the application of its procedures that is likely to have caused it to reach a conclusion different from the one it would have reached in the absence or cure of the error. The burden is upon the party appealing the MRP's decision to show that the error was harmful, *i.e.*, that it caused substantial harm or prejudice to his or her rights.

(2) *Substantial evidence.* The degree of relevant evidence that a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

(c)(1) *Mandatory time limit for decision.* The Board must complete its review of the record and issue a final decision within 30 days after receiving any party's response to the request for review, cross request for review, or OPM's intervention brief, whichever is filed later. The Board may extend the period for review by a single extension of time not to exceed 15 days, if it determines that:

(i) The case is unusually complex; or

(ii) An extension is necessary to prevent any prejudice to the parties that would otherwise result.

(2) No further extension of time will be permitted.

§ 1210.42 Intervenors.

The Director may intervene as a matter of right under 5 CFR 9701.707(f) or otherwise participate in any proceeding brought under this subpart, if the Director believes that an erroneous decision will have a substantial impact on a civil service law, rule, regulation, or policy directive.

§ 1210.43 Finality.

Final decision of the Board. A decision of the Board on a request for review of an MRP decision shall constitute a final decision subject to judicial review in accordance with 5 U.S.C. 7703.

§ 1210.44 Request for reconsideration.

A decision of the Board under this subpart is final unless the Director petitions the Board for review within 30 days after the receipt of the decision. The Director may petition the Board for review only if he or she believes the decision is erroneous and will have a substantial impact on a civil service law, rule, regulation, or policy directive. The Board may extend the filing period for good cause shown.

Dated: September 28, 2007.

Arlin Winefordner,

Acting Clerk of the Board.

[FR Doc. E7–19574 Filed 10–4–07; 8:45 am]

BILLING CODE 7400–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Correcting amendments.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is correcting a document published in the **Federal Register** of September 27, 2007, that amended Regulation A to reflect a decrease in the primary and secondary credit rates at each Federal Reserve Bank.

DATES: This correction is effective October 5, 2007. The rate changes for primary and secondary credit were effective on the dates specified in 12 CFR 201.51, as amended.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board (202/452–3259); for users of Telecommunication Devices for the Deaf (TDD) only, contact 202/263–4869.

SUPPLEMENTARY INFORMATION: The Board published a document in the **Federal Register** of September 27, 2007 (72 FR 54813). The document (FR Doc. E7–19062) amended the Federal Reserve Banks' primary and secondary credit rates on extensions of credit available to depository institutions as a backup source of funding on a short-term basis. This document corrects the secondary credit rates for the Federal Reserve Bank of Dallas and the Federal Reserve Bank of San Francisco.

List of Subjects in 12 CFR Part 201

Banks, Banking, Federal Reserve System, Reporting and recordkeeping.

Authority and Issuance

■ For the reasons set forth in the preamble, the Board is amending 12 CFR Chapter II to read as follows:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

■ 1. The authority citation for part 201 continues to read as follows:

Authority: 12 U.S.C. 248(i)–(j), 343 *et seq.*, 347a, 347b, 347c, 348 *et seq.*, 357, 374, 374a, and 461.

■ 2. In § 201.51 in paragraph (b), the entries for Dallas and San Francisco are revised to read as follows:

§ 201.51 Interest rates applicable to credit extended by a Federal Reserve Bank.[1]

* * * * *

(b) * * *

Federal Reserve Bank	Rate	Effective
*	*	* * *
Dallas	5.75	September 19, 2007.
San Francisco	5.75	September 18, 2007.

* * * * *

By order of the Board of Governors of the Federal Reserve System, October 2, 2007.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E7–19691 Filed 10–4–07; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26491 Directorate Identifier 2006–CE–076–AD; Amendment 39–15218; AD 2007–20–08]

RIN 2120–AA64

Airworthiness Directives; Alpha Aviation Design Limited (Type Certificate No. A48EU Previously Held by Apex Aircraft and Avions Pierre Robin) Model R2160 Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

To prevent fuel system leaks inspect the bronze/brass hollow threaded fuel line fittings for type and leaks, per Avions Pierre Robin Service Bulletin (SB) No. 86.

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

DATES: This AD becomes effective November 9, 2007.

On November 9, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: You may examine the AD docket on the Internet at *http://dms.dot.gov* or in person at Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That supplemental NPRM was published in the **Federal Register** on August 13, 2007 (72 FR 45183). That supplemental NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

To prevent fuel system leaks inspect the bronze/brass hollow threaded fuel line fittings for type and leaks, per Avions Pierre Robin Service Bulletin (SB) No. 86. Replace leaking Type 1 fuel line fittings with Type 2 fittings, per SB No. 86, before further flight.

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

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect about 10 products of U.S. registry. We also estimate that it will take about 1 work-hour per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $100 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here.

Based on these figures, we estimate the cost of this AD on U.S. operators to be $1,800, or $180 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on

[1] The primary, secondary, and seasonal credit rates described in this section apply to both advances and discounts made under the primary, secondary, and seasonal credit programs, respectively.

the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2007–20–08 Alpha Aviation Design Limited (Type Certificate No. A48EU previously held by Apex Aircraft and Avions Pierre Robin): Amendment 39–15218; Docket No. FAA–2006–26491; Directorate Identifier 2006–CE–076–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective November 9, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Model R2160 airplanes, serial numbers 001 through 191, certificated in any category.

Subject

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

Reason

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

To prevent fuel system leaks inspect the bronze/brass hollow threaded fuel line fittings for type and leaks, per Avions Pierre Robin Service Bulletin (SB) No. 86.

Actions and Compliance

(f) Unless already done, within the next 25 hours time-in-service after November 9, 2007 (the effective date of this AD) replace the Type 1 fuel line fittings with Type 2 fittings following Avions Pierre Robin Service Bulletin No. 86, dated July, 1980.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: This AD requires the replacement of the Type 1 fuel line fittings with Type 2 fittings following Avions Pierre Robin Service Bulletin No. 86, dated July, 1980. The MCAI required a one-time inspection for leaks and replacement if leaks were found. There was no MCAI action to determine whether leaks developed in the future. The FAA believes that mandatory replacement of the fittings will eliminate current leaking fittings as well as preventing the problem from developing in the future.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI Airworthiness Authority of New Zealand AD DCA/R2000/12, dated June 29, 2006, and Avions Pierre Robin Service Bulletin No. 86, dated July, 1980, for related information.

Material Incorporated by Reference

(i) You must use Avions Pierre Robin Service Bulletin No. 86, dated July, 1980, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Alpha Aviation Design Ltd., Ingram Road, Hamilton Airport, R.D.2. Hamilton 3282, New Zealand.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Kansas City, Missouri, on September 27, 2007.

Kim Smith,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19501 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–28709; Directorate Identifier 2007–CE–062–AD; Amendment 39–15219; AD 2007–21–01]

RIN 2120–AA64

Airworthiness Directives; DG Flugzeugbau GmbH Model DG–500 Elan Series, DG–500M, and DG–500MB Gliders

AGENCY: Federal Aviation Administration (FAA), 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) issued by the 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 flight with a DG–500 ELAN Trainer, the bolt of bearing stand 5RU61, which is the pivot for bell crank 5St19, failed

in-flight, leading to loss of control of the aircraft. Although the occupants managed to exit the aircraft safely, the aircraft crashed and was damaged beyond repair. While the investigation continues, the most likely cause is suspected to be insufficient tightening of the nut on the bolt of bearing stand 5RU61.

This condition, if not corrected, may cause excessive bending loads, leading to premature failure of the bolt and loss of control of the aircraft.

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

DATES: This AD becomes effective October 25, 2007.

On October 25, 2007, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by November 5, 2007.

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 AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Greg Davison, Glider Program Manager, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2007–0176–E, dated June 22, 2007 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> During a recent flight with a DG–500 ELAN Trainer, the bolt of bearing stand 5RU61, which is the pivot for bell crank 5St19, failed in-flight, leading to loss of control of the aircraft. Although the occupants managed to exit the aircraft safely, the aircraft crashed and was damaged beyond repair. While the investigation continues, the most likely cause is suspected to be insufficient tightening of the nut on the bolt of bearing stand 5RU61.
>
> This condition, if not corrected, may cause excessive bending loads, leading to premature failure of the bolt and loss of control of the aircraft. As a precautionary measure, for the reasons described above, this Emergency Airworthiness Directive (EAD) requires a check of the torque on the affected nut, immediate replacement of any bolts where the torque is found to be insufficient and introduces a life limit for the affected bolts. Any bolts that have already exceeded this limit in service must be replaced, as indicated.

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

Relevant Service Information

DG Flugzeugbau GmbH has issued Technical Note 348/19 and 843/26 (same document), dated June 20, 2007, which references Working Instructions DG Flugzeugbau GmbH No. 1 and 2, dated June 20, 2007; and Working Instruction DG Flugzeugbau GmbH No. 3, dated June 25, 2007. 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 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 issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

Differences Between This AD and the MCAI or Service Information

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

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

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 during a recent flight with a DG–500 ELAN Trainer, the bolt of bearing stand 5RU61, which is the pivot for bell crank 5St19, failed in flight with consequent loss of control of the aircraft. The most likely cause is insufficient tightening of the nut on the bolt of bearing stand 5RU61. This condition, if not corrected, may cause excessive bending loads that could result in premature failure of the bolt with consequent loss of control of the aircraft. 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–2007–28709; Directorate Identifier 2007–CE–062–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 that this AD:

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

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

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

We prepared a 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:

2007–21–01 DG Flugzeugbau GMBH: Amendment 39–15219; Docket No. FAA–2007–28709; Directorate Identifier 2007–CE–062–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective October 25, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models DG–500 Elan Series, DG–500M, and DG–500MB gliders, all serial numbers, certificated in any category.

Subject

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

Reason

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

During a recent flight with a DG–500 ELAN Trainer, the bolt of bearing stand 5RU61, which is the pivot for bell crank 5St19, failed in-flight, leading to loss of control of the aircraft. Although the occupants managed to exit the aircraft safely, the aircraft crashed and was damaged beyond repair. While the investigation continues, the most likely cause is suspected to be insufficient tightening of the nut on the bolt of bearing stand 5RU61.

This condition, if not corrected, may cause excessive bending loads, leading to premature failure of the bolt and loss of control of the aircraft.

As a precautionary measure, for the reasons described above, this Emergency Airworthiness Directive (EAD) requires a check of the torque on the affected nut, immediate replacement of any bolts where the torque is found to be insufficient and introduces a life limit for the affected bolts. Any bolts that have already exceeded this limit in service must be replaced, as indicated.

Actions and Compliance

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

(1) Before the next flight after October 25, 2007 (the effective date of this AD) and thereafter at intervals not to exceed 12 months, inspect the actual torque of the nut that attaches bell crank 5St19 to the bolt following Working Instruction No. 1, dated June 20, 2007, as referenced in DG Flugzeugbau GmbH Technical Note 348/19 and 843/26 (same document), dated June 20, 2007, as applicable to type.

(i) If the torque is found to be less than 2.2 ft. lb. (3 Nm), before further flight, replace the affected bolt with a serviceable bolt following Working Instruction No. 2, dated June 20, 2007, as referenced in DG Flugzeugbau GmbH Technical Note 348/19 and 843/26 (same document), dated June 20, 2007, as applicable to type.

(ii) Report any findings of insufficient torque you find within 7 days after insufficient torque is found. Include in your report the glider serial number, glider hours time-in-service (TIS), the torque that was found, and a point of contact name and phone number. Send your report to DG Flugzeugbau GmbH, Otto-Lilienthal-Weg 2, D–76646 Bruchsal, Germany; telephone: +49 7251 3020140; facsimile: +49 7251 3020149; e-mail: *dirks@dg-flugzeugbau.de*.

(iii) If the torque is found to be 2.2 ft. lb. (3 Nm) or more, before further flight, increase the torque of the nut to 9 ft. lb. (12 Nm);

(2) Unless already replaced as required by paragraph (f)(1)(i) of this AD, within the next 6 months after October 25, 2007 (the effective date of this AD) or when the glider reaches a total of 1,000 hours TIS, whichever occurs later, and repetitively thereafter at intervals not to exceed 1,000 hours TIS, replace the affected bolt with a serviceable bolt following Working Instruction No. 2, dated June 20, 2007, as referenced in DG Flugzeugbau GmbH Technical Note 348/19 and 843/26 (same document), dated June 20, 2007, as applicable to type.

(3) Installation of an additional bracket following Working Instruction No. 3, dated June 25, 2007, as referenced in DG Flugzeugbau GmbH Technical Note 348/19 and 843/26 (same document), dated June 20, 2007, as applicable to type, terminates the repetitive requirement in paragraph (f)(2) of this AD.

FAA AD Differences

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

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI EASA AD No. 2007–0176–E, dated June 22, 2007, and DG Flugzeugbau GmbH Technical Note 348/19 and 843/26 (same document), dated June 20, 2007; Working Instructions No. 1 and No. 2, dated June 20, 2007, as referenced in DG Flugzeugbau GmbH Technical Note 348/19

and 843/26 (same document), dated June 20, 2007; and Working Instruction No. 3, dated June 25, 2007, as referenced in DG Flugzeugbau GmbH Technical Note 348/19 and 843/26 (same document), dated June 20, 2007, for related information.

Material Incorporated by Reference

(i) You must use DG Flugzeugbau GmbH Technical Note 348/19 and 843/26 (same document), dated June 20, 2007; Working Instructions No. 1 and 2 dated June 20, 2007, and Working Instruction No. 3 dated June 25, 2007, as referenced in DG Flugzeugbau GmbH Technical Note 348/19 and 843/26 (same document), dated June 20, 2007, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact AMS-Flight d.o.o., Kavciceva 4, 1000 Ljubljana, Slovenia.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html*.

Issued in Kansas City, Missouri on September 28, 2007.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E7–19682 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30571; Amdt. No. 3237]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This Rule establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective October 5, 2007. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of October 5, 2007.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located;

3. The National Flight Procedures Office, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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*.

Availability—All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Harry. J. Hodges, Flight Procedure Standards Branch (AFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends Title 14 of the Code of Federal Regulations, Part 97 (14 CFR part 97), by establishing, amending, suspending, or revoking SIAPs, Takeoff Minimums and/or ODPs. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms are FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, and 8260–15B when required by an entry on 8260–15A.

The large number of SIAPs, Takeoff Minimums and ODPs, in addition to their complex nature and the need for a special format make publication in the **Federal Register** expensive and impractical. Furthermore, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA forms is unnecessary. This amendment provides the affected CFR sections and specifies the types of SIAPs and the effective dates of the SIAPs, the associated Takeoff Minimums, and ODPs. This amendment also identifies the airport and its location, the procedure, and the amendment number.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as contained in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find

that notice and public procedure before adopting these SIAPs, Takeoff Minimums and ODPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

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

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, and Navigation (Air).

Issued in Washington, DC, on September 21, 2007.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me, under Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures and/or Takeoff Minimums and/or Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 25 OCT 2007

Fort Smith, AR, Fort Smith Regional, RNAV (GPS) RWY 1, Amdt 1
Fort Smith, AR, Fort Smith Regional, Takeoff Minimums and Obstacle DP, Amdt 4
Longmont, CO, Vance Brand, VOR/DME–A, Amdt 1A
Washington, DC, Washington Dulles Intl, RNAV (RNP) Z RWY 1L, Orig–A
Lakeland, FL, Lakeland Linder Regional, ILS OR LOC RWY 5, Amdt 7
Lakeland, FL, Lakeland Linder Regional, RNAV (GPS) RWY 9, Orig
Lakeland, FL, Lakeland Linder Regional, RNAV (GPS) RWY 27, Orig
Lakeland, FL, Lakeland Linder Regional, VOR RWY 27, Amdt 7
Lakeland, FL, Lakeland Linder Regional, Takeoff Minimums and Obstacle DP, Orig
Pensacola, FL, Pensacola Rgnl, LOC RWY 26, Amdt 1
St. Augustine, FL, St Augustine, Takeoff Minimums and Obstacle DP, Orig
Vero Beach, FL, Vero Beach Muni, Takeoff Minimums and Obstacle DP, Orig
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 10, Amdt 1A, ILS RWY 10 (CAT II), ILS RWY 10 (CAT III)
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS OR LOC RWY 28, Amdt 1A, ILS RWY 28 (CAT II)
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 10, Amdt 1A, ILS PRM RWY 10 (CAT II) ILS PRM RWY 10 (CAT III), (Simultaneous Close Parallel)
Atlanta, GA, Hartsfield-Jackson Atlanta Intl, ILS PRM RWY 28, Amdt 1A, ILS PRM RWY 28 (CAT II), Simultaneous Close Parallel)
Savannah, GA, Savannah/Hilton Head Intl, MLS RWY 27, Amdt 1A, CANCELLED
Boise, ID, Boise Air Terminal/Gowen Fld, ILS OR LOC RWY 10R, Amdt 10, ILS RWY 10R (CAT II)
Garden City, KS, Garden City Regional, VOR/DME RWY 17, Amdt 2
Wichita, KS, Cessna ACFT Field, RNAV (GPS)–D, Amdt 1
Wichita, KS, Cessna ACFT Field, Takeoff Minimums and Obstacle DP, Orig
Washington, MO, Washington Regional, RNAV (GPS) RWY 15, Amdt 1
Washington, MO, Washington Regional, RNAV (GPS) RWY 33, Amdt 1
Washington, MO, Washington Regional, VOR–A, Amdt 1
Booneville/Baldwyn, MS, Booneville/Baldwyn, Takeoff Minimums and Obstacle DP, Orig
Tekamah, NE, Tekamah, Muni, RNAV (GPS) RWY 14, Orig
Tekamah, NE, Tekamah, Muni, RNAV (GPS) RWY 32, Orig
Tekamah, NE, Tekamah, Muni, GPS RWY 32, Orig, CANCELLED
Tekamah, NE, Tekamah, Muni, VOR RWY 32, Amdt 6
Tekamah, NE, Tekamah, Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Maxton, NC, Laurinburg-Maxton, Takeoff Minimums and Obstacle DP, Orig
Goldsby, OK, David Jay Perry, VOR/DME RWY 31, Amdt 2
Goldsby, OK, David Jay Perry, Takeoff Minimums and Obstacle DP, Orig
Bend, OR, Bend Muni, RNAV (GPS) RWY 16, Amdt 1
Bend, OR, Bend Muni, VOR/DME RWY 16, Amdt 9
Bend, OR, Bend Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Camden, SC, Woodward Field, RNAV (GPS) RWY 6, Orig
Camden, SC, Woodward Field, RNAV (GPS) RWY 24, Orig
Camden, SC, Woodward Field, VOR/DME–A, Amdt 4
Camden, SC, Woodward Field, Takeoff Minimums and Obstacle DP, Amdt 1
Camden, SC, Woodward Field, NDB OR GPS RWY 24, Amdt 6B, CANCELLED
Clemson, SC, Oconee County Rgnl, RNAV (GPS) RWY 7, Amdt 1
Clemson, SC, Oconee County Rgnl, RNAV (GPS) RWY 25, Amdt 1
Clemson, SC, Oconee County Rgnl, Takeoff Minimums and Obstacle DP, Amdt 2
Millington, TN, Millington Regional Jetport, ILS OR LOC RWY 22, Amdt 4
Millington, TN, Millington Regional Jetport, RNAV (GPS) RWY 22, Amdt 1
Millington, TN, Millington Regional Jetport, VOR/DME OR TACAN RWY 22, Amdt 2A
Millington, TN, Millington Regional Jetport, Takeoff Minimums and Obstacle DP, Orig
Trenton, TN, Gibson County, RNAV (GPS) RWY 1, Orig
Trenton, TN, Gibson County, RNAV (GPS) RWY 19, Orig
Trenton, TN, Gibson County, VOR/DME–A, Amdt 6
Dallas-Fort Worth, TX, Dallas-FT Worth Intl, RNAV (RNP) Z RWY 31R, Amdt 1
Forth Worth, TX, Forth Worth Spinks, Takeoff Minimums and Obstacle DP, Amdt 3
Grand Prairie, TX, Grand Prairie Muni, Takeoff Minimums and Obstacle DP, Amdt 3
Mesquite, TX, Mesquite Metro, Takeoff Minimums and Obstacle DP, Amdt 3

Effective 22 NOV 2007

Bessemer, AL, Bessemer, VOR RWY 5, Amdt 6
West Palm Beach, FL, Palm Beach Intl, ILS OR LOC RWY 9L, Amdt 24A

Effective 20 DEC 2007

Cold Bay, AK, Cold Bay, ILS OR LOC/DME RYW 14, Amdt 17A
Jonesboro, AR, Jonesboro Muni, Takeoff Minimums and Obstacle DP, Amdt 2
Texarkana, AR, Texarkana Regional-Webb Field, Takeoff Minimums and Obstacle DP, Amdt 4
Daytona Beach, FL, Daytona Beach Intl, RNAV (GPS) RWY 25R, Amdt 2A
Key West, FL, Key West Intl, RNAV (GPS) RWY 9, Amdt 1
Orlando, FL, Kissimmee Gateway, ILS OR LOC RWY 15, Orig-A
Fort Dodge, IA, Fort Dodge Regional, RNAV (GPS) RWY 12, Orig
Fort Dodge, IA, Fort Dodge Regional, RNAV (GPS) RWY 30, Orig
Fort Dodge, IA, Fort Dodge Regional, VOR RWY 12, Amdt 15
Fort Dodge, IA, Fort Dodge Regional, VOR/DME RWY 30, Amdt 10
Fort Dodge, IA, Fort Dodge Regional, Takeoff Minimums and Obstacle DP, Orig
Salisbury, MD, Salisbury-Ocean City Wicomico Regional, Takeoff Minimums and Obstacle DP, Orig
Bemidji, MN, Bemidji Regional, LOC/DME RWY 25, Orig, CANCELLED
Pedricktown, NJ, Spitfire Aerodrome, RNAV (GPS) RWY 25, Amdt 1
Watertown, NY, Watertown Intl, Takeoff Minimums and Obstacle DP, Orig

Collegeville, PA, Perkiomen Valley, RNAV (GPS) RWY 9, Amdt 1
Du Bois, PA, Du Bois-Jefferson County, RNAV (GPS) RWY 7, Orig
Du Bois, PA, Du Bois-Jefferson County, VOR/DME RNAV OR GPS RWY 7, Amdt 1, CANCELLED
Du Bois, PA, Du Bois-Jefferson County, Takeoff Minimums and Obstacle DP, Orig
Cotulla, TX, Cotulla-La Salle County, VOR–A, Amdt 13
Cotulla, TX, Cotulla-La Salle County, Takeoff Minimums and Obstacle DP, Orig
Farmville, VA, Farmville Regional, Takeoff Minimums and Obstacle DP, Orig
Huntington, WV, Tri-State/Milton J. Ferguson Field, ILS OR LOC RWY 12, Amdt 12
Huntington, WV, Tri-State/Milton J. Ferguson Field, ILS OR LOC RWY 30, Amdt 5
Huntington, WV, Tri-State/Milton J. Ferguson Field, RNAV (GPS) RWY 12, Amdt 1
Huntington, WV, Tri-State/Milton J. Ferguson Field, RADAR–1, Amdt 6
Huntington, WV, Tri-State/Milton J. Ferguson Field, Takeoff Minimums and Obstacle DP, Orig

[FR Doc. E7–19240 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Polysulfated Glycosaminoglycan

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Luitpold Pharmaceuticals, Inc. The supplemental NADA provides for a revised food safety warning on labeling for an injectable solution of polysulfated glycosaminoglycan used in horses.

DATES: This rule is effective October 5, 2007.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967, filed a supplement to NADA 140–901 for ADEQUAN i.m. (polysulfated glycosaminoglycan), an injectable solution approved for use in horses and dogs by veterinary prescription for noninfectious degenerative and/or traumatic joint disease. The supplemental NADA provides for a revised food safety warning for use in horses. The application is approved as of September 10, 2007, and the regulations are amended in 21 CFR 522.1850 to reflect the approval and a current format.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under § 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Parts 522

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. Revise § 522.1850 to read as follows:

§ 522.1850 Polysulfated glycosaminoglycan.

(a) *Specifications*. Each 1-milliliter (mL) ampule of solution contains 250 milligrams (mg) polysulfated glycosaminoglycan; each 5-mL ampule or vial contains 500 mg polysulfated glycosaminoglycan.

(b) *Sponsor*. See No. 010797 in § 510.600(c) of this chapter.

(c) *Special considerations*. Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(d) *Conditions of use*—(1) *Horses*—(i) *Indications for use*. For the treatment of noninfectious degenerative and/or traumatic joint dysfunction and associated lameness of the carpal and hock joints in horses.

(ii) *Amount*—(A) *Intra-articular use (carpal)*: 250 mg once a week for 5 weeks.

(B) *Intramuscular use (carpal and hock)*: 500 mg every 4 days for 28 days.

(iii) *Limitations*. Do not use in horses intended for human consumption.

(2) *Dogs*—(i) *Indications for use*. For control of signs associated with noninfectious degenerative and/or traumatic arthritis of canine synovial joints.

(ii) *Amount*. 2 mg per pound of body weight by intramuscular injection twice weekly for up to 4 weeks (maximum of 8 injections).

Dated: September 26, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–19729 Filed 10–4–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 556 and 558

New Animal Drugs; Ractopamine

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Elanco Animal Health. The supplemental NADA provides for an increased level of monensin in four-way combination Type C medicated feeds containing ractopamine, melengestrol, monensin, and tylosin for heifers fed in confinement for slaughter, a revision to bacterial pathogen nomenclature, and an increase in liver tolerance.

DATES: This rule is effective October 5, 2007.

FOR FURTHER INFORMATION CONTACT: Suzanne J. Sechen, Center for Veterinary Medicine (HFV–126), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0221, e-mail: *suzanne.sechen@cvm.fda.gov*.

SUPPLEMENTARY INFORMATION: Elanco Animal Health, A Division of Eli Lilly & Co., Lilly Corporate Center, Indianapolis, IN 46285, filed a supplement to NADA 141–233 that provides for use of OPTAFLEXX (ractopamine hydrochloride), MGA (melengestrol acetate), RUMENSIN (monensin), and TYLAN (tylosin phosphate) Type A medicated articles to

make dry and liquid four-way combination Type C medicated feeds used for increased rate of weight gain, improved feed efficiency, and increased carcass leanness; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; for suppression of estrus (heat); and for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium (Actinomyces) pyogenes* in heifers fed in confinement for slaughter during the last 28 to 42 days on feed. The supplemental NADA provides for an increased level of monensin in four-way combination Type C medicated feeds containing ractopamine, melengestrol, monensin, and tylosin for heifers fed in confinement for slaughter, a revision to bacterial pathogen nomenclature, and an increase in the cattle liver tolerance. The supplemental NADA is approved as of September 11, 2007, and the regulations in 21 CFR 556.420 and 558.500 are amended to reflect the approval.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects

21 CFR Part 556

Animal drugs, Foods.

21 CFR Part 558

Animal drugs, Animal feeds.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 556 and 558 are amended as follows:

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

■ 1. The authority citation for 21 CFR part 556 continues to read as follows:

Authority: 21 U.S.C. 342, 360b, 371.

■ 2. In § 556.420, revise paragraph (b)(1) to read as follows:

§ 556.420 Monensin.

* * * * *

(b) * * *

(1) *Cattle*—(i) *Liver*. 0.10 part per million (ppm).

(ii) *Muscle, kidney, and fat*. 0.05 ppm.

(iii) *Milk*. Not required.

* * * * *

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

■ 3. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

■ 4. In § 558.500, in the table in paragraph (e)(2), revise paragraph (e)(2)(x) and add paragraph (e)(2)(xi) to read as follows:

§ 558.500 Ractopamine.

* * * * *

(e) * * *

(2) * * *

Ractopamine in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
*	*	* * *	*	*
(x) 9.8 to 24.6	Monensin 10 to 40 to provide 0.14 to 0.42 mg monensin/lb of body weight, depending on severity of coccidiosis challenge, up to 480 mg/head/day, plus tylosin 8 to 10, plus melengestrol acetate to provide 0.25 to 0.5 mg/head/day	Heifers fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Arcanobacterium (Actinomyces) pyogenes*; and for suppression of estrus (heat).	As in paragraph (e)(2)(vi) of this section; see paragraphs §§ 558.342(d), 558.355(d) and 558.625(c) of this chapter. Melengestrol acetate as provided by No. 000009 in § 510.600(c) of this chapter.	000986
(xi) 9.8 to 24.6	Monensin 10 to 30, plus tylosin 8 to 10, plus melengestrol acetate to provide 0.25 to 0.5 mg/ head/day	Heifers fed in confinement for slaughter: As in paragraph (e)(2)(vi) of this section; for prevention and control of coccidiosis due to *Eimeria bovis* and *E. zuernii*; for reduction of incidence of liver abscesses caused by *Fusobacterium necrophorum* and *Actinomyces (Corynebacterium) pyogenes*; and for suppression of estrus (heat).	As in paragraph (e)(2)(vi) of this section; see paragraphs §§ 558.342(d), 558.355(d) and 558.625(c) of this chapter. Melengestrol acetate as provided by No. 021641 in § 510.600(c) of this chapter.	021641

Dated: September 26, 2007.

Bernadette Dunham,

Deputy Director, Center for Veterinary Medicine.

[FR Doc. E7–19732 Filed 10–4–07; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. CGD08–07–022]

Drawbridge Operation Regulations; Milhomme Bayou, Stephensville, LA

AGENCY: Coast Guard, DHS.

ACTION: Notice of temporary deviation from regulations; request for comments.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Stephensville Bridge across Milhomme Bayou, mile 12.2, at Stephensville, St. Martin Parish, Louisiana. This deviation will test a change to the drawbridge operation schedule to determine whether a permanent change to the schedule is needed. The deviation will allow the draw of the Stephensville Bridge to open on signal if at least one hour of advance notice is given. During the advance notice period, the draw shall open on less than one hour notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.

DATES: This deviation is effective from October 5, 2007 until April 2, 2008.

ADDRESSES: You may mail comments and related material to Commander (dpb), Eighth Coast Guard District, 500 Poydras Street, New Orleans, Louisiana 70130–3310. The Commander, Eighth Coast Guard District, Bridge Administration Branch maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Bridge Administration office between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Bart Marcules, Bridge Administration Branch, telephone (504) 671–2128.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in evaluating this test schedule by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this deviation [CGD08–07–022], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8 by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. Comments must be received by December 4, 2007.

Background and Purpose

St. Martin Parish has requested that the operating regulation on the Stephensville Bridge be changed in order to operate the bridge more efficiently. The Stephensville Bridge is located on Milhomme Bayou at mile 12.2 in Stephensville, St. Martin Parish, Louisiana. The Bridge has a vertical clearance of 5.8 feet above mean high water, an elevation of 3.5 feet Mean Sea Level (MSL) in the closed position and unlimited in the open position. The Stephensville Bridge opens on signal as required by 33 CFR 117.5. This operating schedule has been in effect since 2002 when this bridge replaced an existing bridge in the area.

The previous bridge's operating schedule was, ''shall open on signal; except that, from 10 p.m. to 6 a.m. the draw shall open on signal if at least two hours notice is given. During the advance notice period, the draw shall open on less than two hours notice for an emergency and shall open on demand should a temporary surge in waterway traffic occur.''

Since the completion of the current bridge, the waterway traffic has been minimal and during the past twelve months an average of 5 boats per day have requested an opening. Most of the boats requesting openings are commercial vessels consisting of tugboats with barges and shrimp trawlers that routinely transit this waterway and are able to give advance notice.

Due to this waterway being a secondary route, the Port Allen Alternate route is the primary route, little impact is expected on navigation during this test schedule period. Also, prior coordination with the main waterway user group in the area indicates no expected impacts.

A Notice of Proposed Rule Making [CGD08–07–023], is being issued in conjunction with this Temporary Deviation to obtain public comments. The Coast Guard will evaluate public comments from this Temporary Deviation and the above referenced Notice of Proposed Rule Making to determine if a permanent special drawbridge operating regulation is warranted.

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

Dated: September 21, 2007.

David M. Frank,

Bridge Administrator.

[FR Doc. 07–4860 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[COTP LA–LB 07–004]

RIN 1625–AA00

Safety Zone; Queensway Bay, Long Beach, CA

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Long Beach Harbor to encompass the waters between Queensway Bay to Island White at Long Beach harbor for the Annual Los Angeles and Long Beach Tug Boat Race. This safety zone is needed to prevent vessels from transiting the area during the race in order to protect vessels and personnel from potential damage and injury. Entry into this safety zone will be prohibited unless specifically authorized by the Captain of the Port, Los Angeles-Long Beach, or his on-scene representative.

DATES: This rule is effective from 5 p.m. to 7 p.m. on September 27, 2007.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP LA–LB 07–004 and are available for inspection or copying at Sector Los Angeles—Long Beach, 1001 S. Seaside Ave, San Pedro, CA 90731 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Peter Gooding,

Chief of the Waterways Management Division at (310) 732–2020.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Publishing a NPRM, which would incorporate a comment period before a final rule could be issued, and delaying the rule's effective date is contrary to public safety because immediate action is necessary to protect the public and waters of the United States.

Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective fewer than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event and immediate action is necessary to prevent possible loss of life or property. This temporary safety zone should have minimal negative impact on the public and navigation because it will be enforced for only a two hour period on one day. In addition, the area restricted by the safety zone is minimal, allowing vessels to transit around the safety zone to pass.

Background and Purpose

On September 27, 2007, the Annual Port of Los Angeles and Long Beach Tug Boat Races will be held in the vicinity of Queensway Bay, Echo anchorages, and to extend around Island White. The Captain of the Port is establishing a safety zone to prevent vessels from transiting the area and to protect vessels and personnel from potential damage and injury resulting from the race.

Discussion of Rule

This safety zone includes the waters of the Long Beach Harbor within the boundaries defined by a line drawn from a point located at 33°45′11″ N, 118°11′14″ W; then south to a point located at 33°44′40″ N, 118°11′00″ W; then northeast to a point located at 33°45′03″ N, 118°09′19″ W; then north to a point located at 33°45′19″ N, 118°09′28″ W; then west back toward the starting point to 33°45′11″ N, 118°11′14″ W [NAD 1983].

Vessels are excluded from the area encompassed by this safety zone from 5 p.m. to 7 p.m. on September 27, 2007. Persons and vessels are prohibited from entering into or transiting through this safety zone unless authorized by the Captain of the Port, or his on-scene representative. By prohibiting all vessel traffic from entering the waters surrounding this event, the safety of the race personnel and the public will be enhanced. U.S. Coast Guard personnel will enforce this safety zone.

The Captain of the Port may, in his discretion grant waivers or exemptions to this rule, either on a case-by-case basis or categorically to a particular class of vessel that otherwise is subject to adequate control measures.

The Coast Guard will issue a Broadcast Notice to Mariners to further ensure the local boating traffic is aware of the safety zone and its geographical boundaries. Vessels or persons violating this section will be subject to both criminal and civil penalties.

Regulatory Evaluation

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 the safety zone will restrict boating traffic within the navigable waters of the Long Beach Harbor between Queensway Bay and Island White, the effect of this regulation will not be significant as the safety zone will encompass only a small portion of the waterway and will be short in duration. The entities most likely to be affected are pleasure craft engaged in recreational activities and sightseeing. As such, the Coast Guard expects the economic impact of this rule to be minimal.

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 entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit or anchor in the affected portion of the Long Beach Harbor from 5 p.m. to 7 p.m. on September 27, 2007. Although the safety zone will restrict boating traffic within the navigable waters of Long Beach Harbor in the vicinity of Queensway Bay east around Island White, the effect of this regulation will not be significant as the safety zone will encompass only a small portion of the waterway and will be short in duration. The entities most likely to be affected are small commercial and pleasure craft engaged in recreational activities and sightseeing. As such, the Coast Guard expects the economic impact of this rule to be minimal. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: The safety zone only encompasses a small portion of the waterway, it is short in duration, vessel traffic can pass safely around the safety zone, and the Captain of the Port may authorize entry into the safety zone, if necessary. Before the enforcement period, we will issue maritime advisories widely available to users of this area. If the event concludes prior to the scheduled termination time, the Captain of the Port will cease enforcement of this safety zone and will announce that fact via Broadcast Notice to Mariners.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Commander Peter Gooding, at Coast Sector Los Angeles—Long Beach, Waterways Management Division, at telephone (310) 732–2020.

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 Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, 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 there are no factors in this case that would limit the use of a categorical exclusion under section 2.B.2 of the Instruction. Therefore, this rule is categorically excluded, under figure 2–1, paragraph (34)(g), of the Instruction, from further environmental documentation because it establishes a safety zone.

A final ''Environmental Analysis Check List'' and a final ''Categorical Exclusion Determination'' will be available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T11–241 to read as follows:

§ 165.T11–241 Safety Zone; Queensway Bay Long Beach, California

(a) *Location.* The following area comprises the geographical boundary of a safety zone: All navigable waters of the Pacific Ocean within the boundaries defined by a line drawn from a point located at 33°45′11″ N, 118°11′14″ W; then south to a point located at 33°44′40″ N, 118°11′00″ W; then northeast to a point located at 33°45′03″ N, 118°09′19″ W; then north to a point located at 33°45′19″ N, 118°09′28″ W; then west heading back toward the starting point finishing at 33°45′11″ N, 118°11′14″ W [NAD 1983].

(b) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transit through, or anchoring within this safety zone by all vessels is prohibited, unless authorized by the Captain of the Port (COTP), or his on-scene representative.

(2) On-scene representative means any commissioned, warrant, and petty officer of the Coast Guard onboard a Coast Guard, Coast Guard Auxiliary, local, state, or federal law enforcement vessel authorized to act on behalf of the COTP.

(3) Mariners may request permission of the COTP, or his on-scene representative to transit through the safety zone. The COTP or his on-scene representative may be contacted via VHF–FM Channel 16.

(c) *Enforcement.* (1) All persons and vessels shall comply with the instructions of the COTP or his on-scene representative.

(2) Upon being hailed by the COTP or his on-scene representative by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

(3) The Coast Guard may be assisted in the patrol and enforcement of this safety zone by other federal, state, or local law enforcement as necessary.

(d) *Enforcement period.* This section will be enforced from 5 p.m. to 7 p.m. on September 27, 2007.

Dated: September 12, 2007.

P.E. Wiedenhoeft,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles—Long Beach.

[FR Doc. E7–19675 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–15–P

POSTAL SERVICE

39 CFR Part 111

New Standards for Mailing Lithium Batteries

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service™ is revising the standards for mailing lithium and lithium-ion batteries. The new standards identify all small consumer-type lithium batteries as mailable when properly packaged and labeled.

DATES: *Effective Date:* October 5, 2007.

FOR FURTHER INFORMATION CONTACT: Bert Olsen, 202–268–7276.

SUPPLEMENTARY INFORMATION:

Background

We published a proposed rule in the **Federal Register** (72 FR 20463, April 25, 2007) to revise the standards for mailing lithium and lithium-ion batteries. The standards published in the proposed rule and adopted in this final rule, are consistent with, yet slightly more restrictive than, Department of Transportation (DOT) and International Air Transportation Association (IATA) regulations for transportation of lithium batteries. The new proposed standards provide clearer guidance to mailers and postal employees regarding the mailability of consumer-type lithium batteries than current standards provide.

Comments Received

We received comments from two trade associations which were generally supportive of the proposed standards. Their comments and our responses follow:

1. *Comment:* Do not limit the weight of a mailpiece containing lithium-ion batteries.

Within DOT regulations, the Postal Service agrees not to limit the weight of a mailpiece containing lithium-ion batteries since the proposed rule additionally limits the maximum allowable gram equivalency to 8 grams per battery and the maximum number of batteries per mailpiece to 3. The gram quantity restriction per cell and battery, and the restriction on the number of batteries per mailpiece, ensures compliance with DOT regulations. Therefore, the final rule does not contain a maximum mailpiece weight limit for packages containing lithium-ion batteries.

2. *Comment:* Do not restrict the number of lithium-ion batteries to the number of batteries needed to operate the device.

Within DOT regulations, the Postal Service agrees not to limit the number of lithium-ion batteries that can be mailed to the number of batteries needed to operate the device since the proposal already limits the number of batteries per mailpiece to 3. Therefore, the final rule does not restrict the number of lithium-ion batteries to the number needed to operate the device but rather limits the number of lithium-ion batteries per mailpiece to 3.

3. *Comment:* Do not restrict the mailing of primary lithium batteries to those only in their original retail packaging.

The Postal Service believes that the requirement to mail primary batteries in the original packaging offers assurance of adequate primary packaging. However, we are changing the final rule to read, ''in the originally sealed packaging'' regardless of the source of the packaging to allow for originally sealed packaging from sources other than retailers.

4. *Comment:* USPS required labeling: ''Surface Mail Only,'' in addition to DOT labeling: ''Primary Lithium Batteries—Forbidden for Transportation Aboard Passenger Aircraft,'' is redundant and will add to the cost of the label.

The Postal Service believes labels that read ''Surface Mail Only'' are known to postal employees and quickly recognized. Therefore, the final rule adopts the standards to require labeling as published in the proposal.

5. *Comment:* USPS should not require package labeling in excess of current DOT requirements.

DOT has announced their revised labeling requirements will be effective January 1, 2008. Postal labeling requirements will reflect DOT changes. In addition, the Postal Service believes that requiring labeling of mailpieces containing secondary as well as primary batteries and cells is a cautionary measure that identifies the content of the package. Therefore, the final rule adopts the standards to require labeling as published in the proposal.

6. *Comment:* Mailpieces containing primary lithium batteries should not be limited to 5 pounds. The DOT weight limit is 11 pounds of batteries in a shipping container and the Postal Service should adopt the same requirements.

The Postal Service believes it is not practical for postal personnel to discern the aggregate weight of batteries within a mailpiece. We believe that mailpieces containing individual batteries (batteries not packed with or installed in equipment) should not exceed 5 pounds. However, we recognize that when batteries are packed with or contained in devices, the devices themselves could easily account for the majority of the weight of a mailpiece and easily exceed 5 pounds. Therefore, the final rule adopts a 5 pound maximum mailpiece weight limit when primary batteries are not packed with or installed in the devices they operate and an 11 pound mailpiece weight limit when batteries are packed with or installed in the device they operate.

7. *Comment:* Do not prohibit damaged or recalled batteries from being mailed.

The Postal Service is not prohibiting the mailing of damaged or recalled batteries, but rather we are requiring that these batteries be mailed only with prior approval from the manager, Mailing Standards. Therefore, the final rule adopts the standard for mailing damaged or recalled batteries as published in the proposed rule.

Lithium batteries other than small consumer-type batteries remain nonmailable.

We adopt the following amendments to *Mailing Standards of the United States Postal Service,* Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1, 111.4.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

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

PART 111—[AMENDED]

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

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

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

* * * * *

600 Basic Standards for All Mailing Services

601 Mailability

* * * * *

601.10 Hazardous Materials

* * * * *

10.20 Miscellaneous Hazardous Materials (Hazard Class 9)

* * * * *

[Add new 10.20.5 to read as follows:]

10.20.5 Primary Lithium (Non-Rechargeable) Cells and Batteries

Small consumer-type primary lithium cells or batteries (lithium metal or lithium alloy) like those used to power cameras and flashlights are mailable with the following restrictions. Each cell must contain no more than 1.0 gram (g) of lithium content per cell. Each battery must contain no more than 2.0 g aggregate lithium content per battery. Additionally, each cell or battery must meet the requirements of each test in the *UN Manual of Tests and Criteria,* Part III, and subsection 38.3 as referenced in DOT's hazardous materials regulation at 49 CFR 171.7. All primary lithium cells and batteries must be mailed within a firmly sealed package separated and cushioned to prevent short circuit, movement, or damage. Except for batteries installed in equipment, they must be in a strong outer package. All outer packages must have a complete delivery and return address. Primary lithium cells and batteries are mailable as follows:

a. Via surface transportation when the cells or batteries (not packed with or installed in equipment) are ''in the originally sealed packaging.'' They are forbidden aboard passenger aircraft. The outside of the package must be marked on the address side ''Surface Mail Only, Primary Lithium Batteries—Forbidden for Transportation Aboard Passenger Aircraft.'' The mailpiece must not exceed 5 pounds.

b. Via surface or air transportation when the cells or batteries are properly packed with or properly installed in the equipment they operate and the mailpiece has no more than the number of batteries needed to operate the device. Cells or batteries properly installed in the device they operate must be protected from damage and short circuit, and the device must be equipped with an effective means of preventing accidental activation. The outside of the package must be marked on the address side ''Package Contains Primary Lithium Batteries.'' The mailpiece must not exceed 11 pounds.

[Add new 10.20.6 to read as follows:]

10.20.6 Secondary Lithium-ion (Rechargeable) Cells and Batteries

Small consumer-type lithium-ion cells and batteries like those used to power cell phones and laptop computers are mailable with the following restrictions. Each cell must contain no more than 1.5 g of equivalent lithium content per cell. Each battery must contain no more than 8.0 g aggregate quantity of equivalent lithium content per battery. Additionally, each cell or battery must meet the requirements of each test in the *UN Manual of Tests and Criteria*, Part III, and subsection 38.3 as referenced in the DOT's hazardous materials regulation at 49 CFR 171.7. All secondary lithium-ion cells and batteries must be mailed in a firmly sealed package separated and cushioned to prevent short circuit, movement, or damage. Except for batteries installed in equipment, they must be in a strong outer package. All outer packages must have a complete delivery and return address. These cells and batteries are mailable as follows:

a. Via surface or air transportation when individual cells or batteries are mailed or when properly packed with or properly installed in the equipment they operate. Cells or batteries properly installed in the device they operate must be protected from damage and short circuit, and the device must be equipped with an effective means of preventing accidental activation. The outside of the package must be marked on the address side ''Package Contains Lithium-ion Batteries (no lithium metal).''

b. The mailpiece must not contain more than 3 batteries.

[Add new 10.20.7 to read as follows:]

10.20.7 Damaged or Recalled Batteries

Damaged or recalled batteries are prohibited from mailing unless approved by the manager, Mailing Standards.

* * * * *

[Add new Exhibit 10.20.7 as follows:]

EXHIBIT 10.20.7.—LITHIUM BATTERY MAILABILITY CHART

Primary lithium batteries (small non-rechargeable consumer-type batteries)	Surface transportation	Air transportation	Mailpiece weight limit	International APO/FPO
Without the equipment they operate (individual batteries).	Mailable	Prohibited	5 lb	Prohibited.
Packed with equipment but not installed in equipment.	Mailable	Mailable	11 lb	Mailable.
Contained (properly installed) in equipment.	Mailable	Mailable	11 lb	Mailable.

Note 1: Each primary cell must not contain more than 1g lithium content.

Note 2: Each primary battery must not contain more than 2 g lithium content.

Secondary lithium-ion batteries (small rechargeable consumer-type batteries)	Surface transportation	Air transportation	Mailpiece battery limit	International APO/FPO
Without the equipment they operate (individual batteries).	Mailable	Mailable	no more than 3 batteries	Mailable.
Packed with equipment but not installed in equipment.	Mailable	Mailable	no more than 3 batteries	Mailable.

Secondary lithium-ion batteries (small rechargeable consumer-type batteries)	Surface transportation	Air transportation	Mailpiece battery limit	International APO/FPO
Contained (properly installed) in equipment.	Mailable	Mailable	no more than 3 batteries ..	Mailable.

Note 3: Each secondary cell must not contain more than 1.5 g equivalent lithium content.

Note 4: Each secondary battery must not contain more than 8 g equivalent lithium content.

Note 5: For secondary batteries (lithium-ion) there is a limit of 3 batteries per mailpiece.

601.11 Other Restricted and Nonmailable Matter

* * * * *

11.17 Battery-Powered Devices

[Revise the first sentence in 11.17 to read as follows:]

Cells or batteries properly installed in equipment must be protected from damage and short circuit and equipment or devices containing cells or batteries must include an effective means of preventing accidental activation.* * * * * * * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E7–19051 Filed 10–4–07; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 721

[EPA–HQ–OPPT–2005–0036; FRL–8110–5]

RIN 2070–AJ19

Mercury Switches in Motor Vehicles; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is promulgating this significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for elemental mercury (CAS No. 7439–97–6) used in certain convenience light switches, anti-lock braking system (ABS) switches, and active ride control system switches. This action will amend 40 CFR part 721 and require persons who intend to manufacture (defined by statute to include import) or process elemental mercury for a use designated by this rule as a significant new use to notify EPA at least 90 days before commencing the manufacturing or processing of the chemical substance for such significant new use. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs. In addition, in order to display the OMB control number for the information collection requirements contained in this final rule, EPA is amending the table of Office of Management and Budget (OMB) approval numbers for EPA regulations that appears in 40 CFR part 9.

DATES: This final rule is effective November 5, 2007.

ADDRESSES: EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPPT–2005–0036. All documents in the docket are listed in the docket index available in regulations.gov. To access the electronic docket, go to *http://www.regulations.gov*, select ''Advanced Search,'' then ''Docket Search.'' Insert the docket ID number where indicated and select the ''Submit'' button. Follow the instructions on the regulations.gov website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at *http://www.regulations.gov*, or, if only available in hard copy, at the OPPT Docket. The OPPT Docket is located in the EPA Docket Center (EPA/DC) at Rm. 3334, EPA West Bldg., 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room hours of operation are 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. The telephone number of the EPA/DC Public Reading Room is (202) 566–1744, and the telephone number for the OPPT Docket is (202) 566–0280. Docket visitors are required to show photographic identification, pass through a metal detector, and sign the EPA visitor log. All visitor bags are processed through an X-ray machine and subject to search. Visitors will be provided an EPA/DC badge that must be visible at all times in the building and returned upon departure.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Colby Lintner, Regulatory Coordinator, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 554–1404; e-mail address: *TSCA-Hotline@epa.gov*.

For technical information contact: Thomas Groeneveld, National Program Chemicals Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (202) 566–1188; e-mail address: *groeneveld.thomas@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or process elemental mercury for use in certain motor vehicle convenience light switches, ABS switches, and active ride control system switches. This action may also affect certain entities through pre-existing import certification and export notification rules under TSCA. Persons who import any chemical substance subject to TSCA must comply with the TSCA section 13 (15 U.S.C. 2612) import certification requirements and corresponding regulations codified at 19 CFR 12.118 to 12.127 and 127.28. Such persons must certify that each shipment of the chemical substance complies with applicable rules and orders under TSCA, including any SNUR requirements. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. In addition, TSCA section 12(b) (15 U.S.C. 2611(b)) export notification requirements are triggered by publication of a proposed SNUR. Therefore, any persons who export, intend to export, or have exported elemental mercury on or after August 10, 2006, are subject to the export notification provisions of TSCA section 12(b) (see 40 CFR 721.20). Such persons must comply with the export notification requirements in 40 CFR part 707, subpart D. Potentially affected

entities may include, but are not limited to:

- Manufacturers and processors of motor vehicle electrical switches (NAICS code 335931), e.g., manufacturers and processors of mercury switches in convenience lights, ABS acceleration sensors, and active ride control sensors.
- Manufacturers and processors of transportation equipment (NAICS code 336), e.g., manufacturers of motor vehicles and motor vehicle parts containing mercury switches.
- Motor vehicle repair and maintenance facilities (NAICS code 8111), e.g., motor vehicle mechanics who replace or install new elemental mercury switches as part of vehicle repair and maintenance.
- Motor vehicle part (used) wholesalers (NAICS code 4211), e.g., motor vehicle dismantlers who dismantle motor vehicles and sell used parts.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities. To determine whether you or your business may be affected by this action, you should carefully examine the applicability provisions in 40 CFR 721.5 for SNUR-related obligations. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. Background

A. What Action is the Agency Taking?

EPA proposed this SNUR for elemental mercury used in certain convenience light switches, ABS switches, and active ride control system switches on July 11, 2006 (71 FR 39035) (FRL–7733–9). EPA's responses to public comments received on the proposed rule are in Unit III.D. Please consult the July 11, 2006 **Federal Register** document for further background information for this final rule.

This SNUR will require persons to notify EPA at least 90 days before commencing the manufacture, import, or processing of elemental mercury for the uses described in Unit III.B. and 40 CFR 721.10068(b)(2) of the regulatory text for this final rule (including use in certain convenience light switches, ABS switches, and active ride control switches in motor vehicles, including when elemental mercury is imported or processed as part of an article). EPA defines ''motor vehicle'' for this SNUR by referencing the definition used in the emissions control regulations developed under the Clean Air Act (see 40 CFR 85.1703). As described in Unit III.A., EPA believes this action is necessary because manufacturing, processing, use, or disposal of elemental mercury in these switches may produce significant changes in human and environmental exposures to elemental mercury and methylmercury.

B. What is the Agency's Authority for Taking this Action?

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a ''significant new use.'' EPA must make this determination by rule after considering all relevant factors, including those listed in TSCA section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, TSCA section 5(a)(1)(B) (15 U.S.C. 2604(a)(1)(B)), requires persons to submit a significant new use notification (SNUN) to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

C. Applicability of General Provisions

General provisions for SNURs appear in 40 CFR part 721, subpart A. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. However, 40 CFR 721.45(f) does not apply to this SNUR. As a result, persons subject to the provisions of this rule are not exempt from significant new use reporting if they import or process elemental mercury as part of an article (see 40 CFR 721.5). Conversely, the exemption from notification requirements for exported articles (see 40 CFR 707.60(b)), remains in force. Thus, persons who export elemental mercury as part of an article are not required to provide export notice.

Provisions relating to user fees appear at 40 CFR part 700. Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of Premanufacture Notices (PMNs) under TSCA section 5(a)(1)(A). In particular, these requirements include the information submission requirements of TSCA sections 5(b) and 5(d)(1), the exemptions authorized by TSCA sections 5(h)(1), (h)(2), (h)(3), and (h)(5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under TSCA sections 5(e), 5(f), 6, or 7 to control the activities for which the SNUN was submitted. If EPA does not take action, EPA is required under TSCA section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who export or intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations under TSCA section 12(b) appear at 40 CFR part 707, subpart D. The EPA policy in support of import certification appears at 40 CFR part 707, subpart B. Persons who import a chemical substance identified in a final SNUR are subject to the import certification requirements under TSCA section 13, which appear at 19 CFR 12.118 to 12.127 and 127.28. Such persons must certify that the shipment of the chemical substance complies with all applicable rules and orders under TSCA, including any SNUR requirements.

III. Objectives and Rationale of the Final Rule

A. Overview

This rule applies to elemental mercury (CAS No. 7439–97–6), which is a naturally occurring element. Because of its unique properties (e.g., exists as a liquid at room temperature and forms amalgams with many metals), elemental mercury has been used in many industrial processes and consumer products. Mercury switches exploit the ability of small quantities of elemental mercury to conduct electricity and remain one of the largest categories of elemental mercury product uses. In addition to its useful characteristics, mercury also may cause adverse health effects in humans and wildlife. These effects can vary depending on the form of mercury to which a person is exposed, as well as the magnitude, length, and frequency of exposure.

The most prevalent human and wildlife exposure to mercury results from ingesting fish contaminated with methylmercury. Methylmercury is an organic compound that is formed via the conversion of elemental or inorganic mercury by certain microorganisms and other natural processes. For example, elemental mercury may evaporate and be emitted into the atmosphere. Atmospheric mercury can be deposited directly into water bodies or watersheds, where it can be washed into

surface waters via overland run–off. Once deposited in sediments, certain microorganisms and other natural processes can convert elemental mercury into methylmercury. Methylmercury bioaccumulates, which means that it is taken up and concentrated in the tissues of aquatic, mammalian, avian, and other wildlife. Methylmercury is a highly toxic substance; a number of adverse health effects associated with exposure to it have been identified in humans and in animal studies. Most extensive are the data on neurotoxicity, particularly in developing organisms. Fetuses, infants, and young children generally are more sensitive to methylmercury's neurological effects than adults.

By 2005, all fifty states had created fish–advisory programs. Through the end of 2004, forty-eight states, one territory, and two Indian tribes issued fish consumption advisories recommending that some people limit their consumption of fish from certain water bodies known to be contaminated by methylmercury. Also in 2004, EPA and the Food and Drug Administration (FDA) jointly issued a national advisory providing advice to women of childbearing age and young children on mercury in fish and shellfish. The advisory stated that some fish and shellfish contain higher levels of mercury that may harm a fetus or the developing nervous system of a young child. As of today, the information in the 2004 EPA/FDA advisory remains current.

Mercury switches were used for many years in motor vehicles in hood and trunk convenience lights, ABS, and active ride control systems. More than 200 million mercury switches were installed in motor vehicles from 1974 to 2000. In the United States, motor vehicles that reach the end of their useful life are often dismantled so that the useful parts can be reused and steel and other materials can be recycled. The steel industry recycles approximately 12 to 14 million end-of-life vehicles each year. During the recycling process, vehicles are dismantled, crushed, and shredded. Vehicle scrap is then separated into the ferrous, nonferrous, and motor vehicle shredder residue fractions. All of these fractions can be contaminated with elemental mercury, which can be released when switches are ruptured during processing. Steel fractions are sent to electric arc furnaces (EAFs) and other scrap consumers to be melted and refined for use in other steel products. The EAF process uses intense heat, which can vaporize and emit elemental mercury into the atmosphere. Motor vehicles are believed to be the largest single source of elemental mercury in EAF emissions. The EPA air toxics program has identified EAFs as a priority sector.

In response to increased concerns about exposure to anthropogenic sources of elemental mercury and the availability of suitable mercury-free products, Federal and State governments have made efforts to limit the use of elemental mercury in certain products. American automakers voluntarily eliminated the use of mercury switches in motor vehicles as of January 1, 2003. Foreign motor vehicle manufacturers eliminated the use of mercury switches in the 1990s. Over the next 20 years, it is anticipated that most of the motor vehicles containing mercury switches will reach the end of their useful lives, will be recycled, and ultimately will pass through EAFs and other scrap consumer facilities. Many States and non-governmental organizations have taken actions to remove or to encourage the removal of mercury switches from motor vehicles before they are recycled. For these reasons, the potential for elemental mercury emissions to be released during scrap consumption is expected to decrease as fewer motor vehicles containing mercury switches remain to be dismantled or recycled.

While newly manufactured motor vehicles no longer contain mercury switches, certain switches are still available as aftermarket replacement parts. Mercury switches generally last the lifetime of the motor vehicle; however, switch replacement is required if a collision or another action damages the component containing the switch or the switch itself. Mercury switches are no longer used for replacement in hood and trunk convenience lights because mercury-free substitutes are readily available. However, no mercury-free alternative exists for mid-life replacement of ABS and active ride control system switches and a limited number of such switches remain available as replacement parts for pre-2003 motor vehicles. EPA believes that the demand for mercury switches as aftermarket replacement parts is currently low and likely will become negligible when most pre-2003 motor vehicles containing mercury switches in ABS and active ride control systems reach the end of their useful lives. EPA is excluding from this final SNUR mercury switches manufactured as aftermarket replacement parts for ABS and active ride control systems in vehicles manufactured before January 1, 2003.

For a more detailed summary of background information (e.g., chemistry, environmental fate, exposure pathways, health and environmental effects, and use information), as well as references pertaining to elemental mercury that EPA considered before promulgating this final rule, please refer to the proposed rule as issued in **Federal Register** of July 11, 2006 (71 FR 39035) or the docket for this action under docket ID number EPA–HQ–OPPT–2005–0036. All documents in the docket are listed in the docket's index available at *http://www.regulations.gov*.

B. EPA Findings and Rationale

EPA is encouraged by the voluntary discontinuation of mercury-switch technologies in new vehicles as of January 1, 2003, and the anticipated reductions in mercury-switch production for mid-life replacement parts as pre-2003 vehicles containing mercury switches are no longer available and reach the end of their utility. However, EPA is concerned that the manufacturing or processing of elemental mercury for use in switches in new motor vehicles could be reinitiated in the future. Accordingly, EPA wants the opportunity to evaluate and control, where appropriate, activities associated with those uses, which contribute to atmospheric and environmental releases of elemental mercury. The required notification provided by a SNUN will provide EPA with the opportunity to evaluate activities associated with a significant new use and an opportunity to protect against unreasonable risks, if any, from exposure to mercury.

In determining what constituted significant new uses for elemental mercury motor vehicle switches, EPA considered relevant information on the toxicity of mercury and likely exposures associated with the uses, as discussed in Unit III.A., and the four factors listed in TSCA section 5(a)(2), as discussed in Unit IV.

After considering all relevant factors, EPA is designating as significant new uses the manufacture or processing of elemental mercury for:

- Use in convenience light switches in new motor vehicles.
- Use in convenience light switches as new aftermarket replacement parts for motor vehicles.
- Use in switches in ABS in new motor vehicles.
- Use in switches in ABS as new aftermarket replacement parts for motor vehicles that were manufactured after January 1, 2003.
- Use in switches in active ride control systems in new motor vehicles.
- Use in switches in active ride control systems as new aftermarket

replacement parts for motor vehicles that were manufactured after January 1, 2003.

EPA believes it is unlikely that companies would resume the use of mercury switches because mercury switches are no longer being used in new motor vehicles; effective mercury-free alternatives are increasingly available; use of elemental mercury in products is declining; and a growing number of states have banned the use of mercury switches in motor vehicles. In the event that mercury switch use as replacement parts in ABS and active ride control systems of pre-2003 motor vehicles does not decrease as described in this final rule, EPA may pursue additional regulatory action as appropriate under TSCA sections 4, 6, and 8. For a summary of alternative regulatory actions for elemental mercury that EPA considered before promulgating this final rule, please refer to the proposed rule as issued in **Federal Register** of July 11, 2006 (71 FR 39035).

C. Summary and Effects of the Final Rule

This final rule requires persons who intend to manufacture, import, or process elemental mercury for the significant new uses identified in this action to submit a SNUN at least 90 days before commencing such activity. The required notice will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that use before it occurs. This final rule will ensure that:

- EPA will receive a SNUN indicating a person's intent to manufacture, import, or process elemental mercury for a designated significant new use before that activity begins.
- EPA will have an opportunity to review and evaluate data and information submitted in a SNUN before the submitter begins manufacturing, importing, or processing elemental mercury for a designated significant new use.
- EPA will have an opportunity to regulate prospective manufacturers, importers, or processors of elemental mercury before the notified significant new use occurs, provided such regulation is warranted pursuant to TSCA sections 5(e) or 5(f).

For this SNUR, EPA is not including the general ''article'' exemption at 40 CFR 721.45(f). Thus, persons importing or processing elemental mercury, including when part of an article, for a significant new use would be subject to the notification requirements of 40 CFR 721.25. EPA is not including this exemption because mercury switches are articles, and a primary concern associated with this SNUR is potential exposures associated with the lifecycle of elemental mercury in certain motor vehicle switches. Further, it is possible to reclaim elemental mercury from certain articles, which could be used to produce motor vehicle switches. Conversely, the exemption from notification requirements for exported articles (see 40 CFR 707.60(b), remains in force. Thus, persons who export elemental mercury as part of an article are not required to provide export notice.

D. Response to Public Comments

EPA received ten comments on the proposed rule that was issued in the **Federal Register** of July 11, 2006 (71 FR 39035). Copies of all comments received are available in the public docket for this action. Two comments that expressed general support for the proposed rule and another comment, which consisted of a static web-based image of an article about the health effects of elemental mercury and methylmercury, were not addressed. Comments that were similar in nature were consolidated into the following summaries. A discussion of the comments germane to the rulemaking and EPA responses follows:

1. *Comment—Proposed action insufficient.* One commenter felt that the use of elemental mercury (and all other toxic substances) in motor vehicle manufacturing should be banned. In the alternative, the commenter suggested that automakers should be required to implement mercury recovery policies to recover all mercury used in the motor vehicle manufacturing process.

Response. The actions requested by the commenter are outside the scope of this rulemaking. As mentioned in the proposed rule, EPA considered and rejected regulating elemental mercury under TSCA section 6(a). EPA concluded risk management action under TSCA section 6 is not necessary at this time because mercury switches are no longer being used in convenience lights, ABS, and active ride control systems installed in new motor vehicles; are no longer used in convenience light replacement parts; and are of very limited availability in ABS and active ride control replacement parts for some pre-2003 motor vehicles. This rule will allow EPA to address the potential risks associated with the described significant new uses of elemental mercury. Further, if the elimination of the use of mercury switches in ABS and active ride control replacement parts does not occur as anticipated, EPA may reconsider this decision and pursue additional regulatory action.

2. *Comment—Applicability of action and reporting requirements for motor vehicles involved in collisions and junkyards.* One commenter inquired as to the specific make and model of motor vehicles affected by the proposed rule, the amount of elemental mercury present in a typical convenience light switches, ABS switches, or active ride control system switches, and the reporting requirements for motor vehicles involved in a collision whereby a switch is ruptured and releases elemental mercury. Further, the commenter inquired as to the applicability of the proposed rule to junkyards.

Response. EPA is not able to provide data on the specific make and model of motor vehicles that will be affected by this final rule. However, tables that describe ''Automobiles with ABS or Ride Control Systems that Contain Mercury Switches,'' ''Number of Mercury Capsules Installed between 1970 and 2003, by switch application,'' and ''Vehicles with Mercury Switches Installed, 1985–2003 by switch application,'' can be accessed in the public docket for the final rule in the report titled, ''Market Study: Mercury Use in Auto Switches.''

U.S. automakers phased-out the use of mercury switches in new vehicles on January 1, 2003. Each switch contains between 0.7 to 1.5 grams of elemental mercury. This action does not require the reporting of elemental mercury spills from a vehicle collision. The rule requires persons to notify EPA at least 90 days before commencing the manufacturing or processing of elemental mercury for use in certain new motor vehicle switches, as described in Unit III.B. and 40 CFR 721.10068(b)(2) of the regulatory text for this rule. A junkyard might be affected if it were manufacturing or processing elemental mercury for convenience light switches, ABS switches, or active ride control system switches, or manufacturing or processing elemental mercury and distributing it in commerce to persons who could use it in such switches.

3. *Comment—Clarification of export notification requirements and implementation of de minimis standard.* Two commenters requested that the applicability of export requirements under TSCA section 12(b) be further clarified. The commenters voiced concerns that language in the preamble of the proposed rule requires export notification for elemental mercury exported in any form. The commenters were concerned that trace amounts of

elemental mercury (i.e., impurities), present in or on significant numbers of products in international commerce might trigger unduly burdensome export notification requirements. Instead, one of the commenters stated that export notification requirements should apply ''only for elemental mercury when exported in the form subject to the SNUR, i.e., when used in convenience light switches, ABS switches, and active ride control switches in certain motor vehicles.'' The commenters cited as precedent an EPA amendment of a rule issued under TSCA section 6 (59 FR 42769; August 19, 1994) (FRL–4867–3) (codified at 40 CFR 749.68), concerning hexavalent chromium used in comfort cooling towers. Both commenters also recommended that a *de minimis* standard should be adopted under TSCA section 12(b), whereby exports of chemical substances and mixtures in amounts less than the prescribed threshold would not be subject to notification requirements.

Response. EPA will not, at this time, revisit its interpretation of TSCA section 12(b) and the implementing regulations at 40 CFR part 707, subpart D. Thus, one result of this SNUR is to trigger export notification requirements under TSCA section 12(b) for the export of elemental mercury regardless of its intended use. However, due to recent amendments to EPA's TSCA section 12(b) implementing regulations (see 71 FR 66234; November 14, 2006) (FRL–8101–3) (see 71 FR 68750; November 28, 2006) (FRL–8104–9), exporters will not be required to report exports with *de minimis* levels of elemental mercury and will only be required to provide TSCA section 12(b) notification once for export to any given country.

The proposed rule indicated that the export notification requirements under TSCA section 12(b) would be applicable to the export of elemental mercury regardless of its intended use. Section 12(b)(2) of TSCA provides that, ''If any person exports or intends to export to a foreign country a chemical substance or mixture for which . . . a rule has been proposed or promulgated under section 2604 [(TSCA section 5)] . . . , such person shall notify the Administrator of such exportation or intent to export and the Administrator shall furnish to the government of such country notice of such rule (15 U.S.C. 2611(b)(2)).'' The TSCA section 12(b) export notification requirement for a chemical subject to a proposed or final SNUR is not contingent on whether the intended use of the chemical has been regulated under a SNUR, and EPA does not interpret TSCA section 12(b) to include an exemption for uses that are not regulated. In promulgating the TSCA section 12(b) implementing regulations, EPA explained its position, ''that the export notification requirement for a chemical is not contingent on whether the intended use of the chemical has been regulated. Notice must be given to EPA even though the chemical is being exported for a use, or in a manner, that is not regulated domestically under the relevant section 5, 6, or 7 action, rule or order (45 FR 82844, 82846; December 16, 1980).''

The commenters requested an exemption from the export notification requirements for the export of elemental mercury that would not be used for the significant new use. In support of the requested exemption, the commenters stated that EPA's amendment of a rule issued under TSCA section 6, which concerned hexavalent chromium in comfort cooling towers (59 FR 42769; August 19, 1994) (codified at 40 CFR 749.68), provided a precedent for this type of exemption. In the August 1994 hexavalent chromium action noted by the commenters, EPA amended 40 CFR 749.68 to clarify that only hexavalent chromium chemicals that could be used for water treatment were the subjects of the underlying TSCA section 6 regulation, not other hexavalent chromium chemicals. That amendment had the parallel effect of limiting the scope of TSCA section 12(b) export notifications that were required for those hexavalent chromium chemicals that could be used to treat water. The chemical subject to this SNUR is elemental mercury, thus TSCA section 12(b) requirements are applicable to the export of elemental mercury. It should be noted, however, that in accordance with TSCA section 12(b) regulations at 40 CFR 707.60(b), export notification for elemental mercury exported as part of an article is not required. EPA will not narrow the language of the final rule to confine export notification requirements, as requested by the commenter, ''only for elemental mercury when exported in the form subject to the SNUR, i.e., when used in convenience light switches, ABS switches, and active ride control switches in certain motor vehicles.''

4. *Comment—Weighted average of mercury switch content*. One commenter recommended that market data cited in the preamble of the proposed rule, which pertained to the average content of elemental mercury in switches used in convenience light, ABS, or active ride control systems, should be supplemented to reflect the weighted average of all switches used industry-wide for such purposes in motor vehicles, which typically occur in one of three styles and weights.

Response. The discrepancy between the averages of 0.8 grams per switch in Unit IV.E. of the proposed rule and the weighted average of 1.2 grams per switch, as submitted, is noted. The submitted data suggests that the amount of elemental mercury collectively contained in convenience light, ABS, or active ride control system switches, as well as the amounts potentially released into the environment, might be greater than estimated. However, for the purposes of this action, the data does not affect EPA's significant new use determinations as described herein.

5. *Comment—Lift article exemption in whole, maintain broad definition of ''motor vehicle,'' and incorporate condition for approval of new use*. One commenter advocated lifting the ''article'' exemption at 40 CFR 721.45(f) in whole, as a partial suspension (e.g., solely for articles containing motor vehicle switches) might be confusing or undermine the intent of the proposed rule. The commenter also concurred with the existing, broader definition of ''motor vehicle,'' and suggested the action apply to vehicles other than noncommercial motor vehicles that incorporate mercury switches for convenience light, ABS, or active ride control systems. Finally, the commenter suggested that EPA emphasize ''mitigation requirements as a condition of approval for new use.'' The commenter recommended that ''new language [could] be included in the rule that would give States and EPA the ability to weigh the potential of cross-media impacts when considering significant new uses so that mitigation in other critical environmental areas can be included as a part of the decision making on significant new uses.'' The commenter also urged EPA to consider ''overall community reduction efforts as well as efforts by companies to manage overall environmental footprint'' in its decision-making processes.

Response. EPA agrees that the exemption for articles at 40 CFR 721.45(f) should not apply to this action, and will finalize the rule as proposed, without the ''article'' exemption. EPA also agrees that the proposed definition of motor vehicles should be finalized as proposed. In regard to placing emphasis on ''mitigation requirements as a condition of approval for new use,'' EPA notes that the SNUN review process is not an approval process. Instead, EPA reviews notifications and can take action, as appropriate, under TSCA sections 5(e), 5(f), 6, or 7, to regulate the significant new use. If EPA takes no action during

the SNUN review period, then the SNUN submitter can commence the new use and EPA must issue a **Federal Register** document in accordance with TSCA section 5(g). As to considering cross-media impacts, specific mitigation requirements, and overall community reduction efforts in the ''decision making on significant new uses,'' EPA generally does consider cross-media impacts in the SNUN evaluation process and could request further information from a SNUN submitter as needed to facilitate assessment and, where appropriate, regulate significant new uses. Further, EPA routinely considers environmental and human exposures, hazards, risks, and data needs, and, where appropriate, follows up as required with SNUN submitters, to regulate or limit activities pending the development of information necessary to evaluate a significant new use through the issuance of TSCA section 5(e) orders.

6. *Comment—Potential expansion of elemental mercury emission reduction under other statutes.* One commenter suggested the development of an aggressive National Emission Standards for Hazardous Air Pollutants (NESHAPs) that focused on electric arc furnace facilities.

Response. The actions requested by the commenter are outside the scope of this rulemaking.

IV. Significant New Use Determination

Section 5(a)(2) of TSCA provides that EPA's determination that a use of a chemical substance is a significant new use must be made after consideration of all relevant factors including:

- The projected volume of manufacturing and processing of a chemical substance.
- The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.
- The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.
- The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance (15 U.S.C. 2604(2)(A)–(D)).

TSCA provides for the consideration of all relevant factors in making a significant new use determination, and here EPA considered other factors in addition to those enumerated in TSCA section 5(a)(2). To determine what would constitute a significant new use of elemental mercury, EPA considered relevant information about the toxicity of mercury, the likely exposures and releases associated with the lifecycle of elemental mercury manufactured for use in motor vehicle switches, and the four factors listed in TSCA section 5(a)(2). The lifecycle steps include the following:

- Mercury switch manufacturing.
- Motor vehicle manufacturing.
- Motor vehicle collision, repair, and maintenance.
- End-of-life vehicle recycling.

After consideration of the relevant information about elemental mercury and the lifecycle steps of automobile manufacture, the statutory factors, and other considerations articulated in the proposed rule (71 FR 39041–39042; July 11, 2006), EPA finds that the use of elemental mercury in convenience light, ABS, and active ride control system switches for use in new motor vehicles to be a significant new use. EPA also finds the use of elemental mercury in certain switches as aftermarket replacement parts to be a significant new use: All aftermarket convenience light switches and those aftermarket ABS and active ride control system switches for motor vehicles manufactured after January 1, 2003.

These findings are based on the reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of elemental mercury in such switches, reintroduction of elemental mercury in convenience light, ABS, and active ride control system switches for use in new motor vehicles would: (1) Increase the volume of manufacturing, processing, and recycling of such switches; (2) increase the magnitude and duration of exposure of human beings and the environment to elemental mercury; and (3) result in the exposure of a category of workers to a different type or form of elemental mercury. Based on these considerations, EPA determined that any manufacturing or processing of elemental mercury for the uses designated in this rule is a significant new use.

V. Applicability of Rule to Uses Occurring Before Effective Date of the Final Rule

As discussed in the **Federal Register** of April 24, 1990 (55 FR 17376), EPA has decided that the intent of TSCA section 5(a)(1)(B) is best served by designating a use as a significant new use as of the date of publication of the proposed rule rather than as of the effective date of the final rule. If uses begun after publication of the proposed rule were considered ongoing rather than new, it would be difficult for EPA to establish SNUR notice requirements, because a person could defeat the SNUR by initiating the proposed significant new use before the rule became final, and then argue that the use was ongoing as of the effective date of the final rule. Thus, persons who began or begin commercial manufacture, import, or processing of elemental mercury for a significant new use designated in this rule will have to cease any such activity before the effective date of this rule. To resume their activities, these persons would have to comply with all applicable SNUR notice requirements and wait until the notice review period, including all extensions, expires. EPA has promulgated provisions to allow persons to comply with this SNUR before the effective date. If a person were to meet the conditions of advance compliance under 40 CFR 721.45(h), the person would be considered to have met the requirements of the final SNUR for those activities.

VI. SNUN Submissions

SNUNs should be mailed to the Environmental Protection Agency, OPPT Document Control Office (7407M), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001. Information must be submitted in the form and manner set forth in EPA Form No. 7710–25. This form is available electronically on the EPA website at *http://www.epa.gov/oppt/newchems/pubs/pmnforms.htm*, and in hard copy from the Environmental Assistance Division (7408M), OPPT, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 (see 40 CFR 721.25(a) and 720.40(a)(2)(i)).

VII. Test Data and Other Information

EPA recognizes that TSCA section 5 does not require developing any particular test data or information before submission of a SNUN. Persons are required only to submit test data and information in their possession or control and to describe any other data known to or reasonably ascertainable by them (15 U.S.C. 2604(d); 40 CFR 721.25).

In view of the potential risks posed by manufacture, processing, distribution, and disposal of elemental mercury for use in motor vehicle switches, EPA recommends that potential SNUN submitters include data that would permit a reasoned evaluation of risks posed by elemental mercury. EPA encourages persons to consult with EPA staff before submitting a SNUN. As part of this optional pre-notice consultation, EPA will discuss specific data it believes may be useful in evaluating a significant new use. SNUNs submitted for a significant new use of elemental

mercury without any test data may increase the likelihood that EPA will take action under TSCA section 5(e) to prohibit or limit activities associated with the significant new use intended.

SNUN submitters should be aware that EPA will be better able to evaluate SNUNs that provide detailed information on:

- Human exposure and environmental releases that may result from the significant new uses of elemental mercury.
- Potential benefits of the significant new use of the elemental mercury.
- Information on risks posed by the use of elemental mercury in motor vehicle switches relative to risks posed by mercury-free substitutes.
- Information on how the concerns about elemental mercury emissions during disposal of end-of-life vehicles could be mitigated (e.g., rebates for switches removed before shredding).

Submitters should consider including with a SNUN any other available studies on elemental mercury or studies on analogous substances which may demonstrate that the significant new uses being reported are unlikely to present an unreasonable risk.

VIII. Economic Analysis

A. SNUNs

EPA evaluated the potential costs of establishing SNUR reporting requirements for potential manufacturers and processors of elemental mercury. While there is no precise way to calculate the total annual cost of compliance with this final rule, given the uncertainties related to predicting the number of SNUNs that would be submitted as a result of this SNUR, EPA estimates that the cost for preparing and submitting a SNUN is $7,302, including a $2,500 user fee required by 40 CFR 700.45(b)(2)(iii). Small businesses with annual sales of less than $40 million when combined with those of the parent company, if any, are subject to a reduced user fee of $100 (40 CFR 700.45(b)(1)). Based on past experience with SNURs and the low number of SNUNs which are submitted on an annual basis, EPA believes that there will be few, if any, SNUNs submitted as a result of this SNUR. EPA does not expect manufacturers of motor vehicles or mercury-containing replacement switches to choose to manufacture or process items that would require the submission of a SNUN. EPA believes that certain state laws that ban the use of mercury-containing switches in new motor vehicles, as well as marginal cost differences between mercury-containing and mercury-free switches, will make SNUN submission cost prohibitive. The costs of submitting SNUNs will not be incurred by any company unless that company decides to pursue a significant new use as defined in this SNUR. Further, while the expense of a notice and the uncertainty of possible EPA regulation may discourage certain innovations, that impact would be limited because such factors are unlikely to discourage an innovation that has high potential value. The complete economic analysis performed by EPA is available in the public docket, as referenced in the proposed rule.

B. Export Notification

As noted in Unit I. and Unit II.C., persons who intend to export a chemical substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b) (15 U.S.C. 2611(b)). EPA estimated that the one-time cost of preparing and submitting an export notification was $93.02. The total costs of export notification will vary, depending on the number of required notifications (e.g., number of countries to which the chemical is exported). EPA is not able to estimate the total number of TSCA section 12(b) notifications that will be received as a result of this SNUR, nor the total number of companies that will file such notices. However, EPA expects that the total cost of complying with the export notification provisions of TSCA section 12(b) will be limited, based on past experience.

IX. Statutory and Executive Order Reviews

A. Regulatory Planning and Review

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget has determined that this final SNUR is not a ''significant regulatory action'' subject to review by OMB, because it does not meet the criteria in section 3(f) of the Executive Order.

B. Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0038 (EPA ICR No. 1188). This action would not impose any burden requiring additional OMB approval. If an entity were to submit a SNUN to EPA, the annual burden is estimated to require an average of 105 hours per submission. This burden estimate includes the time needed to review instructions, search existing data sources, gather and maintain the data needed, and complete, review, and submit the required SNUN. In addition to the time and effort to prepare and submit a SNUN, manufacturers must maintain records associated with the SNUN submission for five years. The recordkeeping associated with preparing and filing a SNUN is assumed to require five percent of the time spent on reporting, or 5 hours. This brings the total estimated time burden associated with a SNUN to 110 hours.

According to PRA, burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

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 and included on the related collection instrument or form, if applicable. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9. In addition, EPA is amending the table in 40 CFR part 9 of currently approved OMB control numbers for various regulations to list the regulatory citation for the information requirements contained in this final rule. Due to the technical nature of the table, EPA finds that further notice and comment about amending the table is unnecessary. As a result, EPA finds that there is good cause under section 553(b)(3)(B) of the Administrative Procedures Act (APA), 5 U.S.C. 553(b)(3)(B), to amend the table in 40 CFR 9.1 without further notice and comment.

C. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., EPA hereby certifies that promulgation of this SNUR will not have a significant adverse economic impact on a substantial number of small entities. The rationale supporting this

conclusion is as follows. A SNUR applies to any person (including small or large entities) who intends to engage in any activity described in the rule as a ''significant new use.'' By definition of the word ''new,'' and based on all information currently available to EPA, it appears that no small or large entities presently engage in such activity. Since a SNUR only requires that any person who intends to engage in such activity in the future must first notify EPA by submitting a SNUN, no economic impact would even occur until someone decides to engage in those activities. Although some small entities may decide to conduct such activities in the future, EPA cannot presently determine how many instances, if any, there may be. However, EPA records indicate that an average of only 10 notices per year are received in response to the promulgation of more than 1,000 SNURs. Of those SNUNs submitted, none appear to be from small entities in response to any SNUR. In addition, the estimated reporting cost for the submission of a SNUN (see Unit VIII.A.), is minimal, regardless of the size of the applicant organization.

Therefore, EPA believes that the potential economic impact of complying with this SNUR is not expected to be significant or adversely impact a substantial number of small entities. In a SNUR that published on June 2, 1997 (62 FR 29684) (FRL–5597–1), EPA presented its general determination that proposed and final SNURs are not expected to have a significant economic impact on a substantial number of small entities, which was provided to the Chief Counsel for Advocacy of the Small Business Administration.

D. Unfunded Mandates Reform Act

Based on EPA experience with proposing and finalizing SNURs, State, Local, and Tribal governments have not been impacted by these rulemakings. EPA does not have any reason to believe that any State, Local, or Tribal government will be impacted by this rulemaking. As such, EPA determined that this regulatory action will not impose any enforceable duty, contain any unfunded mandate, or otherwise have any affect on small governments subject to the requirements of sections 202, 203, 204, or 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4).

E. Federalism

This action will not have a substantial direct effect on 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, entitled *Federalism* (64 FR 43255, August 10, 1999).

F. Consultation and Coordination with Indian Tribal Governments

This final rule will not have Tribal implications because it will not have substantial direct effects on Indian Tribes, uniquely affect the communities of Indian Tribal governments, and does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000), do not apply to this final rule.

G. Protection of Children from Environmental Health Risks and Safety Risks

This final rule is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997), because it 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.

H. Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211, entitled *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001), because this action is not expected to affect energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

This action does not involve any technical standards; therefore, section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113 (15 U.S.C. 272 note), does not apply to this action.

J. Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations

This action does not entail special considerations of environmental justice related issues as delineated by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

X. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report to each House of the Congress and 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements.

Dated: September 27, 2007.

Charles M. Auer,

Director, Office of Pollution Prevention and Toxics.

■ Therefore, 40 CFR parts 9 and 721 are amended as follows:

PART 9—[AMENDED]

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

■ 2. In § 9.1 the table is amended by adding a new entry in numerical order under the heading ''Significant New Uses of Chemical Substances'' to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation			OMB control No.
*	*	*	* *
.			

40 CFR citation	OMB control No.
Significant New Uses of Chemical Substances	
* * *	* *
721.10068	2070–0038
* * *	* *

* * * * *

PART 721—[AMENDED]

■ 3. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c).

■ 4. By adding new § 721.10068 to subpart E to read as follows:

§ 721.10068 Elemental mercury.

(a) *Definitions.* The definitions in § 721.3 apply to this section. In addition, the following definition applies: *Motor vehicle* has the meaning found at 40 CFR 85.1703.

(b) *Chemical substances and significant new uses subject to reporting.* (1) The chemical substance elemental mercury (CAS. No. 7439–97–6) is subject to reporting under this section for the significant new uses described in paragraph (b)(2) of this section.

(2) The significant new uses are:

(i) Manufacture or processing of elemental mercury for use in convenience light switches in new motor vehicles.

(ii) Manufacture or processing of elemental mercury for use in convenience light switches as new aftermarket replacement parts for motor vehicles.

(iii) Manufacture or processing of elemental mercury for use in switches in anti-lock brake systems (ABS) in new motor vehicles.

(iv) Manufacture or processing of elemental mercury for use in switches in ABS as new aftermarket replacement parts for motor vehicles that were manufactured after January 1, 2003.

(v) Manufacture or processing of elemental mercury for use in switches in active ride control systems in new motor vehicles.

(vi) Manufacture or processing of elemental mercury for use in switches in active ride control systems as new aftermarket replacement parts for motor vehicles that were manufactured after January 1, 2003.

(c) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Suspension or revocation of certain notification exemptions.* The provisions of § 721.45(f) do not apply to this section. A person who imports or processes elemental mercury as part of an article is not exempt from submitting a significant new use notice.

(2) [Reserved]

[FR Doc. E7–19705 Filed 10–4–07; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0511; FRL–8476–9]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Carbon Monoxide Maintenance Plan Update; Limited Maintenance Plan in Philadelphia County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Pennsylvania State Implementation Plan (SIP) that was submitted on March 19, 2007 by the Pennsylvania Department of the Environment. This revision is a conversion of the currently approved full maintenance plan for carbon monoxide for the years 2007–2017, to a maintenance plan that will utilize a limited maintenance plan option for the same period. This will allow Federal actions requiring conformity determinations to be considered as automatically satisfying the budget test for carbon monoxide. EPA is approving these revisions to the Philadelphia County carbon monoxide maintenance plan in accordance with the requirements of the Clean Air Act (the Act). This action is being taken under section 110 of the Act.

DATES: This rule is effective on December 4, 2007 without further notice, unless EPA receives adverse written comment by November 5, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0511 by one of the following methods:

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

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0511, Marilyn Powers, Acting 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–2007–0511. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov*, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

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

19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov*.

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

I. What Is the Background of This SIP Revision?

On March 19, 2007, the Pennsylvania Department of Environmental Protection submitted a SIP revision to EPA, requesting that EPA convert the previously approved second follow-on ten year carbon monoxide maintenance plan, covering the years 2007–2017, to a limited maintenance plan designation.

In 1991, EPA designated part of Philadelphia County as a carbon monoxide nonattainment area (see 56 FR 56694, 11/6/91). The Commonwealth of Pennsylvania subsequently developed a state implementation plan to control carbon monoxide emissions, utilizing federal and state control measures, ultimately resulting in attainment of the carbon monoxide National Ambient Air Quality Standard (NAAQS). The area was redesignated to attainment, effective March 15, 1996 (61 FR 2926, 1/30/96) and the ten year maintenance plan covering the period 1997–2007 was also approved. Following this period, in accordance with section 175A(b) of the Act, on September 3, 2004, Pennsylvania submitted a second ten year follow-on maintenance plan, covering the period 2007–2017, providing for continued attainment of the carbon monoxide NAAQS in Philadelphia County. This maintenance plan, approved by EPA (70 FR 16958, 4/4/05) and effective on June 3, 2005, established a motor vehicle emissions budget for carbon monoxide that is considered constraining for the purposes of determining conformity with the approved SIP. The purpose of the latest SIP revision is to convert the full maintenance plan to a limited maintenance plan, which will allow for emissions budgets in the affected area to be treated as essentially not constraining for the purposes of future transportation and general conformity determinations.

II. What Is a Limited Maintenance Plan?

EPA detailed the limited maintenance plan option in a memorandum entitled, ''Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas,'' signed by Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality Planning and Standards (OAQPS), dated October 6, 1995. Pursuant to this approach, we will consider the maintenance demonstration satisfied for ''nonclassified'' areas if the monitoring data show that the design value is at or below 7.65 parts per million (ppm), which is equal to 85 percent of the level of the 8-hour carbon monoxide NAAQS. The design value must be based on eight consecutive quarters of data. For such areas, there is no requirement to project emissions of air quality over the maintenance period. We believe that if the area begins the maintenance period at or below 85 percent of the 8-hour carbon monoxide NAAQS, then the applicability of Prevention of Significant Deterioration (PSD) requirements, the control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the 10-year maintenance period.

In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of the final EPA action. Current carbon monoxide design values for Philadelphia County meet the requirements for a limited maintenance plan. The current design value in Philadelphia for carbon monoxide is 3.4 ppm, and recent design values have been between one-third to less than one-half of the NAAQS for this pollutant. Projections of ambient air quality throughout the maintenance period conclude that the 2017 design value for carbon monoxide would be 2.2 ppm. Accordingly, we believe this redesignated carbon monoxide attainment area qualifies for use of a limited maintenance plan.

Further, the EPA guidance document referenced above, sets forth the core criteria for a limited maintenance plan. All of these criteria were met in the full maintenance plan approved by EPA and effective June 3, 2005 (70 FR 16958, 4/4/05), and will not be restated here, as this action only relates to use of the limited maintenance plan option in the context of determining conformity with the SIP.

III. What Does This Mean for Transportation Conformity?

Section 176(c) of the Act defines transportation conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. The Act further defines transportation conformity to mean that no Federal transportation activity will: (1) Cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of a standard in any area; or (3) delay timely attainment of any standard in any area. The Federal Transportation Conformity Rule, 40 CFR Part 93, subpart A, sets forth the criteria and procedures for demonstrations assuring conformity of transportation plans, programs and projects that are developed, funded or approved by the U.S. Department of Transportation, and by metropolitan planning organizations or other recipients of funds under Title 23 U.S.C. of the Federal Transit Administration (49 U.S.C. Chapter 53). The transportation conformity rule applies within all nonattainment and maintenance areas. As prescribed by the transportation conformity rule, once an area has an applicable state implementation plan with motor vehicle emissions budgets, the expected emissions from planned transportation activities must be consistent with (i.e., conform to) such established budgets for that area.

In the case of the Philadelphia County, Pennsylvania, carbon monoxide limited maintenance plan area, however, the emissions budgets may be treated as essentially non-constraining for the length of the second maintenance period as long as the area continues to meet the limited maintenance plan criteria. There is no reason to expect that this area will experience so much growth in that period that a violation of the carbon monoxide NAAQS would result.

Since limited maintenance plan areas are still maintenance areas however, transportation conformity determinations are still required for transportation plans, programs and projects. Specifically, determinations, transportation plans, transportation improvement programs and projects must still demonstrate that they are fiscally constrained (40 CFR part 108) and must meet the criteria consultation and Transportation Control Measure (TCM) implementation with the conformity rule (40 CFR 93.112 and 40

CFR 93.113). In addition, projects in limited maintenance areas will still be required to meet the criteria for carbon monoxide hot spot analyses to satisfy ''project level'' conformity determinations (40 CFR 93.116 and 40 CFR 93.123). All aspects of transportation conformity (with the exception of satisfying the emissions budget test) will still be required.

If a carbon monoxide attainment area monitor records concentrations at or above the limited maintenance eligibility criteria of 7.65 ppm, then the maintenance area will no longer qualify for a limited maintenance plan and will revert to a full maintenance plan. In this event, the limited maintenance plan would remain applicable for conformity purposes only until the full maintenance plan is submitted and EPA has found the SIP's motor vehicle emissions budgets adequate for conformity purposes, or EPA approves the full maintenance plan SIP revision.

IV. What Final Action Is EPA Taking Today?

EPA is approving a SIP revision request submitted by the Pennsylvania Department of the Environment, requesting a limited maintenance plan option for the carbon monoxide maintenance area in Philadelphia County. This SIP revision supplements the currently approved carbon monoxide maintenance plan and establishes a limited maintenance plan with an unlimited budget for regional motor vehicle emissions for the Philadelphia County, Pennsylvania carbon monoxide maintenance area. For future Federal actions requiring conformity determinations under the transportation conformity rule and general conformity rule (40 CFR Part 93), the area will be considered to already satisfy the budget test for carbon monoxide.

We are publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the ''Proposed Rules'' section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on December 4, 2007 without further notice unless EPA receives adverse comment by November 5, 2007. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it 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). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal requirement, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state rule implementing a Federal standard.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this 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**. This rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 4, 2007. 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 may be filed, and shall not postpone the effectiveness of such rule or action.

This action, which approves a conversion of the Philadelphia County carbon monoxide full maintenance plan to a limited maintenance plan option for the purpose of satisfying future conformity determinations, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: September 14, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart NN Pennsylvania

■ 2. In § 52.2020, the table in paragraph (e)(1) is amended by revising the existing entry for Carbon Monoxide Maintenance Plan (Philadelphia County) to read as follows:

§ 52.2020 Identification of plan.

* * * * *

(e) * * *

(1) * * *

Name of non-regulatory SIP revision	Applicable geographic area	State submittal date	EPA approval date	Additional explanation
*	*	*	*	*
Carbon Monoxide Maintenance Plan	Philadelphia County.	9/8/95, 10/30/95	1/30/96 ..... 61 FR 2982	52.2063(c)(105).
		9/3/04	4/4/05 ..... 70 FR 16958	Revised Carbon Monoxide Maintenance Plan Base Year Emissions Inventory using MOBILE 6.
		3/19/07	10/5/07 [Insert page number where the document begins].	Conversion of the Carbon Monoxide Maintenance Plan to a Limited Maintenance Plan Option.
*	*	*	*	*

* * * * *

[FR Doc. E7–19516 Filed 10–4–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 97

[EPA–R04–OAR–2007–0423–200743(a); FRL–8475–6]

Approval of Implementation Plans; North Carolina: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environmental and Natural Resources on August 7, 2006. These revisions incorporate provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) concerning sulfur dioxide (SO_2), nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for the State of North Carolina, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not making any changes to the CAIR FIP, but is amending, to the extent EPA approves North Carolina's SIP revisions, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

On July 3, 2007, North Carolina requested that EPA only act on a portion of the August 7, 2006, submittal as an abbreviated SIP. Consequently, EPA is approving the abbreviated SIP revisions that address the methodology to be used to allocate annual and ozone season NO_X allowances to existing and new units under the CAIR FIPs and CAIR FIP opt-in provisions.

DATES: This direct final rule is effective December 4, 2007 without further notice, unless EPA receives adverse comment by November 5, 2007. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0423, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: ward.nacosta@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2007–0423'', Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. ''EPA–R04–OAR–2007–0423.'' 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 and any form of encryption and should be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

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

SUPPLEMENTARY INFORMATION:

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I. What Action Is EPA Taking?

CAIR SIP Approval

EPA is approving revisions to the North Carolina SIP, initially submitted on August 7, 2006, and revised on July 3, 2007, that would modify the application of certain provisions of the CAIR FIP concerning SO_2, NO_X annual, and NO_X ozone season emissions. (As discussed below, this less comprehensive CAIR SIP is termed an abbreviated SIP.) North Carolina is subject to the CAIR FIPs that implement the CAIR requirements by requiring certain electric generating units (EGUs) to participate in the EPA-administered Federal CAIR SO_2, NO_X annual, and NO_X ozone season cap-and-trade programs. The SIP revisions provide a methodology for allocating NO_X allowances for the NO_X annual and NO_X ozone season trading programs. The CAIR FIPs provide that this methodology, if approved by EPA, will be used to allocate NO_X allowances to sources in North Carolina, instead of the federal allocation methodology otherwise provided in the FIP. The SIP revisions also allow for individual units not otherwise subject to the CAIR SO_2, NO_X annual, and NO_X ozone season trading programs to opt into such trading programs in accordance with opt-in provisions in the CAIR FIPs. Once approved, the SIP revisions will provide for the recordation of NO_X annual and ozone season allowances using the allocations determined by North Carolina, including the NO_X annual new unit growth pool for 2009–2014 in North Carolina's rule minus one ton, i.e., 2,610 tons and will allow certain units to opt into, and be allocated allowances under, the opt-in provisions in the CAIR FIPs. Consistent with the flexibility provided in the FIPs, these provisions, if approved, will be also be used to replace or supplement, as appropriate, the corresponding provisions in the CAIR FIPs for North Carolina. EPA is not making any changes to the CAIR FIP, but is amending, to the extent EPA approves North Carolina's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed.

II. What Is the Regulatory History of the CAIR and the CAIR FIPs?

The CAIR was published by EPA on May 12, 2005 (70 FR 25162). In this rule, EPA determined that 28 States and the District of Columbia contribute significantly to nonattainment and interfere with maintenance of the national ambient air quality standards (NAAQS) for fine particulates ($PM_{2.5}$) and/or 8-hour ozone in downwind States in the eastern part of the country. As a result, EPA required those upwind States to revise their SIPs to include control measures that reduce emissions of SO_2, which is a precursor to $PM_{2.5}$ formation, and/or NO_X, which is a precursor to both ozone and $PM_{2.5}$ formation. For jurisdictions that contribute significantly to downwind $PM_{2.5}$ nonattainment, CAIR sets annual State-wide emission reduction requirements (i.e., budgets) for SO_2 and annual State-wide emission reduction requirements for NO_X. Similarly, for jurisdictions that contribute significantly to 8-hour ozone nonattainment, CAIR sets State-wide emission reduction requirements for NO_X for the ozone season (May 1st to September 30th). Under CAIR, States may implement these emission budgets by participating in the EPA-administered cap-and-trade programs or by adopting any other control measures.

CAIR explains to subject states what must be included in SIPs to address the requirements of section 110(a)(2)(D) of the Clean Air Act (CAA) with regard to interstate transport with respect to the 8-hour ozone and $PM_{2.5}$ NAAQS. EPA made national findings, effective May 25, 2005, that the States had failed to submit SIPs meeting the requirements of section 110(a)(2)(D). The SIPs were due in July 2000, 3 years after the promulgation of the 8-hour ozone and $PM_{2.5}$ NAAQS. These findings started a 2-year clock for EPA to promulgate a FIP to address the requirements of section 110(a)(2)(D). Under CAA section 110(c)(1), EPA may issue a FIP anytime after such findings are made and must do so within two years unless, a SIP revision correcting the deficiency is approved by EPA before the FIP is promulgated.

On April 28, 2006, EPA promulgated FIPs for all States covered by CAIR in order to ensure the emissions reductions required by CAIR are achieved on schedule. Each CAIR State is subject to the FIPs until the State fully adopts, and EPA approves, a SIP revision meeting

the requirements of CAIR. The CAIR FIPs require certain EGUs to participate in the EPA-administered CAIR SO_2, NO_X annual, and NO_X ozone-season model trading programs, as appropriate. The CAIR FIP SO_2, NO_X annual, and NO_X ozone season trading programs impose essentially the same requirements as, and are integrated with, the respective CAIR SIP trading programs. The integration of the CAIR FIP and SIP trading programs means that these trading programs will work together to create effectively a single trading program for each regulated pollutant (SO_2, NO_X annual, and NO_X ozone season) in all States covered by CAIR FIP or SIP trading program for that pollutant. The CAIR FIPs also allow States to submit abbreviated SIP revisions that, if approved by EPA, will automatically replace or supplement the corresponding CAIR FIP provisions (e.g., the methodology for allocating NO_X allowances to sources in the State), while the CAIR FIP remains in place for all other provisions.

On April 28, 2006, EPA published two more CAIR-related final rules that added the States of Delaware and New Jersey to the list of States subject to CAIR for $PM_{2.5}$ and announced EPA's final decisions on reconsideration of five issues without making any substantive changes to the CAIR requirements.

III. What Are the General Requirements of CAIR and the CAIR FIPs?

CAIR establishes State-wide emission budgets for SO_2 and NO_X and is to be implemented in two phases. The first phase of NO_X reductions starts in 2009 and continues through 2014, while the first phase of SO_2 reductions starts in 2010 and continues through 2014. The second phase of reductions for both NO_X and SO_2 starts in 2015 and continues thereafter. CAIR requires States to implement the budgets by either: (1) Requiring EGUs to participate in the EPA-administered cap-and-trade programs, or (2) adopting other control measures of the State's choosing and demonstrating that such control measures will result in compliance with the applicable State SO_2 and NO_X budgets.

The May 12, 2005 and April 28, 2006 CAIR rules provide model rules that States must adopt (with certain limited changes, if desired) if they want to participate in the EPA-administered trading programs.

With two exceptions, only States that choose to meet the requirements of CAIR through methods that exclusively regulate EGUs are allowed to participate in the EPA-administered trading programs. One exception is for States that adopt the opt-in provisions of the model rules to allow non-EGUs individually to opt into the EPA-administered trading programs. The other exception is for States that include all non-EGUs from their NO_X SIP Call trading programs in their CAIR NO_X ozone season trading programs.

IV. What Are the Types of CAIR SIP Submittals?

States have the flexibility to choose the type of control measures they will use to meet the requirements of CAIR. EPA anticipates that most States will choose to meet the CAIR requirements by selecting an option that requires EGUs to participate in the EPA-administered CAIR cap-and-trade programs. For such States, EPA has provided two approaches for submitting and obtaining approval for CAIR SIP revisions. States may submit full SIP revisions that adopt the model CAIR cap-and-trade rules. If approved, these SIP revisions will fully replace the CAIR FIPs. Alternatively, States may submit abbreviated SIP revisions. These SIP revisions will not replace the CAIR FIPs; however, the CAIR FIPs provide that, when approved, the provisions in these abbreviated SIP revisions will be used instead of or in conjunction with, as appropriate, the corresponding provisions of the CAIR FIPs (e.g., the NO_X allowance allocation methodology).

A State submitting an abbreviated SIP revision may submit limited SIP revisions to tailor the CAIR FIP cap-and-trade programs to the State submitting the revision. Specifically, an abbreviated SIP revision may establish certain applicability and allowance allocation provisions that, the CAIR FIPs provide, will be used instead of or in conjunction with the corresponding provisions in the CAIR FIP rules in that State. Specifically, the abbreviated SIP revisions may:

1. Include NO_X SIP Call trading sources that are not EGUs under CAIR in the CAIR FIP NO_X ozone season trading program;

2. Provide for allocation of NO_X annual or ozone season allowances by the State, rather than the Administrator of the EPA or the Administrator's duly authorized representative (Administrator), and using a methodology chosen by the State;

3. Provide for allocation of NO_X annual allowances from the Compliance Supplement Pool (CSP) by the State, rather than by the Administrator, and using the State's choice of allowed, alternative methodologies; or

4. Allow units that are not otherwise CAIR units to opt individually into the CAIR FIP cap-and-trade programs under the opt-in provisions in the CAIR FIP rules.

With approval of an abbreviated SIP revision, the CAIR FIP remains in place, as tailored to sources in the State by the approved SIP revisions.

Abbreviated SIP revisions can be submitted in lieu of, or as part of, CAIR full SIP revisions. States may want to designate part of their full SIP as an abbreviated SIP for EPA to act on first when the timing of the State's submission might not provide EPA with sufficient time to approve the full SIP prior to the deadline for recording NO_X allocations. This will help ensure that the elements of the trading programs where flexibility is allowed are implemented according to the State's decisions. Submission of an abbreviated SIP revision does not preclude future submission of a CAIR full SIP revision. In this case, the July 3, 2007, submittal from North Carolina has been submitted as an abbreviated SIP revision.

V. Analysis of North Carolina's CAIR SIP Submittal

A. State Budgets for Allowance Allocations

The CAIR NO_X annual and ozone season budgets were developed from historical heat input data for EGUs. Using these data, EPA calculated annual and ozone season regional heat input values, which were multiplied by 0.15 pounds per million British thermal units (lb/mmBtu), for phase 1, and 0.125 lb/mmBtu, for phase 2, to obtain regional NO_X budgets for 2009–2014 and for 2015 and thereafter, respectively. EPA derived the State NO_X annual and ozone season budgets from the regional budgets using State heat input data adjusted by fuel factors.

The CAIR State SO_2 budgets were derived by discounting the tonnage of emissions authorized by annual allowance allocations under the Acid Rain Program under title IV of the CAA. Under CAIR, each allowance allocated under the Acid Rain Program for the years in phase 1 of CAIR (2010 through 2014) authorizes 0.50 ton of SO_2 emissions in the CAIR trading program, and each Acid Rain Program allowance allocated for the years in phase 2 of CAIR (2015 and thereafter) authorizes 0.35 ton of SO_2 emissions in the CAIR trading program.

The CAIR FIPs established the budgets for North Carolina as 62,183 (2009–2014) and 51,819 (2015–thereafter) tons for NO_X annual emissions, 28,392 (2009–2014) and

23,660 (2015–thereafter) tons for NO_X ozone season emissions, and 137,342 (2010–2014) and 96,139 (2015–thereafter) tons for SO_2 emissions. North Carolina's SIP revision, being approved in this action, does not affect these budgets, which are total amounts of allowances available for allocation for each year under the EPA-administered cap-and-trade programs under the CAIR FIPs. In short, the abbreviated SIP revision only affects allocations of allowances under the established budgets.

B. CAIR Cap-and-Trade Programs

The CAIR NO_X annual and ozone season FIPs both largely mirror the structure of the NO_X SIP Call model trading rule in 40 CFR part 96, subparts A through I. While the provisions of the NO_X annual and ozone season FIPs are similar, there are some differences. For example, the NO_X annual FIP (but not the NO_X ozone season FIP) provides for a CSP, which is discussed below and under which allowances may be awarded for early reductions of NO_X annual emissions. As a further example, the NO_X ozone season FIP reflects the fact that the CAIR NO_X ozone season trading program replaces the NO_X SIP Call trading program after the 2008 ozone season and is coordinated with the NO_X SIP Call program. The NO_X ozone season FIP provides incentives for early emissions reductions by allowing banked, pre-2009 NO_X SIP Call allowances to be used for compliance in the CAIR NO_X ozone season trading program. In addition, States have the option of continuing to meet their NO_X SIP Call requirement by participating in the CAIR NO_X ozone season trading program and including all their NO_X SIP Call trading sources in that program.

The provisions of the CAIR SO_2 FIP are also similar to the provisions of the NO_X annual and ozone season FIPs. However, the SO_2 FIP is coordinated with the ongoing Acid Rain SO_2 cap-and-trade program under CAA title IV. The SO_2 FIP uses the title IV allowances for compliance, with each allowance allocated for 2010–2014 authorizing only 0.50 ton of emissions and each allowance allocated for 2015 and thereafter authorizing only 0.35 ton of emissions. Banked title IV allowances allocated for years before 2010 can be used at any time in the CAIR SO_2 cap-and-trade program, with each such allowance authorizing 1 ton of emissions. Title IV allowances are to be freely transferable among sources covered by the Acid Rain Program and sources covered by the CAIR SO_2 cap-and-trade program.

EPA used the CAIR model trading rules as the basis for the trading programs in the CAIR FIPs. The CAIR FIP trading rules are virtually identical to the CAIR model trading rules, with changes made to account for federal rather than State implementation. The CAIR model SO_2, NO_X annual, and NO_X ozone season trading rules and the respective CAIR FIP trading rules are designed to work together as integrated SO_2, NO_X annual, and NO_X ozone season trading programs.

North Carolina is subject to the CAIR FIPs for ozone and $PM_{2.5}$ and the CAIR FIP trading programs for SO_2, NO_X annual, and NO_X ozone season which apply to sources in North Carolina. Consistent with the flexibility it gives to States, the CAIR FIPs provide that States may submit abbreviated SIP revisions that will replace or supplement, as appropriate, certain provisions of the CAIR FIP trading programs. The July 3, 2007, submission of North Carolina is such an abbreviated SIP revision.

C. Applicability Provisions for Non-Electric Generating Units (EGUs) NO_X SIP Call Sources

In general, the CAIR FIP trading programs apply to any stationary, fossil-fuel-fired boiler or stationary, fossil-fuel-fired combustion turbine serving at any time, since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with nameplate capacity of more than 25 megawatt electrical (MWe) producing electricity for sale.

States have the option of bringing in, for the CAIR NO_X ozone season program only, those units in the State's NO_X SIP Call trading program that are not EGUs as defined under CAIR. EPA advises States exercising this option to use provisions for applicability that are substantively identical to the provisions in 40 CFR 96.304 and add the applicability provisions in the State's NO_X SIP Call trading rule for non-EGUs to the applicability provisions in 40 CFR 96.304 in order to include in the CAIR NO_X ozone season trading program all units required to be in the State's NO_X SIP Call trading program that are not already included under 40 CFR 96.304. Under this option, the CAIR NO_X ozone season program must cover all large industrial boilers and combustion turbines, as well as any small EGUs (i.e. units serving a generator with a nameplate capacity of 25 MWe or less), that the State currently requires to be in the NO_X SIP Call trading program.

Consistent with the flexibility given to States in the CAIR FIP, North Carolina has not chosen, in the abbreviated SIP revision being approved in today's action, to expand the applicability provisions of the CAIR NO_X ozone season trading program to include all non-EGUs in the State's NO_X SIP Call trading program. EPA notes that North Carolina has indicated that it intends to submit subsequently a full SIP revision that expands the applicability provisions of the CAIR NO_X ozone season trading program in this manner.

D. NO^x Allowance Allocations

Under the NO_X allowance allocation methodology in the CAIR model trading rules and in the CAIR FIP, NO_X annual and ozone season allowances are allocated to units that have operated for five years, based on heat input data from a three-year period that are adjusted for fuel type by using fuel factors of 1.0 for coal, 0.6 for oil, and 0.4 for other fuels. The CAIR model trading rules and the CAIR FIP also provide a new unit set-aside from which units without five years of operation are allocated allowances based on the units' prior year emissions.

The CAIR FIP provides States the flexibility to establish a different NO_X allowance allocation methodology that will be used to allocate allowances to sources in the States if certain requirements are met concerning the timing of submission of units' allocations to the Administrator for recordation and the total amount of allowances allocated for each control period. In adopting alternative NO_X allowance allocation methodologies, States have flexibility with regard to:

1. The cost to recipients of the allowances, which may be distributed for free or auctioned;

2. The frequency of allocations;

3. The basis for allocating allowances, which may be distributed, for example, based on historical heat input or electric and thermal output; and

4. The use of allowance set-asides and, if used, their size.

Consistent with the flexibility given to States in the CAIR FIPs, North Carolina has chosen to replace the provisions of the CAIR NO_X annual FIP concerning the allocation of NO_X annual allowances with its own methodology. North Carolina has chosen to distribute NO_X annual allowances by submitting the table adopted in 15A NCAC 02D .2403(a), which establishes the North Carolina CAIR NO_X annual allocations for existing units. In addition, North Carolina has chosen to use the same methodology as in the CAIR FIP to allocate allowances for 2,610 and 1,131 tons of NO_X to new unit growth for 2009–2014 and for 2015 and thereafter, respectively. Under 40 CFR 51.123(p)(1)(ii)(C), the State permitting

authority must submit CAIR NO_X annual allowance allocations for new units determined under an abbreviated SIP revision by October 31 of each year for which the allowances are allocated. North Carolina's rule does not address the question of when new unit allocations will be submitted to the Administrator and does not adopt either the timing set forth in 40 CFR 51.123(p)(1)(ii)(C), or any alternative timing, for the allocation submissions. However, in a letter dated September 18, 2007, North Carolina stated that its submissions of new unit allocations to the Administrator will meet the timing requirement in 40 CFR 51.123(p)(1)(ii)(C). In light of North Carolina's express intent to meet the timing requirements for submissions of new unit allocations, EPA is interpreting North Carolina's rule to require that new unit allocations be submitted to the Administrator by October 31 of each year for which new unit allocations are made.

Consistent with the flexibility given to States in the CAIR FIPs, North Carolina has chosen to replace the provisions of the CAIR NO_X ozone season FIP concerning allowance allocations with their own methodology. North Carolina has chosen to distribute NO_X ozone season allowances by submitting the table adopted in 15A NCAC 02D .2405(a), which establishes the North Carolina CAIR NO_X ozone season allocations for existing units. In addition, North Carolina has chosen to use the same methodology as in the CAIR FIP to allocate allowances for 1,206 and 531 tons of NO_X to new units for 2009–2014 and for 2015 and thereafter, respectively. Under 40 CFR 51.123(ee)(2)(ii)(D), the State permitting authority must submit CAIR NO_X ozone season allowance allocations for new units determined under an abbreviated SIP revision by July 31 of each year for which the allowances are allocated. North Carolina's rule does not address the question of when new unit allocations will be submitted to the Administrator and does not adopt either the timing set forth in 40 CFR 51.123(ee)(2)(ii)(D), or any alternative timing, for the allocation submissions. However, in a letter dated September 18, 2007, North Carolina stated that its submissions of new unit allocations to the Administrator will meet the timing requirement in 40 CFR 51.123(ee)(2)(ii)(D). In light of North Carolina's express intent to meet the timing requirements for submissions of new unit allocations, EPA is interpreting North Carolina's rule to require that new unit allocations be submitted to the Administrator by July 31 of each year for which new unit allocations are made.

E. Allocation of NO_X Allowances From the Compliance Supplement Pool (CSP)

The CSP provides an incentive for early reductions in NO_X annual emissions. The CSP consists of 200,000 CAIR NO_X annual allowances of vintage 2009 for the entire CAIR region, and a State's share of the CSP is based upon the State's share of the projected emission reductions under CAIR. States may distribute CSP allowances, one allowance for each ton of early reduction, to sources that make NO_X reductions during 2007 or 2008 beyond what is required by any applicable State or Federal emission limitation. States also may distribute CSP allowances based upon a demonstration of need for an extension of the 2009 deadline for implementing emission controls.

The CAIR NO_X annual FIP establishes specific methodologies for allocations of CSP allowances. States may choose an allowed, alternative CSP allocation methodology to be used to allocate CSP allowances to sources in those States.

Consistent with the flexibility given to States in the FIP, North Carolina has not chosen to modify the provisions of the CAIR NO_X annual FIP concerning the allocation of allowances from the CSP, since the State does not have any allowances available to allocate under the CSP provisions.

F. Individual Opt-In Units

The opt-in provisions allow for certain non-EGUs (i.e., boilers, combustion turbines, and other stationary fossil-fuel-fired devices) that do not meet the applicability criteria for a CAIR trading program to participate voluntarily in (i.e., opt into) the CAIR trading program. A non-EGU may opt into one or more of the CAIR trading programs. In order to qualify to opt into a CAIR trading program, a unit must vent all emissions through a stack and be able to meet monitoring, recordkeeping, and recording requirements of 40 CFR part 75. The owners and operators seeking to opt a unit into a CAIR trading program must apply for a CAIR opt-in permit. If the unit is issued a CAIR opt-in permit, the unit becomes a CAIR unit, is allocated allowances, and must meet the same allowance-holding and emissions monitoring and reporting requirements as other units subject to the CAIR trading program. The opt-in provisions provide for two methodologies for allocating allowances for opt-in units, one methodology that applies to opt-in units in general and a second methodology that allocates allowances only to opt-in units that the owners and operators intend to repower before January 1, 2015.

States have several options concerning the opt-in provisions. The rules for each of the CAIR FIP trading programs include opt-in provisions that are essentially the same as those in the respective CAIR SIP model rules, except that the CAIR FIP opt-in provisions become effective in a State only if the State's abbreviated SIP revision adopts the opt-in provisions. The State may adopt the opt-in provisions entirely or may adopt them but exclude one of the allowance allocation methodologies. The State also has the option of not adopting any opt-in provisions in the abbreviated SIP revision and thereby providing for the CAIR FIP trading program to be implemented in the State without the ability for units to opt into the program.

Consistent with the flexibility given to States in the FIPs, North Carolina has chosen to allow non-EGUs meeting certain requirements to participate in the CAIR NO_X annual trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 97 Subpart II of the CAIR NO_X annual trading program.

Consistent with the flexibility given to States in the FIPs, North Carolina has chosen to permit non-EGUs meeting certain requirements to participate in the CAIR NO_X ozone season trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 97 Subpart IIII of the CAIR NO_X ozone season trading program.

Consistent with the flexibility given to States in the FIPs, North Carolina has chosen to allow certain non-EGUs to opt into the CAIR SO_2 trading program. The North Carolina rule allows for both of the opt-in allocation methods as specified in 40 CFR part 97 Subpart III of the CAIR SO_2 trading program.

VI. Final Action

EPA is approving North Carolina's abbreviated CAIR SIP revisions submitted on July 3, 2007. North Carolina is covered by the CAIR FIPs, which requires participation in the EPA-administered CAIR FIP cap-and-trade programs for SO_2, NO_X annual, and NO_X ozone season emissions. Under these abbreviated SIP revisions and consistent with the flexibility given to States in the FIPs, North Carolina adopts provisions for allocating allowances under the CAIR FIP NO_X annual and ozone season trading programs, including new unit provisions. EPA is approving North

Carolina's CAIR NO_X annual and ozone season allocation provisions (interpreted as discussed above) for units subject to the CAIR trading programs under the current CAIR FIP NO_X annual and ozone season applicability provisions. In addition, North Carolina adopts in the abbreviated SIP revision provisions that allow for individual non-EGUs to opt into the CAIR FIP SO_2, NO_X annual, and NO_X ozone season cap-and-trade programs. EPA is approving North Carolina's allowing for opt-in units and therefore the application of the opt-in provisions in these CAIR FIP trading programs to units in North Carolina.

As provided for in the CAIR FIPs, these provisions in the abbreviated SIP revision will replace or supplement the corresponding provisions of the CAIR FIPs in North Carolina. The abbreviated SIP revision meets the applicable requirements in 40 CFR 51.123(p) and (ee), with regard to NO_X annual and NO_X ozone season emissions, and 40 CFR 51.124(r), with regard to SO_2 emissions. EPA is not making any changes to the CAIR FIP, but is amending, to the extent EPA approves North Carolina's SIP revision, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

EPA is approving the aforementioned changes to the SIP. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective December 4, 2007 without further notice unless the Agency receives adverse comments by November 5, 2007.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on December 4, 2007 and no further action will be taken on the proposed rule.

VII. Statutory and Executive Order Reviews

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action merely approves State law as meeting Federal requirements and imposes no additional requirements beyond those imposed by State law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

This rule also does not have tribal implications because it 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). This action also does not have Federalism implications because it does 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 (64 FR 43255, August 10, 1999). This action merely approves a State rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve State choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, 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).

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 appropriate circuit by December 4, 2007. 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 may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 97

Environmental protection, Air pollution control, Electric utilities, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: September 21, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

■ 40 CFR parts 52 and 97 are amended as follows:

PART 52—[AMENDED]

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

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

Subpart (II)—(North Carolina)

■ 2. In § 52.1770(c) Table 1 is amended under Subchapter 2D by adding, in numerical order, a new chapter heading for ''Section .2400 Clean Air Interstate Rules'' and entries for ''Section .2403(a)'', ''Section .2405(a)'', and ''Section .2412'' to read as follows:

§ 52.1770 Identification of plan.

* * * * *

(c) * * *

TABLE –1.—EPA-APPROVED NORTH CAROLINA REGULATIONS

State citation	Title/subject	State effective date	EPA approval date	Explanation
* *	*	*	* *	*
Section .2400 Clean Air Interstate Rules				
Section .2403(a)	Nitrogen Oxide Emissions		10/05/07 [Insert citation of publication].	
Section .2405(a)	Nitrogen Oxide Emissions During Ozone Season.		10/05/07 [Insert citation of publication].	
Section .2412	New Unit Growth		10/05/07 [Insert citation of publication].	
* *	*	*	* *	*

* * * * *

PART 97—[AMENDED]

■ 3. The authority citation for part 97 continues to read as follows:

Authority: 42 U.S.C. 7401, 7403, 7410, 7426, 7601, and 7651, *et seq.*

■ 4. Appendix A to subpart EE is amended by adding in alphabetical order the entry ''North Carolina'' under paragraph 1. to read as follows:

Appendix A to Subpart EE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

1. * * *

North Carolina

* * * * *

■ 5. Appendix A to subpart II of part 97 is amended by adding in alphabetical order the entry ''North Carolina'' under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart II of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Opt-In Units

1. * * *

North Carolina

2. * * *

North Carolina

* * * * *

■ 6. Appendix A to subpart III of part 97 is amended by adding in alphabetical order the entry ''North Carolina'' under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart III of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR SO_2 Opt-In Units

1. * * *

North Carolina

2. * * *

North Carolina

* * * * *

■ 7. Appendix A to subpart EEEE of part 97 is amended by adding in alphabetical order the entry ''North Carolina'' under the introductory text to read as follows:

Appendix A to Subpart EEEE of Part 97—States With Approved State Implementation Plan Revisions Concerning Allocations

* * * * *

North Carolina

* * * * *

■ 8. Appendix A to subpart IIII of part 97 is amended by adding in alphabetical order the entry ''North Carolina'' under paragraphs 1. and 2. to read as follows:

Appendix A to Subpart IIII of Part 97—States With Approved State Implementation Plan Revisions Concerning CAIR NO_X Ozone Season Opt-in Units

1. * * *

North Carolina

2. * * *

North Carolina

* * * * *

[FR Doc. E7–19317 Filed 10–4–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Final rule.

SUMMARY: Base (1% annual chance) Flood Elevations (BFEs) and modified BFEs are made final for the communities listed below. The BFEs and modified BFEs are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing BFEs and modified BFEs for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the modified BFEs for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Mitigation Division Director of FEMA has resolved any appeals resulting from this notification.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and FIRM available at the address cited below for each community. The BFEs and modified BFEs are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act. This final rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This final rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This final rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

■ 2. The tables published under the authority of § 67.11 are amended as follows:

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Marshall County, Alabama, and Incorporated Areas Docket No.: FEMA–B–7702			
Guntersville Lake	Approximately 5,000 feet downstream of SR 69 Crossing.	+596	City of Guntersville, Marshall County (Unincorporated Areas).
	SR 69 Crossing	+596	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Guntersville

Maps are available for inspection at 341 Gunter Avenue, Guntersville, AL 35976.

Marshall County (Unincorporated Areas)

Maps are available for inspection at 424 Blount Avenue, Guntersville, AL 35976.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Gallatin County, Kentucky and Incorporated Areas Docket No.: FEMA–B–7711			
Ohio River	Carroll County Line	+471	City of Warsaw, Gallatin County (Unincorporated Areas).
	Boone County Line	+479	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Warsaw

Maps are available for inspection at 101 West Market Street, Warsaw, KY 41095.

Gallatin County (Unincorporated Areas)

Maps are available for inspection at 200 Washington Street, Warsaw, KY 41095.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Letcher County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–7713			
North Fork Kentucky River	Approximately 0.29 miles downstream of Hazard Road.	+1124	Letcher County (Unincorporated Areas).
	Approximately 0.14 miles downstream of the CSX Railroad (City of Whitesburg Corporate Limits).	+1137	
	Approximately 0.16 miles downstream of State Route 15 near Piedmont Drive (City of Whitesburg Corporate Limits).	+1161	
	Approximately 0.14 miles upstream of State Route 15 near the confluence with Pert Creek.	+1176	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

Letcher County (Unincorporated Areas)

Maps are available for inspection at 156 Main Street, Whitesburg, KY 41858.

Trimble County, Kentucky, and Incorporated Areas Docket No.: FEMA–B–7713			
Ohio River	Trimble County Limits (Downstream)	+463	City of Milton.
	Trimble County Limits (Upstream)	+464	
	Oldham County Line	+457	Trimble County (Unincorporated Areas).
	City of Milton Corporate Limits	+463	
	City of Milton Corporate Limits	+464	
	Carroll County Line	+464	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Milton

Maps are available for inspection at 10179 U.S. Highway 421 North, Milton, KY 40045.

Trimble County (Unincorporated Areas)

Maps are available for inspection at 123 Church Street, Bedford, KY 40006.

Wayne County, Nebraska and Incorporated Areas Docket No.: FEMA–B–7464			
Deer Creek	At confluence with South Logan Creek	+1450	City of Wayne.
	At 574th Avenue	+1460	
Dog Creek	Approximately 2000 feet upstream of confluence with South Logan Creek.	+1420	City of Wayne.
	At 858th Road	+1439	
South Logan Creek	Approximately 350 feet downstream of confluence with Dog Creek.	+1416	City of Wayne.
	Approximately 75 feet upstream of Highway 15	+1444	
	Approximately 200 feet upstream of 854th Road.	+1465	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Wayne

Maps are available for inspection at the City Office, 306 Pearl Street, Wayne, NE 68787.

Sandoval County, New Mexico and Incorporated Areas Docket No.: FEMA–B–7709			
Tributary A (southern split)	Approximately 130 feet upstream from the convergence with Tributary A.	+5417	City of Rio Rancho.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
	Approximately 115 feet upstream from 11th street.	+5436	

* National Geodetic Vertical Datum.
# Depth in feet above ground.
+ North American Vertical Datum.

ADDRESSES

City of Rio Rancho

Maps are available for inspection at 3900 Southern Blvd, Rio Rancho, NM 87124.

Brown County, South Dakota, and Incorporated Areas
Docket No.: FEMA–B–7473

4th Street Drainageway	Approximately 400 feet downstream of Sixth Street.	+1,295	City of Groton.
	Approximately 200 feet downstream of Sixth Street.	+1,296	
	Approximately 300 feet upstream of 13th Avenue/Highway 12.	+1,302	

Depth in feet above ground.
* National Geodetic Vertical Datum.
+ North American Vertical Datum.

ADDRESSES

City of Groton

Maps are available for inspection at City Hall, 204 North Main Street, Groton, South Dakota 57445.

(Catalog of Federal Domestic Assistance No. 97.022, Flood Insurance.)

Dated: September 21, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–19681 Filed 10–4–07; 8:45 am]

BILLING CODE 9110–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket No. 02–55; FCC 07–167]

Improving Public Safety Communications in the 800 MHz Band; Petitions for Waiver of Bethlehem, Pennsylvania and Reading, PA; Petitions for Waiver of Rockdale County, Newton County, City of Covington, Walton County, and Spalding County, GA

AGENCY: Federal Communications Commission.

ACTION: Final rule; clarification.

SUMMARY: In the *Third Memorandum Opinion and Order,* the Federal Communications Commission finds that Sprint Corporation (Sprint) has not met the December 26, 2006, eighteen-month benchmark for clearing Channel 1–120 incumbents as required by the 800 MHz rebanding process. In that connection, the Commission denies the portion of Sprint's Petition for Reconsideration that sought ''clarification'' of the eighteen-month benchmark. The Commission also establishes additional benchmarks to ensure timely clearing of the Channel 1–120 band by all incumbent licensees, including Sprint itself. The Commission also requires Sprint to provide monthly reports on its channel-clearing efforts. In addition, the Commission clarifies the 30-month rebanding benchmark, which requires all 800 MHz licensees that must reband to have ''commenced'' reconfiguration of their systems by December 26, 2007. Finally, the Commission grants several petitions by NPSPAC licensees to extend their rebanding deadline until after incumbent analog broadcasters operating in their area on TV Channel 69 have vacated the spectrum as part of the DTV transition.

DATES: Effective September 12, 2007.

FOR FURTHER INFORMATION CONTACT: Roberto Mussenden, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418–1428 or *Roberto.Mussenden@fcc.gov;* John Evanoff, Policy Division, Public Safety and Homeland Security Bureau, at (202) 418–0848 or *John Evanoff@fcc.gov.*

SUPPLEMENTARY INFORMATION: This summary of the Commission's Third Memorandum Opinion and Order in WT Docket No. 02–55, adopted on September 11, 2007, and released on September 12, 2007. The full text of this document is available for public inspection on the Commission's Internet site at *http://www.fcc.gov.* It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail *FCC@BCPIWEB.COM.*

Background

1. In the 800 MHz Report and Order, 69 FR 67823 (November 22, 2004), the Commission ordered the rebanding of the 800 MHz band to resolve interference between commercial and public safety systems in the band. In that Order, the Commission required Sprint to complete retuning of Channel 1–120 licensees (i.e., licensees operating in the 806–809/851–854 MHz band) in twenty NPSPAC regions within eighteen months of the start of the 36-month rebanding period. In the 800 MHz

Supplemental Order, 70 FR 6758, February 8, 2005, the Commission modified this benchmark to require Sprint to relocate all Channel 1–120 incumbents other than Sprint and SouthernLINC in ''the first twenty NPSPAC Regions the Transition Administrator has scheduled for band reconfiguration.'' The Commission also required Sprint to have initiated retuning negotiations with all NPSPAC licensees in the same twenty regions by the eighteen-month benchmark date.

Discussion

A. Eighteen Month Benchmark

1. Petition for Reconsideration

2. *Petition for Reconsideration.* The Commission denied the portion of Sprint's Petition for Reconsideration that sought ''clarification'' of the eighteen-month benchmark. In a Petition for Reconsideration filed in January 2006, Sprint requested that the Commission ''clarify'' the nature of the eighteen-month rebanding benchmark. Because the Commission found that Sprint's request was more appropriately characterized as a Petition for Reconsideration, the Commission concluded that Sprint's request was time-barred. Even if the Commission considered Sprint's request on the merits, the Commission continued to believe that the eighteen-month benchmark as defined in the *800 MHz Supplemental Order* should be retained.

2. Sprint's Compliance With the Eighteen Month Benchmark

3. *Eighteen Month Benchmark Compliance.* The Commission found that Sprint has not met the December 26, 2006, eighteen-month benchmark for clearing Channel 1–120 incumbents as required by the 800 MHz rebanding process. On January 26, 2007, Sprint filed a report with the Public Safety and Homeland Security Bureau on the status of 800 MHz band reconfiguration and the steps Sprint had taken to meet the eighteen-month benchmark. In its report, Sprint stated that as of the December 26, 2006, benchmark date, it had completed clearing and relocation of all Channel 1–120 incumbents, other than Sprint and SouthernLINC, in 26 of 55 NPSPAC regions, including seven Wave 1 regions, sixteen Wave 2 regions, two Wave 3 regions, and one Wave 4 region. On March 6, 2007, the Bureau requested that the TA certify that Sprint had completed the rebanding activities described in the Sprint Report. On March 20, 2007, the TA filed its certification of Sprint's performance. The Commission concluded that Sprint has not met the first element of the eighteen-month benchmark because as of the benchmark date, Sprint had not fully cleared Channel 1–120 incumbents in all fifteen Wave 1 regions. With regard to the second element of the eighteen-month benchmark, the Commission concluded that Sprint has met this element of the eighteen-month benchmark.

4. In the *800 MHz Report and Order,* the Commission stated that if Sprint failed to meet the eighteen-month benchmark ''for reasons that [Sprint], with the exercise of due diligence could reasonably have avoided, the Commission may consider and exercise any appropriate enforcement action within its authority, including assessment of monetary forfeitures or, if warranted, license revocation.'' While the Commission deferred consideration of monetary forfeitures and license revocation at this time, the Commission concluded that it is in the public interest to adopt additional benchmarks to ensure that Sprint supports continued progress in rebanding and a smooth transition for critical public safety communications systems. Establishing such benchmarks will also provide important guidance to all stakeholders and will enhance the Commission's ability to monitor and enforce progress as rebanding moves into its later stages.

B. Additional Benchmarks

5. The Commission established additional benchmarks to ensure timely clearing of the Channel 1–120 band by all incumbent licensees, including Sprint itself. First, with limited exceptions noted below, we require Sprint to complete relocation of all non-Sprint, non-SouthernLINC Channel 1–120 incumbents in all regions in Waves 1 through 3, and in the non-border regions of Wave 4, by December 26, 2007. The Commission excluded from this benchmark those Stage 1 licensees that also have NPSPAC facilities and that have elected to relocate both their Channel 1–120 and NPSPAC facilities in Stage 2. The Commission will also not require Sprint to complete Stage 1 clearing in Puerto Rico by the benchmark date, because the Puerto Rico band plan is currently being revised. Finally, as discussed below, beginning on October 1, 2007, the Commission will require Sprint to provide a monthly update on its progress toward completing Channel 1–120 clearing.

6. Second, the Commission also imposed benchmarks with respect to the clearing of Channel 1–120 spectrum used by Sprint and SouthernLINC. These benchmarks are essential to clear the Channel 1–120 spectrum for timely relocation by NPSPAC, and to eliminate any incentive for Sprint to delay rebanding in order to continue using 800 MHz spectrum designated for public safety as part of its own network. First, FRAs between Sprint and relocating NPSPAC licensees must provide for timely clearing of the necessary spectrum by Sprint to facilitate NPSPAC relocation. The *800 MHz Report and Order* requires Sprint to cease using Channel 1–120 channels to accommodate NPSPAC relocation. To ensure that this clearing process occurs in a timely manner, in any case in which a NPSPAC licensee requests access to spectrum in the new NPSPAC band because it requires the spectrum for testing purposes or to commence operations, Sprint must clear the necessary channels within 90 days of the request. For any request made on or after January 1, 2008, Sprint must clear the necessary spectrum within 60 days of the request.

7. The Commission recognized that imposing this requirement will require Sprint to implement channel swaps and other adjustments to its own network, which could have an impact both on Sprint's network capacity and on other NPSPAC licensees in the area. The Commission emphasized that the spectrum requirements of NPSPAC licensees take precedence over Sprint network capacity issues, and that Sprint is responsible for ensuring that other NPSPAC licensees do not experience harmful interference as a result of Sprint's own network modifications. The Commission noted that Sprint has had ample opportunity to plan for these contingencies and that the Commission has also established mechanisms that enable Sprint to prepare for and mitigate spectrum shortfalls it may experience in accommodating rebanding by other licensees, e.g., by providing access to 900 MHz spectrum and crediting Sprint for the cost of constructing additional cell sites to increase capacity.

8. The Commission also affirmed that the Commission's orders require Sprint to vacate the entire Channel 1–120 band, other than in Wave 4 border areas, by the end of the 36-month transition period on June 26, 2008. The *800 MHz Report and Order* stated that ''we require Nextel to vacate all of its spectrum holdings below 817 MHz/862 MHz'' as part of the transition process. This also requires Sprint to clear all of SouthernLINC's Channel 1–120 holdings by June 26, 2008, and provide for SouthernLINC's relocation to comparable spectrum. The Commission emphasized that Sprint must clear its Channel 1–120 holdings by the June 2008 deadline regardless of whether all

NPSPAC licensees in a given region are prepared to relocate within that time frame. In that connection, the Commission disagreed with Sprint's contention that requiring it to vacate spectrum by June 2008 ''would seriously harm public safety'' and ''squander scarce spectrum resources.''

9. Nevertheless, in the event that the Commission were to grant any NPSPAC licensee a waiver allowing it to relocate to the new NPSPAC band after June 26, 2008, the Commission stated that it will allow Sprint to petition to remain temporarily on the Channel 1–120 channels that it would otherwise have to vacate to accommodate the NPSPAC system. In any such petition, Sprint must demonstrate that public safety will not be adversely affected by the extension, that it has no reasonable alternative, and that the extension is otherwise in the public interest. Any extension granted to Sprint under this procedure will require Sprint to relinquish the channels on 60 days notice by the NPSPAC licensee as described in paragraph 23 above. The Commission also emphasized that Sprint may not under any circumstances remain on any Channel 1–120 channel once the corresponding channel in the 821–824/866–869 MHz band becomes available to it. For example, if a channel in the 821–824/866–869 MHz band is currently unoccupied by a NPSPAC licensee, and the channel becomes available to Sprint after June 26, 2008, Sprint may not continue to use the corresponding Channel 1–120 channel, even though the channel is not needed to accommodate a relocating NPSPAC licensee.

10. The Commission also affirmed that Sprint must vacate all of its remaining spectrum in the interleaved portion of the 800 MHz band, as well as the Expansion Band and Guard Band, by June 26, 2008, except in Wave 4 border areas, regardless of any other rebanding contingency. Sprint has already vacated some spectrum in these portions of the band to accommodate relocation of Stage 1 licensees from Channels 1–120. Prior to June 26, 2008, Sprint may continue to use its spectrum in the interleaved, Guard, and Expansion Bands to the extent it is not needed for relocation of other licensees. However, Sprint must clear this remaining spectrum by the end of the transition on June 26, 2008 because the channels that Sprint vacates will revert to the Commission for re-licensing, and public safety will have exclusive access to the vacated interleaved channels for a three-year period after rebanding is completed in each region.

11. To assist in monitoring and enforcing each of the band-clearing conditions imposed on Sprint, as set forth above, the Commission required that beginning on October 1, 2007, Sprint file monthly reports with the TA and PSHSB on its clearing of the Channel 1–120 spectrum. These reports are intended to provide specific, verifiable information to allow us to monitor Sprint's progress and determine whether it is in compliance with each of the benchmarks and conditions of this order, as well as with other applicable provisions of the 800 MHz rebanding rules. Specifically, Sprint must include the following information in each monthly report with respect to clearing of Channels 1–120. This information must be provided separately for each NPSPAC region:

(1) The number of non-Sprint, non-SouthernLINC licensees that have been cleared from Channels 1–120, and the number that remain to be cleared;

(2) For each region in which SouthernLINC operates, the number of SouthernLINC channels in the Channel 1–120 band that have been cleared, and the number that remain to be cleared;

(3) The number of Channel 1–120 channels that are being used by Sprint in its own network, and the number of Channel 1–120 channels that Sprint has vacated; and

(4) The identity of each NPSPAC licensee that has requested that Sprint vacate Channel 1–120 channels, the date of the licensee's request, the number of channels that Sprint has been asked to vacate, and the date proposed by the licensee for Sprint to vacate the specified channels.

12. These monthly reports by Sprint will assist the Commission in monitoring Sprint's compliance with its Stage 1 implementation obligations, but will also provide important information relevant to the progress of Stage 2 rebanding of NPSPAC licensees. This reporting requirement is imposed as a separate condition on Sprint's licenses as modified in the Commission's orders in this proceeding. To the extent that Sprint fails to satisfy this reporting requirement, the Commission may consider any appropriate enforcement action within its authority, including but not limited to revocation of Sprint's modified licenses. Sprint also remains subject to all prior requirements and license conditions adopted in this proceeding.

C. 30-Month Benchmark

13. The Commission clarified the 30-month rebanding benchmark, which requires all 800 MHz licensees that must reband to have ''commenced'' reconfiguration of their systems by December 26, 2007. The *800 MHz Report and Order* established a 30-month benchmark for the 800 MHz rebanding process. Specifically, the Commission required that all 800 MHz systems ''must have commenced reconfiguration within 30 months of the Commission Public Notice announcing the start date of reconfiguration in first NPSPAC region.'' Under the rebanding schedule, this 30-month date falls on December 26, 2007. To ensure that all parties take the necessary steps to meet this benchmark, the Commission provided the following guidance.

14. First, in a companion Public Notice released on September 12, 2007, the Commission adopted new timelines for non-border area NPSPAC licensees to complete planning and FRA negotiations and to begin rebanding implementation. Licensees who are in compliance with these timelines as of December 26, 2007 will be deemed to be in compliance with the 30-month benchmark. The Commission will apply the benchmark to all Wave 1–3 licensees and to all Wave 4 licensees that have received frequency assignments from the TA as of September 12, 2007, the release date of this order. However, the Commission will not apply this benchmark to Wave 4 licensees that have not received frequency assignments because their systems are in border regions affected by ongoing negotiations with Canada and Mexico. The Commission, however, will establish an appropriate implementation benchmark for Wave 4 licensees at a later date. Finally, the Commission directed the TA to submit a report to the Public Safety and Homeland Security Bureau by January 15, 2008 regarding whether the 30-month benchmark as defined above has been met. The TA report should certify whether all covered licensees have complied with the timelines set forth in the Public Notice, and identify all cases in which the timelines have not been met.

D. Rebanding in Markets With Channel 69 Incumbents

15. The Commission granted several petitions by NPSPAC licensees to extend their rebanding deadline until after incumbent analog broadcasters operating in their area on TV Channel 69 have vacated the spectrum as part of the DTV transition. Two NPSPAC licensees in eastern Pennsylvania and four NPSPAC licensees in the Atlanta, Georgia area have filed requests for extension of the June 26, 2008 rebanding deadline based on their proximity to incumbent full power analog TV broadcasters WFMZ–TV and

WUPA, operating on Channel 69 (800–806 MHz) in Allentown, Pennsylvania and Atlanta, respectively. These NPSPAC licensees (collectively, Petitioners) expressed concern that if they retune to the new NPSPAC band (806–809 MHz) before the February 17, 2009 DTV transition date, they will receive out-of-band emission (OOBE) interference on their new NPSPAC channels from the Allentown and Atlanta Channel 69 incumbents. The Commission granted Petitioners' requests in part and will allow them to delay the commencement of their infrastructure retune until March 1, 2009. However, the Commission directed Petitioners to proceed with (and Sprint to pay for) planning and other preparatory rebanding activity (e.g., replacement and reprogramming of mobiles) that can occur prior to the DTV transition date.

16. Finally, the Commission delegated authority to the Public Safety and Homeland Security Bureau to consider future requests by 800 MHz licensees to extend the 36-month deadline as it applies to the rebanding of their particular systems. The Commission directed the Bureau to subject such extension requests to a high level of scrutiny. Licensees submitting requests to the Bureau will be expected to demonstrate that they have worked diligently and in good faith to complete rebanding expeditiously, and that the amount of additional time requested is no more than is reasonably necessary to complete the rebanding process.

Ordering Clauses

17. Accordingly, *it is ordered* that, pursuant to sections 4(i), 303(f), 309, 316, 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(f), 309, 316, 332, 337 and 405, this Third Memorandum Opinion and Order is hereby adopted.

18. *It is further ordered* that the Petition for Reconsideration filed by Sprint Nextel Corporation, on January 27, 2006 is dismissed to the extent described herein.

19. *It is further ordered* that, as a condition of its 800 MHz and 1.9 GHz modified licenses, Sprint Corporation shall comply with the benchmarks and reporting requirements set forth herein.

20. *It is further ordered* that the 800 MHz Transition Administrator, on January 15, 2008, shall submit a report on the progress of band reconfiguration to the extent described herein.

21. *It is further ordered* pursuant to the authority of section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), and sections 1.925 of the Commission's Rules, 47 CFR 1.925 that the Requests for Waiver submitted by the Cities of Bethlehem and Reading, Pennsylvania, and Covington, Georgia, and the Counties of Rockdale, Newton, Walton, and Spalding, Georgia, in the above-captioned proceeding are granted to the extent described herein.

22. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified ''information collection burden for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4).

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E7–19641 Filed 10–4–07; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 21

RIN 1018–AV10

Migratory Bird Permits; Removal of Migratory Birds From Buildings

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, change the regulations governing migratory bird permitting. We amend 50 CFR part 21 to allow removal of migratory birds (other than federally listed threatened or endangered species, bald eagles, and golden eagles) from inside buildings in which the birds may pose a threat to themselves, to public health and safety, or to commercial interests.

DATES: This rule is effective on November 5, 2007.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, at the Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4501 North Fairfax Drive, Room 4091, Arlington, Virginia 22203–1610.

FOR FURTHER INFORMATION CONTACT: George T. Allen, Wildlife Biologist, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 703–358–1825.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service is the Federal agency delegated the primary responsibility for managing migratory birds. The delegation is authorized by the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703 *et seq.*), which implements conventions with Great Britain (for Canada), Mexico, Japan, and the Soviet Union (Russia). Raptors (birds of prey) are afforded Federal protection by the 1972 amendment to the Convention for the Protection of Migratory Birds and Game Animals, February 7, 1936, United States-Mexico, as amended; the Convention between the United States and Japan for the Protection of Migratory Birds in Danger of Extinction and Their Environment, September 19, 1974; and the Convention Between the United States of America and the Union of Soviet Socialist Republics (Russia) Concerning the Conservation of Migratory Birds and Their Environment, November 26, 1976. A list of migratory bird species protected by the MBTA can be found at 50 CFR 10.13.

To simplify removal of migratory birds from buildings in which their presence may be a threat to the birds, to public health and safety, or to commercial interests, we will allow the removal of any migratory bird, except a threatened or endangered species, a bald eagle, or a golden eagle, from the inside of any building in which a bird might be trapped, without requiring a migratory bird permit to do so. The bird must be captured using a humane method and, in most cases, immediately released to the wild. This regulation does not allow removal of birds or nests from the outside of buildings without a permit. Removal of active nests from inside buildings must be conducted by a federally permitted migratory bird rehabilitator.

This regulatory addition will facilitate removal of birds from buildings, which would otherwise require a migratory bird permit. Our changes are detailed below in the Regulation Promulgation section of this document.

What Comments on the Proposed Rule Did We Receive?

We received six sets of comments on the proposed rule. The comments raised relatively few issues, which we discuss here.

Issue: One commenter believed that the rule should include bird nests.

Response: Removal or destruction of nests of most species of birds when the nests are not in use is allowed. With this regulations change, an active nest may

be removed from inside a building with the assistance of a permitted rehabilitator. We clarified the relevant language in this rule.

Issue: A commenter suggested that the words ''and for buildings undergoing renovation or demolition'' be added after the words ''commercial interests.''

Response: Renovation and demolition of buildings can be conducted outside the nesting season, which is relatively short for most species. A nest of any species protected under one or more of the Migratory Bird Conventions is protected during the nesting season. This provision is unchanged by this rule.

Comment: ''We suggest this proposal should more specifically indicate what time frame is meant by 'promptly' as used in the sections on releasing birds and on transferring injured and orphaned birds to rehabilitators.''

Response: We replaced the term ''promptly'' with ''immediately,'' and qualified this requirement slightly by requiring that an exhausted, ill, injured, or orphaned bird be sent to a rehabilitator.

Comment: ''I fear that if you open up this wildlife management category as is proposed, there will be a resulting unorthodox influx of raptors into warehouse buildings across the United States to clean-out invasive bird species. The claim will be they came through the doors when, actually, many will have been intentionally introduced by unscrupulous lay-people and store managers having introduced the raptor to its captivity and peril but unable to get it out. I already see and hear about many of these every year. However, something does need to happen to improve the raptor recovery service response time to these corporations, but something also needs to be done to prevent the criminal activity of capturing a free raptor in the environment and placing it in harms way into a ''box store'' environment to clean-out invasive species. All too often, these magnificent wild raptors perish trying to get out or by being mishandled.''

Response: In most cases this action is not legal, but we added language to the regulation to address this concern.

Required Determinations

Regulatory Planning and Review

The Office of Management and Budget has determined, in accordance with the criteria in Executive Order (E.O.) 12866, that this rule is not a significant regulatory action.

a. This rule will not have an annual economic effect of $100 million or more. It will not adversely affect an economic sector, productivity, jobs, the environment, or other units of government. A cost-benefit and economic analysis thus is not required. There are minimal costs associated with this rule.

b. This rule does not create inconsistencies with other agencies' actions. It deals solely with governance of migratory bird permitting in the United States. No other Federal agency has any role in regulating activities with migratory birds.

c. There are no entitlements, grants, user fees, or loan programs associated with the regulation of birds in buildings.

d. This rule does not raise novel legal or policy issues, and is in compliance with other laws, policies, and regulations.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121)), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities.

SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide the statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities. We have examined this rule's potential effects on small entities as required by the Regulatory Flexibility Act, and we certify that this action will not have a significant economic impact on a substantial number of small entities, because the changes we are making are intended primarily to simplify removal of birds from structures in which the birds may either pose a threat to public health and safety or commercial interests, or be at risk themselves.

The costs associated with this change to our regulations would be very small. This rule is not a major rule under SBREFA (5 U.S.C. 804(2)). It will not have a significant impact on a substantial number of small entities, so a regulatory flexibility analysis of this action is not required.

a. This rule will not have an annual effect on the economy of $100 million or more.

b. This rule will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions.

c. This rule will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*), we have determined the following:

a. This rule will not ''significantly or uniquely'' affect small governments. A small government agency plan is not required. Actions under the regulation will not affect small government activities in any significant way.

b. This rule will not produce a Federal mandate of $100 million or greater in any year. It is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act.

Takings

In accordance with E.O. 12630, the rule will not have significant takings implications. A takings implication assessment is not required. This rule does not contain a provision for taking of private property.

Federalism

No significant economic impacts are expected to result from allowing individuals, businesses, or government offices to remove migratory birds from buildings. This rule will not interfere with the States' ability to manage themselves or their funds, nor does it have sufficient Federalism effects to warrant preparation of a Federalism assessment under E.O. 13132.

Civil Justice Reform

In accordance with E.O. 12988, the Office of the Solicitor has determined that the rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). There will be no new information collection requirements associated with this change to our regulations. We may not collect or sponsor, nor is a person required to respond to, a collection of information unless it displays a

currently valid Office of Management and Budget control number.

National Environmental Policy Act

We have analyzed this rule in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 432–437(f), and part 516 of the U.S. Department of the Interior Manual (516 DM). A change to our regulations allowing the removal of migratory birds from buildings will not have a significant environmental impact.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and 512 DM 2, we have evaluated potential effects on Federally recognized Indian Tribes and have determined that there are no potential effects. This rule will not interfere with the Tribes' ability to manage themselves or their funds or to regulate migratory bird activities on Tribal lands.

Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 addressing regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Because this rule would affect only removal of birds from structures in limited circumstances, it is not a significant regulatory action under E.O. 12866, and will not significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Environmental Consequences of the Action

The change we are making is to allow people to remove birds protected under the Migratory Bird Treaty Act from buildings. We do not expect significant environmental impacts of this action.

Socioeconomic. We do not expect the action to have discernible socioeconomic impacts.

Migratory bird populations. This rule will not alter the take of migratory birds from the wild. It will not change migratory bird populations.

Endangered and Threatened Species. The regulation is for migratory birds other than threatened or endangered species. It will not affect threatened or endangered species or habitats important to them.

Compliance With Endangered Species Act Requirements

Section 7 of the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that ''The Secretary [of the Interior] shall review other programs administered by him and utilize such programs in furtherance of the purposes of this chapter'' (16 U.S.C. 1536(a)(1)). It further states that the Secretary must ''insure that any action authorized, funded, or carried out (is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat'' (16 U.S.C. 1536 (a)(2)). The change to our regulations will not affect listed species.

Author

The author of this rulemaking is Dr. George T. Allen, U.S. Fish and Wildlife Service, Division of Migratory Bird Management, 4401 North Fairfax Drive, Mail Stop 4107, Arlington, VA 22203–1610.

List of Subjects in 50 CFR Part 21

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

Regulation Promulgation

■ For the reasons stated in the preamble, we amend part 21 of subchapter B, chapter I, title 50 of the Code of Federal Regulations, as follows.

PART 21—MIGRATORY BIRD PERMITS

■ 1. The authority citation for part 21 continues to read as follows:

Authority: Migratory Bird Treaty Act, 40 Stat. 755 (16 U.S.C. 703); Public Law 95–616, 92 Stat. 3112 (16 U.S.C. 712(2)); Public Law 106–108, 113 Stat. 1491, Note following 16 U.S.C. 703.

■ 2. Amend § 21.12 by:
■ a. Revising the introductory paragraph and paragraph (a);
■ b. Redesignating paragraphs (b), (c), and (d) as paragraphs (b)(1), (b)(2), and (c) and adding a new heading to paragraph (b);
■ c. Adding a heading to newly designated paragraph (c); and
■ d. Adding a new paragraph (d), to read as set forth below.

§ 21.12 General exceptions to permit requirements.

The following persons or entities under the following conditions are exempt from the permit requirements:

(a) *Employees of the Department of the Interior (DOI):* DOI employees authorized to enforce the provisions of the Migratory Bird Treaty Act of July 3, 1918, as amended (40 Stat. 755; 16 U.S.C. 703–(711), may, without a permit, take or otherwise acquire, hold in custody, transport, and dispose of migratory birds or their parts, nests, or eggs as necessary in performing their official duties.

(b) *Employees of certain public and private institutions:*

(1) * * *

(2) * * *

(c) *Licensed veterinarians:*

* * * * *

(d) *General public:* Any person may remove a migratory bird from the interior of a building or structure under certain conditions.

(1) You may humanely remove a trapped migratory bird from the interior of a residence or a commercial or government building without a Federal permit if the migratory bird:

(i) Poses a health threat (for example, through damage to foodstuffs);

(ii) Is attacking humans, or poses a threat to human safety because of its activities (such as opening and closing automatic doors);

(iii) Poses a threat to commercial interests, such as through damage to products for sale; or

(iv) May injure itself because it is trapped.

(2) You must use a humane method to capture the bird or birds. You may not use adhesive traps to which birds may adhere (such as glue traps) or any other method of capture likely to harm the bird.

(3) Unless you have a permit that allows you to conduct abatement activities with a raptor, you may not release a raptor into a building to either frighten or capture another bird.

(4) You must immediately release a captured bird to the wild in habitat suitable for the species, unless it is exhausted, ill, injured, or orphaned.

(5) If a bird is exhausted or ill, or is injured or orphaned during the removal, the property owner is responsible for immediately transferring it to a federally permitted migratory bird rehabilitator.

(6) You may not lethally take a migratory bird for these purposes. If your actions to remove the trapped migratory bird are likely to result in its lethal take, you must possess a Federal Migratory Bird Permit. However, if a bird you are trying to remove dies, you must dispose of the carcass immediately unless you have reason to believe that a museum or scientific institution might be able to use it. In that case, you should contact your nearest Fish and Wildlife Service office or your State wildlife agency about donating the carcass.

(7) For birds of species on the Federal List of Threatened or Endangered Wildlife, provided at 50 CFR 17.11(h), you may need a Federal threatened or endangered species permit before removing the birds (see 50 CFR 17.21 and 50 CFR 17.31).

(8) You must have a permit from your Regional migratory bird permits office to remove a bald eagle or a golden eagle from a building (see 50 CFR Part 22).

(9) Your action must comply with State and local regulations and ordinances. You may need a State, Tribal, or Territorial permit before you can legally remove the bird or birds.

(10) If an active nest with eggs or nestlings is present, you must seek the assistance of a federally permitted migratory bird rehabilitator in removing the eggs or nestlings. The rehabilitator is then responsible for handling them properly.

(11) If you need advice on dealing with a trapped bird, you should contact your closest Fish and Wildlife Service office or your State wildlife agency.

Dated: September 4, 2007.

David M. Verhey,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E7–19712 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 020607C]

RIN 0648–AV10

Atlantic Highly Migratory Species; Atlantic Swordfish Quotas

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

ACTION: Final rule.

SUMMARY: This final rule amends the regulations governing the North and South Atlantic swordfish fisheries to implement two recommendations by the International Commission for the Conservation of Atlantic Tuna (ICCAT)(Recommendations 06–02 and 06–03). These recommendations establish baseline quotas for North and South Atlantic swordfish, respectively, and set caps on underharvest carryover. Additionally, recommendation 06–02 allows a contracting party (CPC) with a total allowable catch (TAC) allocation to make a transfer within a fishing year of up to 15 percent of its baseline allocation to other CPCs with TAC allocations, as long as the transfer is conducted in a manner that is consistent with domestic obligations and conservation considerations. This final rule will transfer 15 percent of the North Atlantic swordfish baseline quota into the reserve category which would allow it to be transferred to other CPCs with TAC allocations. In addition, this final rule modifies the North and South Atlantic swordfish quotas for the 2006 fishing year to account for updated landings information from the 2004 and 2005 fishing years. Finally, this final rule includes the option of an internet website as an additional method for complying with the Atlantic Highly Migratory Species (HMS) Angling or Atlantic HMS Charter/Headboat category(s 24 hour reporting requirement. Currently, reporting is by telephone only. This rule will remain in effect until ICCAT provides new recommendations for the U.S. swordfish fisheries.

DATES: This rule is effective on November 5, 2007.

ADDRESSES: For copies of the Final Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA), please write to Highly Migratory Species Management Division, 1315 East-West Highway, Silver Spring, MD 20910, or at 301–713–1917 (fax). Copies are also available from the HMS website at *http://www.nmfs.noaa.gov/sfa/hms/*.

FOR FURTHER INFORMATION CONTACT: Heather Ann Halter or Karyl Brewster-Geisz by phone: 301–713–2347 or by fax: 301–713–1917.

SUPPLEMENTARY INFORMATION:

Background

The U.S. Atlantic swordfish fishery is managed under the 2006 Consolidated HMS Fishery Management Plan (FMP). Implementing regulations at 50 CFR part 635 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq*. and the Atlantic Tunas Convention Act (ATCA), 16 U.S.C. 971 *et seq*. Regulations issued under the authority of ATCA carry out the recommendations of ICCAT.

Currently, baseline quotas for North and South Atlantic swordfish are 2,937.6 metric tons (mt) dressed weight (dw) for the North Atlantic and 90.2 mt dw for the South Atlantic. Baseline quotas for the United States are established by implementing recommendations from the International Commission for the Conservation of Atlantic Tunas, or ICCAT. Each fishing year, quotas are adjusted by carrying over the entire under harvest or deducting overharvest from the previous fishing year. Thus, the entire under harvest is added to the next year(s baseline quota. Finally, no additional quota has been added to the reserve category since it was created in 2002 and it continues to decrease each year because 18.8 mt dw is transferred to Canada annually from the reserve.

On June 18, 2007 (72 FR 33436), NMFS published a proposed rule that examined alternatives for implementing 2006 ICCAT recommendations 06–02 and 06–03. Among the topics explored in the alternatives were North and South Atlantic swordfish quotas and underharvest carryovers, as well as alternatives exploring mechanisms for a permissible 15 percent North Atlantic baseline quota transfer to other CPCs with TAC allocations. Information regarding these alternatives was provided in the preamble of the proposed rule and is not repeated here.

Final Quotas, Underharvest Carryover Caps, and Transfer Allocation for North and South Atlantic Swordfish

The final 2007 and 2008 baseline quotas for North and South Atlantic swordfish are 2,937.6 mt dw and 75.2 mt dw, respectively. In addition, final 2007 and 2008 carryover caps will be 50 percent of the original baseline allocation for the North Atlantic (1,468.8 mt dw) and 100 percent of the original baseline allocation for the South Atlantic (75.2 mt dw). The 100 percent cap for the South Atlantic will also apply to 2006 carryover. The final mechanism for possible 15 percent transfer to other CPCs will be placement of 15 percent of the 2007 North Atlantic baseline quota allocation (440.6 mt dw) into the 2007 reserve category. The final North and South Atlantic 2007 and 2008 swordfish quotas, carryover caps, and transfer mechanism to the North Atlantic reserve category are provided in Table 1. These baselines and carryovers will continue until ICCAT issues new recommendations for the United States. Both the North and South Atlantic swordfish fisheries are open unless closed per 50 CFR 635.28(c)(1).

TABLE 1 — FINAL NORTH AND SOUTH ATLANTIC SWORDFISH BASELINE QUOTAS, CARRYOVER CAPS, AND NORTH ATLANTIC RESERVE CATEGORY QUOTA

North Atlantic Swordfish Quota (mt dw)	**2006**	**2007**	**2008**
Directed Quota	2,554.9	2,114.3	2,133.1
Incidental Quota	300.0	300.0	300.0
Reserve Quota	82.7	523.3	504.5
Baseline Quota	2,937.6	2,937.6	2,937.6
Carryover Cap	no cap	1,468.8	1,468.8
South Atlantic Swordfish Quota (mt dw)	**2006**	**2007**	**2008**
Baseline Quota	90.2	75.2	75.2
Carryover Cap	75.2	75.2	75.2

Final Addition to Atlantic HMS Angling or Atlantic HMS Charter/Headboat Category 24 hour reporting requirement

NMFS will include the option of an internet website as an additional method for complying with the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category(s 24 hour reporting requirement. Previously, reporting was by telephone only.

Response To Comments

NMFS conducted three public hearings to receive comments on the proposed rule. The comment period ended on July 18, 2007. Comments on the proposed rule (June 18, 2007; 72 FR 33436) are summarized below, together with NMFS' responses.

Comment 1: NMFS received several comments in support of the addition of an internet reporting option for the HMS angling and charter/headboat 24 hour reporting requirement. Comments noted that reporting a landing using the internet is very helpful, easy, and is less frustrating than calling in a landing.

Response: NMFS will implement the internet option for the HMS angling and charter/headboat 24 hour reporting requirement to provide fishermen with more flexibility in satisfying the requirement. Those who prefer to report by phone may still do so, and those that prefer reporting by internet may choose that option in lieu of telephone reporting.

Comment 2: NMFS received several comments in support of the preferred alternative 1b, following ICCAT recommendations for quotas and underharvest carryover caps.

Response: Implementation of alternative 1b will establish baseline quotas and carryover caps consistent with ICCAT recommendations 06–02 and 06–03 and the Atlantic Tunas Convention Act.

Comment 3: NMFS received comments in support of preferred alternative 2b, which will introduce the transfer provision in ICCAT recommendation 06–02 by transfering 15 percent of the 2007 North Atlantic swordfish U.S. baseline quota (440.6 mt dw) into the reserve category which would allow it to be transferred to other CPCs with TAC allocations. Additionally, NMFS received a comment opposing preferred alternative 2b, which will transfer 15 percent of the 2007 North Atlantic swordfish U.S. baseline quota (440.6 mt dw) into the reserve category which would allow it to be transferred to another CPC. This comment favored alternative 2c, which would take the allowable 15 percent transfer (if it were to be made) to another CPC from the directed quota at the time of request.

Response: NMFS will implement alternative 2b in order to replenish a reserve quota that has not been increased since its creation in 2002 and also to create a reliable directed fishery quota at the start of a given fishing season. If alternative 2c were implemented, a 15 percent transfer (if it were made) out of the directed quota would not allow swordfish vessel owners and directed permit holders to adequately plan for the upcoming fishing year due to sudden directed quota loss.

Comment 4: NMFS received several comments stating that, if NMFS eventually decides to transfer 15 percent of the North Atlantic swordfish quota to one or more CPCs, NMFS should choose a transfer to Canada over a transfer to Mexico. These statements were due to the belief that Canada(s fishing practices are more environmentally friendly than those of Mexico. In addition, NMFS received a comment opposing any transfer of quota to a CPC at this time.

Response: NMFS has not, at this time, decided to transfer 15 percent of the North Atlantic swordfish quota to any given CPC. If requested in the future, NMFS would consider implementing the transfer under a separate action. Such an action would consider the ecological and economic impacts of transferring quota to that CPC. This is consistent with ICCAT recommendation 06–02 regarding quota transfer to another CPC, which states that a country which decides to implement the 15 percent quota transfer may do so consistent with domestic obligations and conservation considerations.

Comment 5: NMFS received comments that Canadian fishermen undergo feast or famine practices in order to catch their full quota at the end of the summer, which drops the U.S. catch. These comments stated that it would be better if NMFS could give Canada the 18.8 mt dw annual transfer a little at a time in order to spread their landings out and prevent these feast or famine practices.

Response: Under recommendation 06–02, ICCAT provides Canada 18.8 mt dw annually from the U.S. baseline quota. That transfer is for Canada to use as it sees fit. This rulemaking will not modify the 18.8 mt dw annual transfer to Canada nor influence Canadian fishing practices.

Changes to the Proposed Rule

NMFS did not make any changes from the June 18, 2007, proposed rule (72 FR 33436).

Classification

NMFS has determined that this action is consistent with the conservation goals of ICCAT, the Magnuson-Stevens Act, ATCA, the Consolidated HMS FMP, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

In compliance with section 604 of the Regulatory Flexibility Act, a Final Regulatory Flexibility Analysis (FRFA) was prepared for this rule. The FRFA analyzes the anticipated economic impacts of the preferred actions and any significant alternatives to the final rule that could minimize economic impacts on small entities. Each of the statutory requirements of Section 604 of the Regulatory Flexibility Act has been addressed, and a summary of the FRFA is below. The full FRFA and analysis of economic and ecological impacts, are available from NMFS (see **ADDRESSES**).

Section 604(a)(1) of the Regulatory Flexibility Act requires the Agency to state the objective and need for the rule. The objective of this rule is, consistent with the Magnuson-Stevens Act and the Atlantic Tunas Convention Act, to comply with ICCAT recommendations

in establishing U.S. quotas, capping the amount of carryover from 2006 for both North and South Atlantic swordfish, and establishing a mechanism for transferring up to 15 percent of the U.S. swordfish allocation to other ICCAT CPCs. NMFS needs to implement this action in order to comply with ICCAT recommendations and the ATCA.

Section 604(a)(2) of the Regulatory Flexibility Act requires the Agency to summarize significant issues raised by the public comment in response to the Initial Regulatory Flexibility Analysis (IRFA), a summary of the Agency(s assessment of such issues, and a statement of any changes made as a result of the comments. The IRFA was done as part of the draft EA for the proposed rule of this action. NMFS did not receive any comments specific to the IRFA or the economic impacts of the proposed alternatives.

Section 604(a)(3) of the Regulatory Flexibility Act requires the Agency to describe and provide an estimate of the number of small entities to which the rule will apply. This rule could directly affect commercial and recreational swordfish fishermen in the Atlantic Ocean in the United States. The commercial swordfish fishery is composed of fishermen who hold a swordfish directed, incidental, or handgear limited access permit, all of which NMFS considers to be small entities. There are also related industries including processors, bait houses, and equipment suppliers, but these industries are not directly affected by this rule. As of February 2006, there were 365 commercial swordfish permit holders for directed, incidental, and handgear permits. Also as of February 2006, there were 25,238 HMS angling permit holders who could land swordfish recreationally (i.e., not for profit), and 4,173 charter/headboat permit holders authorized to land swordfish. More information regarding the numbers of small entities involved in the swordfish fishery can be found in Chapter 6 of the EA (see **ADDRESSES**).

Section 604(a)(4) of the Regulatory Flexibility Act requires the Agency to describe the projected reporting, recordkeeping, and other compliance requirements of the final rule, including an estimate of the classes of small entities which would be subject to the requirements of the report or record. None of the alternatives considered for this final rule would result in additional reporting, recordkeeping, and compliance requirements.

Section 604(a)(5) of the Regulatory Flexibility Act requires the Agency to describe the steps taken to minimize the significant economic impact on small entities consistent with the stated objectives and applicable statutes. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603(c)(1)-(4)) lists four general categories of ''significant'' alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and (4) exemptions from coverage for small entities.

NMFS considers all permit holders in the swordfish fishery to be small entities. In order to meet the objectives of this final rule, consistent with the Magunson-Stevens Act and ATCA, NMFS cannot exempt small entities or change the reporting requirements only for small entities. Thus, there are no alternatives discussed that fall under the first and fourth categories described above. In addition, none of the alternatives considered would result in additional reporting or compliance requirements (category two above). NMFS does not know of any performance or design standards that would satisfy the aforementioned objectives of this rulemaking while, concurrently, complying with the Magnuson-Stevens Act and ATCA. As described below, NMFS analyzed five different alternatives in this final rulemaking and provides justification for selection of the preferred alternative to achieve the desired objective.

The alternatives included: maintaining current baseline quotas for North and South Atlantic swordfish (alternative 1a, no action), implementing North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06–02 and 06–03 (alternative 1b), allocating no additional swordfish quota to the reserve category (alternative 2a, no action), transferring 15 percent (440.6 mt dw) of the 2007 baseline North Atlantic swordfish allocation to the reserve category (alternative 2b), and establishing procedures for possible implementation of the transfer provision outlined in ICCAT recommendation 06–02 (alternative 2c). Implementing North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06–02 and 06–03 (alternative 1b) and transferring 15 percent (440.6 mt dw) of the 2007 baseline North Atlantic swordfish allocation to the reserve category (alternative 2b) are the preferred alternatives.

Alternatives Considered for Quotas and Underharvest Carryovers

Alternative 1a is considered the no action alternative since it would maintain existing baseline quotas for North and South Atlantic swordfish, as well as carryover entire underharvests in future fishing years (e.g., 2007 and beyond). This alternative is not preferred because it would fail to comply with international obligations under ICCAT and ATCA.

Maintaining existing baseline quotas would fail to decrease the South Atlantic recommended baseline quota from 90.2 mt dw to 75.2 mt dw. Furthermore, failing to cap overharvests consistent with ICCAT recommendations 06–02 and 06–03 would result in carryover that would more than double what is recommended by ICCAT.

Alternative 1b, the preferred alternative, which will implement North and South Atlantic swordfish quotas and underharvest provisions as outlined in ICCAT recommendations 06–02 and 06–03, complies with ICCAT recommendations. North Atlantic underharvest carryover will be capped at 50 percent of the 2007 and 2008 baseline quota allocations (1,468.8 mt dw). South Atlantic underharvest carryover will be capped at 100 percent of the 2007 and 2008 baseline quota allocations (75.2 mt dw) and South Atlantic underharvest carryover for 2006 will be capped at 100 mt ww (75.2 mt dw). In addition, alternative 2b will allow for 2,022.56 mt dw of the U.S. 2005 North Atlantic underharvest to be redistributed among other CPCs in 2007 (1,011.28 mt dw) and 2008 (1,011.28 mt dw), consistent with ICCAT recommendation 06–02.

By applying caps and baseline quotas in ICCAT recommendations 06–02 and 06–03 for 2007, prices for fully realized quota harvests can be calculated in order to compare the application of alternative 1a versus 1b. Application of alternative 1b versus 1a may result in a loss of $45.3 million for the North Atlantic swordfish fishery in 2007 if harvests are fully realized. Application of alternative 1b versus 1a may result in a loss of $0.14 million for the South Atlantic swordfish fishery in 2007 if harvests are fully realized. However, baseline quotas for the North and South Atlantic have not been fully realized in recent years. The pelagic longline fleet has not caught the entire U.S. swordfish quota, causing significant amounts of swordfish quota to be carried over in

past fishing years. For example, the amount of total underharvest in the North Atlantic during years 2004–2006 was 3,528.8 mt dw, 4,806.1 mt dw, and 6,905.9 mt dw, respectively. In recent years, there have been no landings of swordfish in the South Atlantic. A reduction in the growth of underharvest carryovers, and the June 7, 2007, final rule (72 FR 31688) to help revitalize the swordfish industry, would increase the ability of the vessel owners and permit holders in the pelagic longline fleet to catch their full quota. In conclusion, maintaining the North Atlantic baseline quota, decreasing the South Atlantic baseline quota, and capping underharvest carryovers in both swordfish fisheries would not have adverse impacts on a large number of small entities.

Alternatives Considered for Quota Transfers

Alternative 2a is considered the no action alternative since it would maintain the reserve category whereby no new quota allocations would replenish the reserve. This alternative is not preferred because the 18.8 mt dw per year transfer to Canada would eventually deplete the reserve. Consistent with § 635.27(c)(1)(i)(D), the reserve has four stated uses. Quota in the reserve category may be used for inseason adjustments to other fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, or for other purposes consistent with management objectives. The status quo alternative does not create any new economic burdens on the North Atlantic commercial swordfish fishery, however, if the reserve were to be completely depleted in future fishing years, its four stated uses could not be implemented. For example, other swordfish quota categories could not be supplemented through transfers from the reserve, overharvests could not be covered, and valuable data could not be obtained by using quota for fishery independent research.

Alternative 2b, the preferred alternative, will transfer 15 percent (440.6 mt dw) of the 2007 baseline U.S. North Atlantic swordfish allocation to the reserve category. This will replenish the reserve and make it available for its four stated uses.

Alternative 2c would establish procedures for possible implementation of the transfer provision outlined in the 2006 ICCAT recommendation 06–02 to handle transfer requests or offers by other CPCs. This alternative differs from alternative 2b in that 2c would not place 15 percent of the North Atlantic baseline quota directly into the reserve. Rather, if the situation arose for a needed transfer, a transfer of up to 15 percent would be made from the directed quota category.

Alternative 2b is preferred over 2c because placing 15 percent of the North Atlantic baseline quota directly into the reserve would replenish the reserve and also create a reliable directed fishery quota at the start of a given fishing season. If 2c were implemented, a 15 percent transfer (if it were made) out of the directed quota may not allow the fishery to adequately prepare for the upcoming year, since the directed quota would suddenly decrease during a season in which a transfer might be made. The industry might prepare and purchase such things as equipment for an upcoming season and lose revenue due to this quota reduction.

Alternative 2b would replenish a reserve that would otherwise become depleted in future fishing years through the annual 18.8 mt dw transfer to Canada. This creates four options (previously mentioned) for use of the 15 percent (440.6 mt dw) allocated reserve quota. Placing 15 percent of the 2007 and 2008 baseline quota directly into the reserve would provide for a directed fishery quota that would not be reduced due to an in-season transfer, as well as provide opportunity to cover other U.S. North Atlantic swordfish quota categories should the situation arise.

Implementing alternative 2b, transferring 15 percent of the U.S. baseline quota to the reserve, amounts to 3,601.9 mt dw for the North Atlantic directed swordfish fishery and 504.5 mt dw for the reserve during the 2007 fishing year. If alternative 2b is not implemented, the North Atlantic directed swordfish fishery would have a larger quota of 4,042.5 mt dw and a smaller reserve of 63.9 mt dw. The implementation of alternative 2b would therefore result in a potential loss in revenue of $3.7 million to the North Atlantic directed swordfish fishery when compared to the status quo. However, NMFS does not expect fishing effort to increase in the short term to the extent that this loss would be realized. U.S. fishermen have not caught their full swordfish quota since 2000, resulting in large underharvest carryovers which, in turn, made for large adjusted quotas. Therefore, NMFS believes that the caps, and the June 7, 2007, final rule (72 FR 31688) to revitalize the swordfish industry, would help the fishery harvest the swordfish quota without the large carryovers which have occurred in the past. Furthermore, as previously stated, one of the four possible uses of the reserve would be to transfer quota back to the directed swordfish category if needed, which may also prevent this potential economic loss from being realized. Therefore, alternative 2b is preferred over 2c because it minimizes any economic impact and complies with international obligations.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Management, Reporting and recordkeeping requirements, Treaties.

Dated: October 1, 2007.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs,National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 635 is amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 2. In § 635.5, paragraph (c)(2) is revised to read as follows:

§ 635.5 Recordkeeping and reporting.

* * * * *

(c) * * *

(2) The owner, or the owner(s designee, of a vessel permitted, or required to be permitted, in the Atlantic HMS Angling or Atlantic HMS Charter/Headboat category must report all non-tournament landings of Atlantic blue marlin, Atlantic white marlin, and Atlantic sailfish, and all non-tournament and non-commercial landings of North Atlantic swordfish to NMFS by telephone to a number designated by NMFS, or electronically via the internet to an internet website designated by NMFS, or by other means as specified by NMFS, within 24 hours of that landing. For telephone landing reports, the owner, or the owner(s designee, must provide a contact phone number so that a NMFS designee can call the vessel owner, or the owner(s designee, for follow up questions and to confirm the reported landing. Regardless of how submitted, landing reports submitted to NMFS are not complete unless the vessel owner, or the owner(s designee, has received a confirmation number from NMFS or a NMFS designee.

* * * * *

■ 3. In § 635.27, paragraphs (c)(1)(i)(A) and (D), (c)(1)(ii), and (c)(3)(i) and (ii) are revised to read as follows:

§ 635.27 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) A swordfish from the North Atlantic stock caught prior to the directed fishery closure by a vessel for which a directed fishery permit, or a handgear permit for swordfish, has been issued or is required to be issued is counted against the directed fishery quota. The annual fishery quota, not adjusted for over- or underharvests, is 2,937.6 mt dw for each fishing year. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 1,468.8 mt dw: one for January 1 through June 30, and the other for July 1 through December 31.

* * * * *

(D) A portion of the total allowable catch of North Atlantic swordfish may be held in reserve for inseason adjustments to fishing categories, to compensate for projected or actual overharvest in any category, for fishery independent research, for transfer to another ICCAT contracting party, or for other purposes consistent with management objectives.

* * * * *

(ii) *South Atlantic Swordfish.* The annual directed fishery quota for the South Atlantic swordfish stock is 75.2 mt dw. After December 31, 2007, the annual quota is subdivided into two equal semi-annual quotas of 37.6 mt dw: one for January 1 through June 30, and the other for July 1 through December 31. The entire quota for the South Atlantic swordfish stock is reserved for vessels with pelagic longline gear onboard and that have been issued a directed fishery permit for swordfish. No person may retain swordfish caught incidental to other fishing activities or with other fishing gear in the Atlantic Ocean south of 5 degrees North latitude.

* * * * *

(3) * * *

(i) Except for the carryover provisions of paragraphs (c)(3)(ii) and (iii) of this section, NMFS will file with the Office of the Federal Register for publication notification of any adjustment to the annual quota necessary to meet the objectives of the Consolidated Highly Migratory Species Fishery Management Plan.

(ii) If consistent with applicable ICCAT recommendations, total landings above or below the specific North Atlantic or South Atlantic swordfish annual quota will be subtracted from, or added to, the following year(s quota for that area. As necessary to meet management objectives, such carryover adjustments may be apportioned to fishing categories and/or to the reserve. Carryover adjustments for the North Atlantic shall be limited to 50 percent of the baseline quota allocation for that year. Carryover adjustments for the South Atlantic shall be limited to 100 mt ww (75.2 mt dw) for that year. Any adjustments to the 12-month directed fishery quota will be apportioned equally between the two semiannual fishing seasons. NMFS will file with the Office of the Federal Register for publication any adjustment or apportionment made under this paragraph.

* * * * *

■ 4. In § 635.28, paragraph (c)(2) is revised to read as follows:

§ 635.28 Closures.

* * * * *

(c) * * *

(2) *Incidental catch closure.* When the annual incidental catch quota specified in § 635.27(c)(1)(i) is reached, or is projected to be reached, NMFS will file with the Office of the Federal Register for publication notification of closure. From the effective date and time of such notification until additional incidental catch quota becomes available, no swordfish may be landed in an Atlantic coastal state, or be possessed or sold in or from the Atlantic Ocean north of 5° N. lat. unless the directed fishery is open and the appropriate permits have been issued to the vessel. In the event of a directed and incidental North Atlantic swordfish category closure, South Atlantic swordfish may be possessed in the Atlantic Ocean north of 5° N. lat. and/or landed in an Atlantic coastal state on a vessel with longline gear onboard, provided that the harvesting vessel does not fish on that trip in the Atlantic Ocean north of 5° N. lat., the fish were taken legally from waters of the Atlantic Ocean south of 5° N. lat., and the harvesting vessel reports positions with a vessel monitoring system as specified in § 635.69.

[FR Doc. E7–19715 Filed 10–4–07; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XD14

Fisheries of the Economic Exclusive Zone Off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands

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

ACTION: Temporary rule; modification of a closure.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using pot gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to fully use the 2007 total allowable catch (TAC) of Pacific cod specified for catcher vessels using pot gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2007, through 2400 hrs, A.l.t., December 31, 2007. Comments must be received at the following address no later than 4:30 p.m., A.l.t., October 17, 2007.

ADDRESSES: You may submit comments, identified by [0648–XD14], by any one of the following methods:

- Mail to: P.O. Box 21668, Juneau, AK 99802
- Hand delivery to the Federal Building, 709 West 9th Street, Room 420A, Juneau, Alaska
- Electronic Submissions: Submit all electronic public comments via the Federal eRulemaking Portal *http://www.regulations.gov*
- FAX to 907–586–7557, Attn: Ellen Sebastian
- 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. Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the

BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels using pot gear in the BSAI under § 679.20(d)(1)(iii) on September 28, 2007 (72 FR 56016, October 2, 2007). As of October 1, 2007, approximately 529 metric tons of Pacific cod remain in the 2007 Pacific cod TAC allocated to catcher vessels using pot gear in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C) and (a)(2)(iii)(D), and to fully use the 2007 TAC of Pacific cod specified for catcher vessels using pot gear in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels using pot gear in the BSAI. The opening is effective 1200 hrs, A.l.t., October 2, 2007, through 2400 hrs, A.l.t., December 31, 2007.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of the Pacific cod fishery by catcher vessels using pot gear in the BSAI. Immediate notification is necessary to allow for the orderly conduct and efficient operation of this fishery, to allow the industry to plan for the fishing season, and to avoid potential disruption to the fishing fleet and processors. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 1, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels using pot gear in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until October 17, 2007.

This action is required by § 679.25 and is exempt from review under Executive Order 12866.

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

Dated: October 1, 2007.

Emily H. Menashes

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

[FR Doc. 07–4955 Filed 10–2–07; 1:38 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 070213033–7033–01]

RIN 0648–XD11

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processor Vessels Using Hook-and-line Gear in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2007 directed fishing allowance (DFA) of Pacific cod specified for catcher processor vessels using hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), October 2, 2007, until 1200 hrs, A.l.t., December 31, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2007 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear in the BSAI as a DFA of 68,105 metric tons (mt) is established by the 2007 and 2008 final harvest specifications for groundfish in the BSAI (72 FR 9451, March 2, 2007) and a reallocation (72 FR 52493, September 14, 2007). See § 679.20(c)(3)(iii) and (c)(5), and (a)(7)(i)(C).

In accordance with § 679.20(d)(1)(iii), the Administrator, Alaska Region, NMFS, has determined that the 2007 Pacific cod TAC allocated to catcher processor vessels using hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher processor vessels using hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher processor vessels using hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 28, 2007.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

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

Dated: September 28, 2007.

Emily H. Menashes

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

[FR Doc. 07–4956 Filed 10–2–07; 1:38 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 697

[Docket No. 0612243160–7448–02; I.D. 112505A]

RIN 0648–AU07

Atlantic Coastal Fisheries Cooperative Management Act Provisions; American Lobster Fishery

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

ACTION: Final rule.

SUMMARY: NMFS amends the Federal American lobster (Homarus americanus) regulations to implement further minimum carapace length (gauge) increases, an escape vent size increase, and trap reductions in the offshore American lobster fishery, consistent with recommendations for Federal action made by the Atlantic States Marine Fisheries Commission (Commission) and in support of the Commission's Interstate Fishery Management Plan for American Lobster (ISFMP).

DATES: Effective November 4, 2007.

ADDRESSES: Copies of the American lobster Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis (EA/RIR/FRFA) prepared for this regulatory action are available upon request from Harold Mears, Director, State, Federal and Constituent Programs Office, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Peter Burns, Fishery Management Specialist, (978) 281–9144, fax (978) 281–9117, e-mail *peter.burns@noaa.gov*.

SUPPLEMENTARY INFORMATION:

Statutory Authority

These new regulations would modify Federal lobster conservation management measures in the Exclusive Economic Zone (EEZ) under the authority of section 804 of the Atlantic Coastal Fisheries Cooperative Management Act (Atlantic Coastal Act) 16 U.S.C 5101 *et seq.*, which states, in the absence of an approved and implemented Fishery Management Plan under the Magnuson-Stevens Fishery Conservation and Management Reauthorization Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) and, after consultation with the appropriate Fishery Management Council(s), the Secretary of Commerce may implement regulations to govern fishing in the EEZ, i.e., from 3 to 200 nautical miles (nm) offshore. The regulations must be (1) compatible with the effective implementation of an ISFMP developed by the Commission and (2) consistent with the national standards set forth in section 301 of the Magnuson-Stevens Act.

Purpose and Need for Management

American lobsters are managed within the framework of the Commission. The Commission serves to develop fishery conservation and management strategies for certain coastal species and coordinates the efforts of the states and Federal Government toward concerted sustainable ends. The Commission, under the provisions of the Atlantic Coastal Act, decides upon a management strategy as a collective and then forwards that strategy to the states and Federal Government, along with a recommendation that the states and Federal Government take action (e.g., enact regulations) in furtherance of this strategy. The Federal Government is obligated by statute to support the Commission's overall efforts. Relevant to this action, the Commission's Lobster Board recommended that the Federal Government create regulations consistent with the measures set forth in the Commission's Lobster ISFMP as identified in Addenda II, III, and IV and XI to Amendment 3 of the ISFMP. As initially adopted, these addenda included management measures for several lobster conservation management areas (LCMAs/Areas) including Area 3, the Outer Cape Cod (Outer Cape) Area and Area 1. Specifically, these measures included an escape vent size increase for both Area 1 and the Outer Cape Area and a series of gauge increases for the Outer Cape Area in addition to the measures considered for Area 3. However, the Commission's American Lobster Management Board (Board), in May 2006, determined that only the Area 3 measures were required and repealed those specific to the Outer Cape Area and Area 1. Consequently, NMFS will implement regulatory measures in three general categories for LCMA 3: (1) Gauge size increases (recommended in Addenda II); (2) an escape vent size increase (recommended in Addendum IV) and a delay in the implementation of the escape vent size increase until 2010 (Addendum XI); and (3) trap reductions (recommended in Addendum IV and Addendum XI). These regulatory changes serve as the Federal Government's response to the Commission's requested action and are consistent with NMFS' resource objectives, legal mandates, and overall practical/managerial requirements. The management measures for the areas other than Area 3 associated with these addenda and recommended for Federal implementation by the Commission will be addressed in future and ongoing rulemakings.

The Area 3 broodstock and effort control measures relevant to this action directly address the concerns of the most recent stock assessment. The peer-reviewed lobster stock assessment in 2005 showed that the American lobster resource presents a mixed picture (see the Commission Stock Assessment Report No. 06–03, published January 2006 at www.asmfc.org.). One theme throughout the assessment was the high fishing effort and high mortality rates in all three stock areas. The assessment indicated that there is stable abundance for the Georges Bank (GBK) stock and much of the Gulf of Maine (GOM) stock and decreased abundance and recruitment, yet continued high fishing mortality rates, for the Southern New England (SNE) stock and in Statistical Area 514 (Massachusetts Bay and Stellwagen Bank) in the GOM stock. Of particular concern in the 2005 peer-reviewed stock assessment report is the SNE stock, where depleted stock abundance and recruitment coupled with high fishing mortality rates over the past few years led the stock assessment and peer review panel to recommend additional harvest restrictions. The SNE stock encompasses all of Areas 4, 5, and 6, and part of Areas 2 and 3. Overall, stock abundance in the GOM is relatively high with recent fishing mortality comparable to the past. The GOM stock encompasses all of Area 1, and part of both Area 3 and the Outer Cape Management Area. Currently, high lobster fishing effort levels in GOM continue in concert with high stock abundance, although high effort levels are not likely to be supportable if abundance returns to long-term median levels. The GBK stock seems stable, with current abundance and fishing mortality similar to the 20–year average. The GBK stock encompasses part of Areas 2, 3, and the Outer Cape Management Area. While the report

noted the female proportion of the stock is increasing slightly, it also cautioned that further increases in effort are not advisable, hence, the need for additional effort reduction and broodstock protection.

Background

The Commission's American lobster management strategy is neither predicated upon a single measure nor is it contained within a single document. Rather, the structure is based on facilitating ongoing adaptive management with necessary elements implemented over time. The Commission set forth the foundation of its American Lobster ISFMP in Amendment 3 in December 1997. The Federal Government issued compatible regulations that complemented Amendment 3 in December 1999. Amendment 3 regulations established assorted measures that directly, even if preliminarily, address overfishing (e.g., trap caps and minimum gauge sizes). Amendment 3 created seven lobster management areas and established industry-led lobster management teams that make recommendations for future measures to end overfishing, based on the current status of the stocks. Additional management measures were set forth in subsequent Amendment 3 addenda including measures to limit future access to LCMAs 3, 4, and 5 in Addendum I (approved by the Commission in August 1999 and compatible Federal regulations enacted March 2003); and measures to increase protection of American lobster broodstock in Addenda II and III (approved by the Commission in February 2001 and February 2002, respectively, and compatible Federal regulations enacted March 2005). Addenda II and III measures included gauge increases and mandatory v-notch requirements for Area 3. Additional lobster management measures, notably measures that would control effort, were set forth in later addenda, including Addendum III, and relative to this action, Addendum IV (approved by the Commission in December 2003) that included additional trap reductions in Area 3; Addendum V (approved by the Commission in March 2004) that included a reduced trap cap in Area 3; Addendum VI (approved by the Commission in February 2005); Addendum VII (approved by the Commission in November 2005); Addendum VIII (approved by the Commission in May 2006); Addendum IX (approved by the Commission in October 2006), Addendum X (approved by the Commission in October 2006), and Addendum XI that included recommendations for additional trap reductions and a delay in the escape vent size increase in Area 3 (approved by the Commission in May 2007).

This current Federal rulemaking is one of three (3) Federal rulemakings that have their genesis, at least in part, in Commission Addenda II and III.

The first Addenda II – III rulemaking began with the publishing, in the **Federal Register**, of an advance notice of proposed rulemaking (''ANPR'') on May 24, 2001 (66 FR 28726), and ended with the publishing of a final rule on March 14, 2006 (71 FR 13027). This first rulemaking focused primarily on the broodstock protection measures set forth in the two addenda, and it was this similarity in purpose that resulted in NMFS combining the addenda recommendations into a single rulemaking. Addenda II and III, however, also contained additional management recommendations; most notably effort control measures and ''if necessary'' measures, so called because they would be considered only if determined necessary in later years. These separate measures became more prominent as the Commission issued later addenda, causing NMFS to start a second rulemaking involving Addenda II III in 2005.

The second Addenda II - III rulemaking actually focuses more on Commission Addenda IV – VII. This second rulemaking formally began with NMFS' publication of an ANPR in a **Federal Register** notice dated May 10, 2005 (70 FR 24495), and remains ongoing. Specifically, NMFS determined that the Addenda II – III effort control measures were modified substantively and revised by the Commission's Addenda IV, V, VI, and VII. Overall, measures proposed in those Addenda involve additional limited access programs for Area 2 and the Outer Cape LCMAs and proposals to transfer traps in LCMAs 2, 3 and the Outer Cape. As a result, NMFS will analyze the Addenda II – III effort control programs as a component of the larger more detailed second rulemaking associated with the effort control recommendations in Addenda IV VII. NMFS is still engaged in this second proposed rulemaking, and the Commission's effort control measures are still under analysis.

The third Addenda II – III rulemaking, which is represented in this final rule, also involves later Commission action, most notably Addendum XI. This third rulemaking formally began on December 13, 2005, with NMFS' publication of an ANPR in the **Federal Register** (70 FR 73717). The rulemaking initially focused on Addenda II III's so called ''if necessary'' measures because, although the measures were in Addenda II III at the time of the first Federal rulemaking, the Commission had not actually deemed them necessary until too late in the process for their inclusion in the March 26, 2006, final rule. Ultimately, the Commission modified the requirements of the ISFMP, voting on May 8, 2006 that the ''if necessary'' measures were, in fact, required only in LCMA 3, but not in the other LCMAs. The repealed measures include the additional escape vent size increase for LCMA 1 (2 inches X 5 3/4 inches (5.08–cm X 14.61–cm) rectangular or 2 5/8 inches (6.67 cm) circular by 2008); in the Outer Cape Cod LCMA, four additional 1/32–inch (0.08–cm) gauge increases up to 3 1/2 inches (8.89 cm) by July 2008 and an escape vent increase to 2 1/16 inches X 5 3/4 inches (5.24 cm X 14.61 cm) rectangular or 2 11/16 inch (6.82 cm) circular by 2008.

The Commission voted to approve draft Addendum XI for public comment on January 31, 2007, and the document was approved as part of the ISFMP in May 2007. The Addendum includes two additional 2.5–percent trap reductions for LCMA 3 and a delay in the implementation of the LCMA 3 escape vent size increase until 2010. NMFS incorporated the Addendum XI proposed measures in this third rulemaking in an ANPR filed in the **Federal Register** on December 18, 2006 (71 FR 75705), and in a subsequent proposed rule published in the **Federal Register** on June 20, 2007 (72 FR 33955) with the expectation that the Board would ultimately adopt the measures as part of the lobster management framework.

At present, most states have issued their complementary regulations; the Federal Government has not. Most Federal lobster permit holders also hold a state lobster license, and they must abide by the ISFMP measures by virtue of their state license, even if the same restrictions have not yet been placed on their Federal permit. Generally, the exception to state coverage of all ISFMP measures, under the Commission's ISFMP, is for states that are classified as de minimis states. The focus of the analysis of measures in this action is for Federal lobster permit holders from states that have not implemented all measures in the Commission's ISFMP, and, in the case of this rule, exceptions to coverage exist for Federal permit holders from Connecticut, New Jersey, and the de minimis states. Both the states of New Jersey and Connecticut voted to approve Addenda II and III and it is expected that those states will issue compatible regulations in the immediate

future. Certain states at the southern end of the range qualify for de minimis status because a given state's declared annual landings, averaged over a two-year period, amount to less than 40,000 lb (18,144 kg) of American lobster. While de minimis states are required to promulgate all coastwide measures contained in Section 3.1 of Amendment 3, many of the area-specific measures for Area 3 identified in this action are not required to be implemented by the de minimis states. However, Federal lobster regulations apply to all entities fishing for lobster in Federal waters, including Federal permit holders in de minimis states.

Based on the impact analysis relative to this final rule, a negligible number of Federal trap and non-trap vessels would be impacted by adoption of these new measures. The impacts are concentrated on those few vessels hailing from Connecticut, New Jersey and the de minimis states. However, should Connecticut and New Jersey ultimately implement these measures as mandated by the Commission's ISFMP, as expected, the impacts will be reduced even further. Impacts in the de minimis states are also expected to be minimal; by definition, the lobster catch has to be small to even qualify for de minimis status and lobster catch is not a principle component of the overall fishery in those states. In addition, a number of Federal lobster permit holders may be impacted by the trap reductions scheduled for Area 3. Some Area 3 permit holders electing to fish for lobster with traps in a nearshore management area in addition to Area 3, may endure trap reductions in the nearshore areas since the Federal lobster regulations require that Federal lobster vessels be subject to the lowest trap limit of all areas that are designated on the vessel's Federal lobster permit. In other words, if a vessel's Area 3 trap allocation is reduced to a number that is less than the vessel's nearshore allocation, that vessel's trap limit in the nearshore area will be similarly reduced. Overall, adoption of these new management measures into the Federal regulations will facilitate the cooperative state and Federal enforcement of lobster regulations by reducing the regulatory gap between the states and NMFS.

Description of the Public Process

The actions set forth in this Final Rule have undergone extensive and open public notice, debate and discussion both at the Commission and Federal levels.

1. Commission Public Process

Typically, this public discussion of a potential Federal lobster action begins within the Commission process. Specifically, the Commission's Lobster Board often charges its Plan Development Team or Plan Review Team sub-committees of the Lobster Board - to investigate whether the existing ISFMP needs to be revised or amended to address a problem or need, often as identified in a lobster stock assessment. The Plan Review and Plan Development Teams are typically comprised of personnel from state and Federal agencies knowledgeable in scientific data, stock and fishery condition and fishery management issues. If a team or teams conclude that management action is warranted, it will so advise the Lobster Board, which would then likely charge the Lobster Conservation Management Teams (LCMTs) to develop a plan to address the problem or need. The LCMTs most often comprised of industry representatives will conduct a number of meetings open to the public wherein they will develop a plan or strategy, i.e., remedial measures, in response to the Lobster Board's request. The LCMTs then vote on the plan and report the results of their vote back to the Lobster Board. Minutes of the LCMT public meetings can be found at the Commission's website at *http://www.asmfc.org* under the ''Minutes & Meetings Summary'' page in the American Lobster sub-category of the Interstate Fishery Management heading.

After receiving an LCMT proposal, the Commission's Lobster Board will often attempt to seek specialized comment from both the Lobster Technical Committee and Lobster Advisory Panel before the proposal is formally brought before the Board. The Technical Committee is comprised of specialists, often scientists, whose role is to provide the Lobster Board with specific technical or scientific information. The Advisory Panel is a committee of individuals with particular knowledge and experience in the fishery, whose role is to provide the Lobster Board with comment and advice. Minutes of the Technical Committee and Advisory Panel can be found at the Commission's website at *http://www.asmfc.org* under the ''Minutes & Meetings Summary'' page in the American Lobster sub-category of the Interstate Fishery Management heading.

After receiving sub-committee advice, the Lobster Board will then debate the proposed measures in an open forum whenever the Board convenes (usually four times per year, one time in each of the spring, summer, fall and winter seasons). Meeting transcripts of the Lobster Board can be found at the Commission's website at *http://www.asmfc.org* under ''Board Proceedings'' on the ''Minutes & Meetings Summary'' page in the American Lobster sub-category of the Interstate Fishery Management heading. These meetings are typically scheduled months in advance and the public is invited to comment at every Board meeting. In the circumstance of an addendum, the Board will vote on potential measures to include in a draft addendum. Upon approving a draft addendum, the Lobster Board will conduct further public hearings on that draft addendum for any state that so requests. After conducting the public hearing, the Lobster Board will again convene to discuss the public comments, new information, and/or whatever additional matters are relevant. After the debate, which may or may not involve multiple Lobster Board meetings, additional public comment and/or requests for further input from the LCMTs, Technical Committee and Advisory Panel, the Lobster Board will vote to adopt the draft addendum, and if applicable, request that the Federal Government implement compatible regulations.

The actions set forth in the final rule have their genesis in Addenda II, III and IV, and XI. Relative to Addendum II, the Lobster Board instructed the Plan Review Team to offer input on the new stock assessment, including a strategy for Addendum II, in a public meeting dated June 6, 2000. In a public meeting dated August 23, 2000, the Board directed the PRT to develop Addendum II, which was to include proposals made by many of the already involved LCMTs. In November 2000, the Board held a further public meeting in which it voted to approve Addendum II as a draft for public comment. Public hearings were held in three states in January 2001. Finally, in a public hearing dated February 1, 2001, the Lobster Board heard the results of the January public hearings and formally voted to approve Addendum II.

Addendum III followed a similar process. After discussion at the LCMT level, the Lobster Board voted to draft Addendum III in a public meeting dated July 17, 2001. The Board then voted to approve Addendum III as a draft for public comment in a public meeting dated October 16, 2001. Public Hearings were held in seven states in November and December 2001. The Lobster Board was informed of the results of the state hearings in a public meeting dated

February 2, 2002 at which time it voted to formally approve the Addendum III.

Addendum IV was the subject of multiple public meetings before the Lobster Board in 2002 and 2003. The Lobster Board approved Addendum IV as a draft for public comment in a public meeting dated August 28, 2003. Public hearings were held in seven states in October and November 2003. The Lobster Board was informed of the results of the states hearings in a public meeting dated December 17, 2003 at which time it voted to formally approve Addendum IV.

Addendum XI was released for public comment as a draft document in April 2007 and responded to the findings of the 2005 peer-reviewed stock assessment regarding the need for the development of management measures to address the depleted abundance, low recruitment and high fishing mortality rates in the SNE stock. Several states held public hearings on the draft addendum in April 2007 and the final addendum was approved by the Commission's Lobster Board in May 2007. In addition to a full suite of measures designed as the SNE Stock Rebuilding Program, the addendum, as it relates to this final rule, adopts the two additional Area 3 trap reductions of 2.5 percent, the Area 3 escape vent size increase, and the extension of the implementation of the escape vent increase to 2010.

2. Federal Public Process

Since the transfer of Federal lobster management in December 1999 from the Magnuson-Stevens Act, with its Federal Fishery Management Councils, to the Atlantic Coastal Act, with the Atlantic States Marine Fisheries Commission, Federal lobster action has typically been undertaken in response to a Commission action.

The development of this current rulemaking began in response to the Commission's approval of Addendum II in February 2001 and request for complimentary Federal regulations. Since that time, NMFS has filed numerous public notices in the **Federal Register** seeking public comment on the recommendations made by the Commission in Addenda II, III and IV and XI. The Federal filings and notices were specified in detail in the Background section of this document. The Commission and the New England and Mid-Atlantic Fishery Management Councils were also invited to comment on the proposed rule, consistent with past actions, in letters dated June 20, 2007. No new issues were brought forward that had not already been considered in the EA/RIR/IRFA for this action. NMFS received six comments to its proposed Federal action, which are summarized and set forth below.

Comments and Responses

The proposed rule for this regulatory action was published in the **Federal Register** on June 20, 2007 (72 FR 33955), and written public comments were solicited through August 6, 2007. In response to the request for public input, a total of six written comments were received.

Comment 1: Five of the six respondents indicated their support for all the measures selected in this action as identified in the preferred alternative of the proposed rule and as explained in the following section of this document entitled, ''Regulatory Revisions Implemented by This Action.'' Specifically, these five respondents expressed their support for the gauge increase up to 3 1/2 inches (8.89 cm) by 2008, the escape vent size increase to 2 1/16 inches X 5 3/4 inches rectangular (5.24 cm X 14.61 cm) or two circular vents at 2 11/16 inches diameter (6.82 cm) by July 1, 2010, and the full suite of trap reductions through 2010.

Response: NMFS believes that these measures will provide the best means of addressing the fishing effort and broodstock protection needs of the fishery as identified in the most recent stock assessment and will best complement the efforts of the Commission in implementation of the ISFMP in support of consistent state and Federal regulations in Area 3.

Comment 2: Three of the five commenters who wrote in support of the selected management measures also expressed their desire for NMFS to implement a trap transferability program for Area 3 as adopted into the Commission's ISFMP to allow eligible vessels to transfer portions of their lobster trap allocations, with a conservation tax included for each transaction to facilitate trap reductions in the Area 3 fishery.

Response: NMFS is currently analyzing alternatives in an ongoing rulemaking action that considers the Commission's recommendations to implement the industry-proposed trap transferability program for Area 3 and has chosen to not address that issue within the context of this final rule. An ANPR/Notice of Intent to prepare a draft environmental impact statement was published in the **Federal Register** on May 10, 2005 (70 FR 24495), wherein NMFS indicated that an analysis of the potential management alternatives associated with Area 3 trap transferability is underway. The pending rulemaking that analyzes trap transferability is discussed in greater detail earlier in this final rule section where it is referred to as the ''second Addenda II - III rulemaking.''

Comment 3: One commenter who supports the selected action inquired why this action did not include the maximum gauge size for Area 3 recently adopted by the Commission.

Response: The Area 3 maximum size is outside the scope of this rulemaking. The Area 3 maximum size was only recently adopted by the Commission in May 2007 as a component of Addendum XI to Amendment 3 of the ISFMP, after the scope of this rulemaking and associated impact analysis were completed. NMFS will address the Area 3 maximum size in a future rulemaking and that will include opportunities for public comment.

Comment 4: One commenter does not support the concept of a minimum carapace length or escape vent for the management of the lobster fishery, although the commenter does support trap reductions as an effective means of reducing fishing effort. The commenter states that an increase in the minimum carapace length and escape vent size will reduce the efficiency of the lobster fleet by causing boats to retain fewer lobster in relation to the costs incurred to catch the lobster. The commenter suggests that the average size of landed lobster is too small due to an excessive removal rate of lobster by the fishing fleet. Therefore, a reduction in effort will reduce the removal rate and reduce the costs of harvesting lobster, while an increase in the minimum size and the escape vent will not reduce the costs of removing lobster.

Response: The commenter here suggests a paradigm shift in overall management theory wherein management would focus on input controls (e.g., trap numbers, limited entry) rather than output controls (gauge size, escape vent size requirements). The relative merit of such a theory is the subject of ongoing discussion within industry, academic and management circles. Resolution and/or consensus as to this theory's applicability to lobster management has not yet occurred. At present, the commenter's generally preferred approach has not been adopted by the Commission in its lobster ISFMP and is incongruent with, and might actually undermine, the Commission's present lobster management strategy. NMFS believes the commenter's approach is beyond the scope of the present action, although NMFS will continue to monitor, and as appropriate, participate in discussions on ways to improve management of the lobster resource. *Comment 5:* One

commenter is opposed to a maximum lobster carapace length since such a measure will reduce the size of the exploitable stock in terms of its contribution to the yield from the resource.

Response: This action will not implement a maximum lobster carapace length in Area 3 or any other management area.

Changes From the Proposed Rule

The following minor changes were made to the regulatory text since the publication of the proposed rule.

Edit 1

The draft regulatory text in the proposed rule at § 697.19(b) Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area, indicated that the current trap limits in for Federal lobster trap vessels in Area 3 are effective until November 1, 2007. However, since the timing of publication of the final rule could not be predetermined at the time of drafting, and since the regulations filed in the final rule can not become effective until 30 days after publication of the final rule, the text was revised to explain that the current trap limits would remain in effect through the date that falls 29 days after publication of the final rule in the **Federal Register**.

Edit 2

Paragraph (2) of § 697.19(b) Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area, initially referenced November 1, 2007 as the effective date for the 2007 trap limits in Area 3 associated with this action. However, since the exact publication date of the final rule could not be foreseen upon drafting, and since the regulations filed in the final rule can not become effective for 30 days after publication, the regulatory text was revised in the final rule to indicate that the 2007 trap reductions will be effective on the date that falls 30 days after the date of publication of the final rule in the **Federal Register**.

Edit 3

Section 697.20(a)(5) Size, harvesting and landing requirements, was changed to indicate that the increase in the minimum carapace length to 3 15/32 inches (8.81 cm) for American lobster harvested in or from Area 3 is effective through June 30, 2008. Similarly, § 697.20(a)(6) was also changed to indicate that the minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3 15/32 inches (8.81 cm), through June 30, 2008. As initially written, these two paragraphs did not reference a date upon which this measure would no longer be effective. Since this rule implements an additional gauge increase effective on July 1, 2008, as clearly stated later in the same section of the regulatory text, the reference was made to June 30, 2008 to more succinctly specify the dates though which the first of the two gauge increases will remain in effect.

Regulatory Revisions Implemented by This Action

This Federal lobster management action will implement the following specific management measures for LCMA 3 as described here.

Increase Minimum Carapace Length in Area 3

To protect lobster broodstock NMFS will implement two additional gauge increases, resulting in a 3 1/2–inch (8.89–cm) minimum gauge size requirement for LCMA 3 by July 1, 2008. Most states have already begun the four-year gauge increase schedule, beginning in 2005, as mandated by the ISFMP. To remain consistent with the ISFMP, the Federal lobster minimum carapace length in LCMA 3 will increase to 3 15/32 inches (8.81 cm) effective November 4, 2007. Effective July 1, 2008, the Federal lobster minimum carapace length in LCMA 3 will increase to 3 1/2 inches (8.89 cm). These measures are consistent with the gauge increases set forth in the ISFMP.

Increase Lobster Trap Escape Vent Size for Area 3 in 2010

Under this action, and consistent with the Commission's recommendations in Addendum XI, NMFS will increase the LCMA 3 escape vent size to 2 1/16 inches X 5 3/4 inches rectangular (5.24 cm X 14.61 cm) or two circular vents at 2 11/16 inches diameter (6.82 cm) by July 1, 2010.

Area 3 Lobster Trap Reductions Through 2010

By way of this rulemaking, NMFS will implement a suite of trap reductions in LCMA 3. First, Addendum IV to Amendment 3 of the ISFMP calls for a 10–percent trap reduction implemented over two consecutive years with a scheduled 5–percent reduction for 2007 and a 5–percent reduction in 2008. To address the need for further fishing mortality and fishing effort reductions in the offshore fishery as identified in the updated stock assessment released in 2005, the Board developed Addendum XI, that included consideration of an additional 5–percent reduction in traps in LCMA 3, to be implemented as a 2.5–percent reduction each year for two consecutive years following the initial 10–percent trap reduction specified in Addendum IV. The Commission voted to approve draft Addendum XI for public comment on January 31, 2007, and subsequently Addendum XI was approved by the Commission in May 2007, including the requirement for an additional 5–percent reduction in traps in LCMA 3. Table 1 illustrates the LCMA 3 gauge increases, escape vent size increases and the 10–percent trap reductions currently recommended in the ISFMP for Federal implementation. Also included in the table are the two additional 2.5–percent trap reductions for LCMA 3 just approved by the Board in May 2007.

TABLE 1. AMERICAN LOBSTER ISFMP GAUGE, ESCAPE VENT AND TRAP REDUCTION SCHEDULE FOR LCMA 3 AND CORRESPONDING FEDERAL ACTION

[Measurements are in inches]

LCMA	Current Federal Lobster Regulations		Addenda II-VIII, XI(Commission Recommendations)			Changes to Federal Lobster Regulations		
	gauge	vent*	gauge	vent*	trap reductions**	gauge	vent*	trap reductions**
LCMA3	3 3/8	2 X 5 3/4 rectangular or 2 5/8 circular	3 3/8 July 2004 3 13/32 July 2005 3 7/16 July 2006 3 1/2 July 2008	2 1/16 X 5 3/4 rectangular or 2 11/16 circular by 2010	5% in July 2007 5% in July 2008 2.5% in July 2009 2.5% in July 2010 3 15/32 in Nov. 2007	3 15/32 in Nov. 2007 3 1/2 in July 2008	2 1/16 X 5 3/4 rectangular or 2 11/16 circular by 2010	5% in Nov. 2007 5% in July 2008 2.5% in July 2009 2.5% in July 2010

* All vent sizes include a rectangular and corresponding circular vent size. In all cases, each trap is required to have one rectangular vent or two circular vents at the sizes indicated. The delay of the escape vent size increase until 2010 was adopted into the ISFMP in Addendum XI.

** The two 5% trap reductions scheduled for 2007 and 2008 were established in Addendum IV; the two 2.5% reductions were incorporated into the ISFMP in Addendum XI.

Classification

This final rule has been determined to be not significant for the purposes of Executive Order (E.O.) 12866.

This final rule does not contain policies with Federalism implications as that term is defined in E.O. 13132.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) as required by section 603 of the Regulatory Flexibility Act (RFA). The FRFA describes the economic impact this final rule will have on small entities. A description of the action, the reason for consideration, and its legal basis are contained in the Supplemental Information section of this final rule.

The FRFA incorporates the initial regulatory flexibility analysis (IRFA), a summary of the significant issues raised by the public comments in response to the IRFA, the NMFS responses to those comments, and a summary of the analyses completed to support the action. The IRFA was summarized in the proposed rule (72 FR 33955, June 20, 2007) and is thus not repeated here. A copy of the IRFA, RIR, and the EA prepared for this action are available from the Northeast Regional Office (see **ADDRESSES**). A description of the action, it's reasons for consideration, and the legal basis for this action are contained in the SUMMARY section of the preamble and in the preamble to this final rule.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as ''small entity compliance guides''. The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As part of this rulemaking process, a letter to permit holders that also serves as a small entity compliance guide (the guide) was prepared. Copies of this final rule are available from the Northeast Regional Office (see **ADDRESSES**), and the guide will be sent to all holders of permits for the American lobster fishery as part of a permit holder letter. The guide and this final rule will be available upon request.

Summary of the Significant Issues Raised by the Public Comments

A total of six written comments were received in response to the publication of the proposed rule for this action (72 FR 33955). No significant issues were raised about the IRFA or the economic effects of the rule in the public comments. A summary of the comments and Agency responses is provided in the preamble section of this document.

Description of and Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The selected action will have a potential effect on the 139 federally permitted vessels with an Area 3 trap allocation. This action will also have a potential effect on federally permitted vessels that elected to fish lobster using non-trap gear of which there were 1,105 in fishing year 2006. Gross sales for any one of these vessels would not exceed the small business size standard for commercial fishing of $4 million. Therefore, all 1,244 fishing businesses are considered small entities for purposes of the Regulatory Flexibility Act (RFA).

The selected action would only change regulations for trap and non-trap vessels fishing in Area 3; only vessels that actually fished or intend to fish in Area 3 would be effected. Available data indicate that 87 of the 139 vessels with an Area 3 trap allocation and 265 non-trap vessels actually landed lobster while fishing Area 3 for a total of 352 small entities (about 30 percent of the total number of potentially effected permit holders) that have demonstrated recent participation in the Area 3 lobster fishery.

The Commission has lead responsibility for managing lobster and developing a regulatory framework for implementation by the individual member states and making recommendations for complementary action by the Federal Government. Since nearly all permit holders must be licensed in a state and are bound by the most restrictive management measures no matter where they fish, Federal action will have added economic impact only in cases where the federal regulation is more restrictive than any given state regulation. This Federal action will either align Federal regulations with existing state regulations or anticipates highly probable state actions to be taken in the future.

Economic Impacts of the Selected Action

Minimum Size Increases

The ISFMP calls for a series of scheduled increases of 1/32 inch (0.08 cm) from 3 3/8 inches (8.57 cm) in Area 3 in 2004 to 3 1/2 inches (8.89 cm) by July 2008. These scheduled gauge

increases have already been implemented by all states except for New Jersey, Connecticut and the de minimis states. Currently, the minimum Federal gauge size in Area 3 is 3 3/8 inches (8.57 cm). However, since the majority of lobster trap and non-trap vessels are licensed in states that have already implemented the ASMFC recommended size increases for Area 3, only 21 of the participating federally permitted trap and non-trap vessels are currently able to retain lobster at the lower Federal minimum gauge. This action will raise the gauge to 3 15/32 inches (8.81 cm) in 2007 and to 3 1/2 inches (8.89 cm) in July 2008. This schedule replicates what has already been implemented by most states and will affect the 21 participating Area 3 vessels that are currently licensed in states that have not implemented the recommended gauge size.

The economic impact on these vessels is uncertain but is expected to be low for the 6 affected trap vessels and even lower for the 15 affected non-trap vessels. That is, lobsters landed from Area 3 tend to be larger than lobsters landed elsewhere. For example, sea sampling data indicate that the minimum carapace length for 98 percent of non-trap lobster landings on observed trips was at least 3 1/2 inches (8.89 cm) in both 2004 and 2005. Assuming the size distribution of the trap gear catch is similar to that of non-trap gear the majority of lobster income by either trap or non-trap vessels will be unaffected by the increase in the Area 3 Federal gauge. However, non-trap vessel impacts are likely to be proportionally lower than that of the trap vessels because lobster comprises only a small percentage of total fishing income for non-trap vessels.

Escape Vent Size Increase

When the draft Environmental Assessment was conducted to evaluate the impacts of this action, the Commission had not yet adopted Addendum XI. However, although the preferred alternatives associated with the delay of the escape vent size increase and two additional 2.5–percent trap reductions were not yet incorporated into the ISFMP, the draft EA/RIR/IRFA did analyze these measures. At present, the NMFS final rule is consistent with the current ISFMP, as amended in May 2007 with the adoption of Addenda XI, and will delay implementation of increase in vent size to 2 1/16 x 5 3/4 inches (5.24 cm x 14.61 cm) rectangular or 2 11/16 inches (6.83 cm) circular until 2010 instead of 2008, as originally adopted by the Commission.

Delaying the escape vent size will have no effect on non-trap vessels but will provide some economic relief to any vessel that fished traps in Area 3. The larger escape vent size will allow any sub-legal and some legal sized lobsters to escape. Delaying the increase in escape vent size will theoretically allow for the retention of all legal-sized lobsters that enter the trap and provide some compensation for the change in the minimum gauge size since more legal-sized lobsters would be retained. Note that all vessels will still be required to bear the cost of replacing non-conforming escape vents but the two-year delay in implementation provides sufficient additional income to offset the cost of replacing escape vents. This measure will also maintain consistency between the state escape vent size requirements for Area 3 as dictated by the ISFMP, and Federal regulations.

Trap Reduction

This action will implement reductions in individual trap allocations of 5 percent in each of 2007 and in July 2008, and the two additional reductions in individual allocations; 2.5 percent in 2009 and another 2.5 percent in 2010, consistent with the trap reductions adopted by the Commission. Since the majority of states have already implemented the scheduled Area 3 trap reductions for 2007 and 2008 Federal action will not impose any added economic costs on the majority of participating Area 3 trap vessels. Federal action will affect an estimated 13 trap vessels from New Jersey and the de minimis states since these states have yet to enact the 5–percent Area 3 trap reductions for 2007 and 2008. Furthermore, the states of Connecticut and Rhode Island have adopted the first two 5–percent reductions but their respective regulations do not specify the two additional 2.5–percent reductions as adopted by the Commission in May 2007. With the exception of the de minimis states who are not required to implement the trap reductions, each state is expected to adopt the full suite of Area 3 trap reductions as required by the ISFMP. Should Connecticut and Rhode Island fail to implement these additional reductions, this Federal action will impact the 49 Federally-permitted lobster trap vessels hailing from these states that would otherwise be regulated by state-implemented reductions, in addition to the 13 vessels from New Jersey and the de minimis states that will be impacted if those states do not implement the two 5–percent reductions and the two 2.5–percent reductions. Therefore, between 3 (total vessels from the de minimis states) and 62 vessels may be impacted by this Federal action depending on the extent to which New Jersey, Connecticut and Rhode Island enact the trap reductions.

Regardless of whether states or the Federal Government implement trap reductions the economic impact on small entities is difficult to quantify with precision, but is expected to be minimal. Fishing strategy adaptation, such as tending traps more frequently and the decreased operating costs associated with fishing less traps, can often offset the economic impacts associated with reduced trap allocations. Therefore, the realized impact on landings and revenue is uncertain but is expected to be small. There may be differences in impact, however, among Area 3 participants that fish in other LCMAs if their Area 3 trap allocation falls below the number of traps they may be eligible to fish in another management areas. Specifically, due to the Federal definition of the most restrictive provision, any vessel with an Area 3 trap allocation which falls below the number of traps that may be fished by that vessel in another management area will be limited to the lowest area-specific trap allocation of all areas indicated for trap fishing on the vessel's federal permit. For example, a vessel eligible for 800 Area 3 traps, designating both Area 1 and Area 3 on the Federal permit, can fish a combined total of 800 traps in Area 1 and Area 3. In 2007, however, after the same vessel's Area 3 allocation declines to 760 traps under the trap reduction scenario associated with this action, the number of traps that can be fished in Area 1 will also be limited to 760 traps even though other Area 1 participants will be able to fish 800 traps.

The number of vessels impacted by this situation is contingent upon the areas designated on the Federal permit and the business practices employed by each small entity. It is also contingent upon the interpretation of the most restrictive rule as practiced by affected states. Consequently, some Area 3 participants in this situation, depending on their chosen course of action in defining their fishing practices, may endure reductions in nearshore trap allocations as a result of Area 3 trap reductions since their Area 3 allocations are below or will fall below their nearshore trap allocation. In consideration of these variables, this action may potentially impact the nearshore allocations of between 22 and 49 Federal lobster vessels over the four-year trap reduction period. This is a conservative estimate that includes all

eligible Area 3 trap vessels that may potentially elect Area 3 and whose Area 3 trap allocations are below or will fall below their nearshore area allocation due to the Area 3 trap reductions. However, a more real-time estimate considers only the subset of vessels which actively designated Area 3 on the 2006 Federal permit, equating to between 22 and 26 vessels over the four-year trap reduction period.

Overall, this impact is not considered to be significant since it will only affect a small number of vessels and since reductions in the number of traps are not necessarily correlated with reductions in catch, especially considering the differences in how traps are fished with respect to depth, seasons, area, soak time and other factors. Small-scale trap reductions at this level may have some overall benefits by reducing the costs to a fishing operation associated with fishing time and bait and fuel costs. NMFS is presently analyzing its application of the most restrictive trap standard as part of a separate rulemaking.

List of Subjects in 50 CFR Part 697

Fisheries, Fishing.

Dated: September 25, 2007.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR chapter VI, part 697, is amended as follows:

PART 697—ATLANTIC COASTAL FISHERIES COOPERATIVE MANAGEMENT

■ 1. The authority citation for part 697 continues to read as follows:

Authority: 16 U.S.C. 5101 *et seq.*

■ 2. In § 697.19, paragraph (b) is revised to read as follows:

§ 697.19 Trap limits and trap tag requirements for vessels fishing with lobster traps.

* * * * *

(b) *Trap limits for vessels fishing or authorized to fish in the EEZ Offshore Management Area.* (1) Effective through November 3, 2007, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vi) and the maximum trap limits identified in Table 1, Column 2 to this part, except as noted in paragraphs (c) and (e) of this section.

(2) Beginning November 4, 2007, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vi) and the maximum trap limits identified in Table 1, Column 3, to this part, except as noted in paragraphs (c) and (e) of this section.

(3) Beginning July 1, 2008, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vi) and the maximum trap limits identified in Table 1, Column 4, to this part, except as noted in paragraphs (c) and (e) of this section.

(4) Beginning July 1, 2009, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vi) and the maximum trap limits identified in Table 1, Column 5, to this part, except as noted in paragraphs (c) and (e) of this section.

(5) Beginning July 1, 2010, and beyond, vessels fishing only in or issued a management area designation certificate or valid limited access American lobster permit specifying only EEZ Offshore Management Area 3, or, specifying only EEZ Offshore Management Area 3 and the Area 2/3 Overlap, may not fish with, deploy in, possess in, or haul back from such areas more than the number of lobster traps allocated by the Regional Administrator pursuant to the qualification process set forth at § 697.4(a)(7)(vi) and the maximum trap limits identified in Table 1, Column 6, to this part, except as noted in paragraphs (c) and (e) of this section.

* * * * *

■ 3. In § 697.20, paragraphs (a)(3) through (a)(5) are revised and paragraph (a)(6) through (a)(9) are added to read as follows:

§ 697.20 Size, harvesting and landing requirements.

(a) * * *

(3) The minimum carapace length for all American lobsters harvested in or from the EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is 3 3/8 inches (8.57 cm).

(4) The minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Nearshore Management Area 2, 4, 5 and the Outer Cape Lobster Management Area is 3 3/8 inches (8.57 cm).

(5) Through June 30, 2008, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3 15/32 inches (8.81 cm).

(6) Through June 30, 2008, the minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3 15/32 inches (8.81 cm).

(7) Effective July 1, 2008, the minimum carapace length for all American lobsters harvested in or from the Offshore Management Area 3 is 3 1/2 inches (8.89 cm).

(8) Effective July 1, 2008, the minimum carapace length for all American lobsters landed, harvested or possessed by vessels issued a Federal limited access American lobster permit fishing in or electing to fish in EEZ Offshore Management Area 3 is 3 1/2 inches (8.89 cm).

(9) No person may ship, transport, offer for sale, sell, or purchase, in interstate or foreign commerce, any whole live American lobster that is smaller than the minimum size specified in paragraph (a) of this section.

* * * * *

■ 4. In § 697.21, paragraph (c) is revised to read as follows:

§ 697.21 Gear identification and marking, escape vent, maximum trap size, and ghost panel requirements.

* * * * *

(c) *Escape vents.* (1) All American lobster traps deployed or possessed in the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6 or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 1 or the EEZ Nearshore Management Area 6, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 1 15/16 inches (4.92 cm) by 5 3/4 inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2 7/16 inches (6.19 cm) in diameter.

(2) All American lobster traps deployed or possessed in the EEZ Nearshore Management Area 2, 4, 5, and the Outer Cape Lobster Management Area, or, deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Nearshore Management Area 2, 4, 5, and the Outer Cape Lobster Management Area, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 2 inches (5.08 cm) 5 3/4 inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2 5/8 inches (6.67 cm) in diameter.

(3) Effective through June 30, 2010, all American lobster traps deployed or possessed in the EEZ Offshore Management Area 3, or deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish the EEZ Offshore Management Area 3, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 2 inches (5.08 cm) 5 3/4 inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2 5/8 inches (6.67 cm) in diameter.

(4) Effective July 1, 2010, all American lobster traps deployed or possessed in the EEZ Offshore Management Area 3, or deployed or possessed by a person on or from a vessel issued a Federal limited access American lobster permit fishing in or electing to fish in the EEZ Offshore Management Area 3, must include either of the following escape vents in the parlor section of the trap, located in such a manner that it will not be blocked or obstructed by any portion of the trap, associated gear, or the sea floor in normal use:

(i) A rectangular portal with an unobstructed opening not less than 2 1/16 inches (5.24 cm) X 5 3/4 inches (14.61 cm);

(ii) Two circular portals with unobstructed openings not less than 2 11/16 inches (6.82 cm) in diameter.

(5) The Regional Administrator may, at the request of, or after consultation with, the Commission, approve and specify, through a technical amendment of this final rule, any other type of acceptable escape vent that the Regional Administrator finds to be consistent with paragraph (c) of this section.

* * * * *

■ 5. In part 697, Table 1 to part 697 is revised to read as follows:

TABLE 1 TO PART 697 - AREA 3 TRAP REDUCTION SCHEDULE

HISTORIC Trap Allocation	Year 2006 Trap Allocation	Year 1 - 5% Trap Reduction Effective November 2007	Year 2 - 5% Trap Reduction Effective July 1, 2008	Year 3- 2.5% Trap Reduction Effective July 1, 2009	Year 4 - 2.5% Trap Reduction Effective July 1, 2010
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
200	200	190	181	176	172
240	240	228	217	211	206
250	250	238	226	220	214
264	264	251	238	232	226
300	300	285	271	264	257
320	320	304	289	282	275
325	325	309	293	286	279
360	360	342	325	317	309
370	370	352	334	326	317
400	400	380	361	352	343
450	450	428	406	396	386
480	480	456	433	422	412
500	500	475	451	440	429
590	590	561	532	519	506
600	600	570	542	528	515
700	700	665	632	616	601
720	720	684	650	634	618

TABLE 1 TO PART 697 - AREA 3 TRAP REDUCTION SCHEDULE—Continued

HISTORIC Trap Allocation	Year 2006 Trap Allocation	Year 1 - 5% Trap Reduction Effective November 2007	Year 2 - 5% Trap Reduction Effective July 1, 2008	Year 3- 2.5% Trap Reduction Effective July 1, 2009	Year 4 - 2.5% Trap Reduction Effective July 1, 2010
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6
768	768	730	693	676	659
800	800	760	722	704	686
883	883	839	797	777	758
900	900	855	812	792	772
930	930	884	839	818	798
1000	1000	950	903	880	858
1004	1004	954	906	883	861
1020	1020	969	921	898	875
1100	1100	1045	993	968	944
1150	1150	1093	1038	1012	987
1170	1170	1112	1056	1030	1004
1200-1299	1200	1140	1083	1056	1030
1300-1399	1200	1140	1083	1056	1030
1400-1499	1200	1140	1083	1056	1030
1500-1599	1276	1212	1152	1123	1095
1600-1699	1352	1284	1220	1190	1160
1700-1799	1417	1346	1279	1247	1216
1800-1899	1482	1408	1338	1304	1271
1900-1999	1549	1472	1398	1363	1329
2000-2099	1616	1535	1458	1422	1386
2100-2199	1674	1590	1511	1473	1436
2200-2299	1732	1645	1563	1524	1486
2300-2399	1789	1700	1615	1574	1535
2400-2499	1845	1845	1753	1623	1583
2500-2599	1897	1802	1712	1669	1628
2600-2699	1949	1852	1759	1715	1672
2700-2799	2000	1900	1805	1760	1716
2800-2899	2050	1948	1850	1804	1759
2900-2999	2100	1995	1895	1848	1802
3000-3099	2150	2043	1940	1892	1845
3100-3199	2209	2099	1994	1944	1895
>3199	2267	2154	2046	1995	1945

[FR Doc. E7–19713 Filed 10–4–07; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 72, No. 193
Friday, October 5, 2007

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 AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Chapter VIII

RIN 0580–AB00

The Role of USDA in Differentiating Grain Inputs for Ethanol Production and Standardizing Testing of the Co-Products of Ethanol Production

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We published an advance notice of proposed rulemaking in the **Federal Register** on July 20, 2007 (72 FR 39762), inviting comments from producers, handlers, processors, livestock feeders, industry representatives, and other interested persons on the appropriate government role with regard to differentiating grain attributes for ethanol production, as well as standardizing the testing of co-products of ethanol production, commonly referred to as distillers grains. The notice provided an opportunity for interested parties to forward written comments to the Grain Inspection, Packers and Stockyards Administration until September 18, 2007. As a result of a request from the grain industry, we are reopening the comment period to provide interested parties with additional time in which to comment.

DATES: We will consider comments that we receive by December 4, 2007.

ADDRESSES: We invite you to submit comments on this advance notice of proposed rulemaking. You may submit comments by any of the following methods:

- *E-Mail:* Send comments via electronic mail to *comments.gipsa@usda.gov.*
- *Mail:* Send hardcopy written comments to Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1633–S, Washington, DC 20250–3604.
- *Fax:* Send comments by facsimile transmission to: (202) 690–2173.
- *Hand Delivery or Courier:* Deliver comments to: Tess Butler, GIPSA, USDA, 1400 Independence Avenue, SW., Room 1647–S, Washington, DC 20250–3604.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Instructions:* All comments should make reference to the date and page number of this issue of the **Federal Register**.
- *Read Comments:* All comments will be available for public inspection in the above office during regular business hours (7 CFR 1.27(b)) and at *regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Eric Jabs at GIPSA, USDA, 6501 Beacon Drive, Suite 180 Stop 1404, Kansas City, MO 64133; Telephone (816) 823–4635; Fax Number (816) 823–4644; e-mail *Eric.J.Jabs@usda.gov.*

SUPPLEMENTARY INFORMATION: GIPSA published an advance notice of proposed rulemaking in the **Federal Register** on July 20, 2007 (72 FR 39762), inviting comments from all interested persons on the appropriate government role with regard to differentiating grain attributes for ethanol production, as well as standardizing the testing of co-products of ethanol production, commonly referred to as distillers grains. Our intent is to determine the appropriate government role in facilitating the marketing of distillers grains in today's evolving marketplace. The comment period of 60 days from the date of publication (72 FR 39762) closed on September 18, 2007. GIPSA received a request from the grain industry to provide interested parties additional time to comment. As a result, the comment period is reopened for a 60 day period.

Authority: 7 U.S.C. 71–87.

James E. Link,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. E7–19733 Filed 10–4–07; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2007–29092; Directorate Identifier 2007–NE–30–AD]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. ATF3–6 and ATF3–6A Series Turbofan Engines

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

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for Honeywell International Inc. ATF3–6 and ATF3–6A series turbofan engines equipped with a certain part number (P/N) low pressure compressor (LPC) aft shaft. This proposed AD would require removing from service those LPC aft shafts and installing a serviceable LPC aft shaft. This proposed AD results from reports of eight LPC aft shafts found cracked during fluorescent penetrant inspection (FPI). We are proposing this AD to prevent uncoupling and overspeed of the low pressure turbine, which could result in uncontained engine failure and damage to the airplane.

DATES: We must receive any comments on this proposed AD by December 4, 2007.

ADDRESSES: Use one of the following addresses to comment on this proposed AD.

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for sending your comments electronically.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* (202) 493–2251.

You can get the service information identified in this proposed AD from Honeywell International Inc., 111 S. 34th St., Phoenix, AZ 85034–2802; Web

site: *http://portal.honeywell.com/wps/portal/aero;* telephone (800) 601–3099.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *joseph.costa@faa.gov;* telephone: (562) 627–5246; fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send us any written relevant data, views, or arguments regarding this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2007–29092; Directorate Identifier 2007–NE–30–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light 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 with FAA personnel concerning this proposed AD. 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 the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Examining the AD Docket

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

Discussion

During routine fluorescent penetrant inspection of P/N 3002070–1 LPC aft shafts, eight LPC aft shafts were found with cracks in the root radii of the curvic teeth. Five of eight cracked aft shafts were found to have fillet root radii of the curvic teeth below the manufacturing minimum limit. We have determined that curvic teeth machined to a small root radii increases local stresses and contributes to cracking. This condition, if not corrected, could result in uncoupling and overspeed of the low pressure turbine, uncontained engine failure, and damage to the airplane.

Relevant Service Information

We have reviewed and approved the technical contents of Honeywell International Inc. Service Bulletin (SB) No. ATF3–72–6240, Revision 1, dated May 14, 2007, that describes procedures for removing P/N 3002070–1 LPC aft shafts from service and installing a serviceable LPC aft shaft.

Differences Between the Proposed AD and the Manufacturer's Service Information

The compliance schedule in this proposed AD differs from the SB compliance schedule by improving format, by removing the hourly and calendar ''at access'' compliance time requirements, and by relaxing the compliance schedule.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or develop on other products of this same type design. We are proposing this AD, which would require removing LPC aft shafts, P/N 3002070–1 from service and installing a serviceable LPC aft shaft. The proposed AD would require you to use the service information described previously to perform these actions.

Costs of Compliance

We estimate that this proposed AD would affect 32 ATF3–6 and ATF3–6A series turbofan engines installed on airplanes of U.S. registry. We also estimate that it would take about 40 work-hours per engine to perform the proposed actions if unscheduled, 20 work-hours per engine if during scheduled major periodic inspection (MPI), and 1 work-hour per engine during scheduled core zone inspection (CZI). We estimate that 4 engines would be unscheduled, 14 engines would be scheduled at MPI, and 14 engines would be scheduled at CZI. The average labor rate is $80 per work-hour. Required parts would cost about $15,000 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $516,320.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify that the proposed 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. Would 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. You may get a copy of this summary at the address listed under **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Honeywell International Inc. (formerly AlliedSignal Inc. and Garrett Turbine Engine Co.): Docket No. FAA–2007–29092; Directorate Identifier 2007–NE–30–AD.

Comments Due Date

(a) The Federal Aviation Administration (FAA) must receive comments on this airworthiness directive (AD) action by December 4, 2007.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Honeywell International Inc. ATF3–6–4C, ATF3–6A–3C, and ATF3–6A–4C turbofan engines equipped with part number (P/N) 3002070–1 low pressure compressor (LPC) aft shaft. These engines are installed on, but not limited to, Dassault Aviation Fan Jet Falcon Series G (Falcon 20G/HU25), and Dassault Aviation Mystere-Falcon 200 airplanes.

Unsafe Condition

(d) This AD results from reports of eight LPC aft shafts found cracked during fluorescent penetrant inspection (FPI). We are issuing this AD to prevent uncoupling and overspeed of the low pressure turbine, which could result in uncontained engine failure and damage to the airplane.

Compliance

(e) You are responsible for having the actions required by this AD performed within the compliance times specified in Table 1 and Table 2 of this AD, unless the actions have already been done.

TABLE 1.—ATF3–6A–4C TURBOFAN ENGINES, LPC AFT SHAFT REPLACEMENT COMPLIANCE SCHEDULE

For ATF3–6A–4C turbofan engines, if the cycles-since-new (CSN) on the effective date of this AD are:	Then replace the LPC aft shaft:
(1) 6,500 or more CSN	Within an additional 100 cycles-in-service (CIS).
(2) 5,000 to 6,499 CSN	Within an additional 800 CIS, but not more than 6,600 CSN, whichever occurs first.
(3) 4,000 to 4,999 CSN	Within an additional 1,500 CIS, but not more than 5,800 CSN, whichever occurs first.
(4) Fewer than 4,000 CSN	Within an additional 2,000 CIS, but not more than 5,500 CSN, whichever occurs first.

TABLE 2.—ATF3–6–4C AND ATF3–6A–3C TURBOFAN ENGINES, LPC AFT SHAFT REPLACEMENT COMPLIANCE SCHEDULE

For ATF3–6–4C and ATF3–6A–3C turbofan engines, if the CSN on the effective date of this AD are:	Then replace the LPC aft shaft:
(1) 4,400 or more CSN	Within an additional 100 CIS.
(2) 3,600 to 4,399 CSN	Within an additional 500 CIS, but not more than 4,500 CSN, whichever occurs first.
(3) 3,300 to 3,599 CSN	Within an additional 700 CIS, but not more than 4,100 CSN, whichever occurs first.
(4) Fewer than 3,300 CSN	Within an additional 1,000 CIS, but not more than 4,000 CSN, whichever occurs first.

LPC Aft Shaft Replacement

(f) Using the compliance schedule in Table 1 or Table 2 of this AD as applicable, remove the LPC aft shaft P/N 3002070–1, from service, and install a serviceable LPC aft shaft.

Definition

(g) For the purpose of this AD, a serviceable LPC aft shaft is an aft shaft with a P/N not referenced in this AD.

Alternative Methods of Compliance

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

Related Information

(i) Honeywell International Inc. Service Bulletin No. ATF3–72–6240, Revision 1, dated May 14, 2007, pertains to the subject of this AD.

(j) Contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; e-mail: *joseph.costa@faa.gov*; telephone: (562) 627–5246; fax: (562) 627–5210.

Issued in Burlington, Massachusetts, on October 1, 2007.

Peter A. White,

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

[FR Doc. E7–19684 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2007–29305; Notice No. 07–15]

RIN 2120–AI92

Automatic Dependent Surveillance—Broadcast (ADS–B) Out Performance Requirements To Support Air Traffic Control (ATC) Service

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes performance requirements for certain avionics equipment on aircraft operating in specified classes of airspace within the United States National Airspace System. The proposed rule would facilitate the use of Automatic Dependent Surveillance-Broadcast (ADS–B) for aircraft surveillance by Federal Aviation Administration and Department of Defense air traffic controllers to accommodate the expected increase in demand for air transportation. In addition to accommodating the anticipated increase in operations, this proposal, if adopted, would provide aircraft operators with a platform for additional flight applications and services.

DATES: Send your comments on or before January 3, 2008.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–29305 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground

Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

• *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.

Privacy Act: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. 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 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov*.

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket. Or, go to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Vincent Capezzuto, Surveillance and Broadcast Services Office, Air Traffic Organization, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone 202–385–8288.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking proposal by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, include specific rule language changes, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

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 docket number, notice number, or amendment number of this rulemaking.

Authority for This Rulemaking

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and use of airspace, and Subpart III, section 44701, General requirements. Under section 40103, the FAA is charged with prescribing regulations on the flight of aircraft, including regulations on safe altitudes, navigating, protecting, and identifying aircraft, and the safe and efficient use of the navigable airspace. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This proposal is within the scope of sections 40103 and 44701 since it proposes aircraft performance requirements that would meet advanced surveillance needs to accommodate the projected increase in operations within the National Airspace System (NAS). As more aircraft operate within the U.S. airspace, improved surveillance performance is necessary to continue to balance the growth in air transportation with the agency's mandate for a safe and efficient air transportation system.

Table of Contents

I. Background

A. Vision of the Future

The demand for air travel is growing in the U.S. and around the world. The FAA's forecasts project a doubling in U.S. airline passenger traffic by 2025. The forecasts also show strong growth for general aviation, especially with the advent of very light jets. By the end of this decade as many as 400–500 of these small jets could join the fleet each year. With the new small jets and other growth, the active general aviation fleet is projected to grow from 230,000 aircraft today to 275,000 aircraft in 2020.

That is the demand from piloted aircraft. The development and use of unmanned aircraft systems (UAS) is one of the next big steps forward in aviation's evolution. The FAA is working across government and industry to ensure the safe authorization of these aircraft to fly in civil airspace.

The good news is U.S. air travel and related use of the National Airspace System (NAS) will grow. That growth will bring challenges since the present U.S. air traffic system—the world's largest and safest—is not designed to absorb this level of growth. Today's system is limited by outmoded technology—such as the constraints ground-based radar places on the distance aircraft must be separated and the limits caused by having to transmit information by voice between aircraft and the ground.

The solution to managing the anticipated growth in the use of the NAS is the Next Generation Air Transportation System, or NextGen, which will assure the safe and efficient movement of people and goods as demand increases. NextGen will use technology to allow precise navigation, permit accurate real-time communication, and vastly improve situational awareness. The goal: A system flexible enough to accommodate safely whatever number, type and mix of aircraft there will be in U.S. skies by 2025.

NextGen will be an aircraft-centric system with performance-based requirements. The future system will describe performance for navigation, communications, and surveillance.

For navigation, the aviation community is already seeing the benefits of performance-based navigation with the use of Required Navigation Performance (RNP) as well as Area Navigation (RNAV) procedures at many U.S. airports. RNP and RNAV are examples of procedures that use improved navigational accuracy as compared to traditional procedures. The new procedures are being implemented consistent with the ''Roadmap for Performance-Based Navigation.'' The benefit of performance-based navigation: Enabling aircraft to fly precisely defined flight paths with unprecedented accuracy.

For communication, NextGen will be built on a more comprehensive and capable information network than has been previously available. It will ensure the right information gets to the right person at the right time. With performance-based navigation and internet-like access to critical information—including nearly real-time weather—pilots will be able to make precision landings at airports that have no control towers, radar, or Instrument Landing Systems. Attaining the goal of performance-based communications will depend on technology, such as datalink, which would transmit key instructions directly to aircraft flight management systems, which would speed receipt of critical information and prevent errors that can come from manual data entry.

The third element—performance-based surveillance—relies on technology that permits knowing the exact location of other aircraft in the air and of other aircraft and ground vehicles on the airport surface. The aviation community's experience with ADS–B, which periodically broadcasts an aircraft's location—both horizontal and vertical position and horizontal and vertical velocity—will lead directly to the performance requirements. When displayed in the cockpit, information obtained through ADS–B greatly improves situational awareness in the en route segment, in the terminal area during approaches, and on the airport surface. For additional information on ADS–B activities, see Section VI, FAA Experience with ADS–B later in the preamble.

This rulemaking is important because ADS–B is an essential NextGen building block. Improving surveillance requires advanced onboard equipment with backup capability. Most, if not all, of the surveillance capability as well as the navigation and communications capabilities should be onboard the aircraft so the required capabilities will go wherever the aircraft goes. As part of the rulemaking effort, the FAA established an Aviation Rulemaking Committee under Order 1110.147. This committee has been chartered to deliver a report on how to optimize operational benefits of the ADS–B system and to provide recommendations to the FAA on the rulemaking after the NPRM is published. The scope of the ARC membership is designed to provide the widest range of inputs into the development of the NextGen strategy. The FAA will put the ARC recommendations in the docket established for this rulemaking.

It is this combination of onboard capability and performance expectations that will enable aircraft in the future to fly safely and efficiently despite ever-increasing demands on the airspace.

B. The Century of Aviation Reauthorization Act and NextGen

The ''Century of Aviation Reauthorization Act'' was enacted on December 12, 2003 (Pub. L. 108–176) (the ''Act''). This law set forth requirements and objectives for transforming the U.S. air transportation system to meet the needs of the 21st Century. Section 709 of the Act required the Secretary of Transportation to establish in the FAA a joint planning and development office (JPDO) to manage work related to NextGen. Among its statutorily defined responsibilities, the JPDO coordinates the development and utilization of new technologies to ensure that when available, they may be used to the fullest potential in aircraft and in the air traffic control system.

The FAA, the National Aeronautics and Space Administration (NASA) and the Departments of Commerce, Defense, and Homeland Security have launched an effort to align their resources to develop and further evolve NextGen. The goals of NextGen, as stated in the Act, that are addressed by this proposal are:

(1) Improve the level of safety, security, efficiency, quality, and affordability of the NAS and aviation services;

(2) Take advantage of data from emerging ground-based and space-based communications, navigation, and surveillance technologies;

(3) Be scalable to accommodate and encourage substantial growth in domestic and international transportation and anticipate and accommodate continuing technology upgrades and advances; and

(4) Accommodate a wide range of aircraft operations, including airlines,

air taxis, helicopters, general aviation, and UAS.

The JPDO was also charged with creating and carrying out an integrated plan for NextGen. The Act mandates that the NextGen Integrated Plan (the ''Plan'') be designed to ensure that the NextGen system meets the air transportation safety, security, mobility, efficiency, and capacity needs beyond those currently included in the FAA's Operational Evolution Plan.[1] As described in the Plan [2], the current approach to air transportation, where ground based radars track flights along congested airways, and pass information among the control centers for the duration of the flights, is becoming operationally obsolete. The current system is increasingly inefficient, and large increases in air traffic will result in mounting delays or limitations in service for many areas in the NAS.

As detailed in the Plan, the demand for air travel is expected to double within the next 20 years. Current FAA projections are that by 2025, operations will grow to more than half a million departures and arrivals per year at approximately 16 additional airports. The present air traffic control system will be unable to handle this level of growth. Not only will the current method of handling traffic flow not be able to adapt to the highest volume and density for future operations, but the nature of the new growth may be problematic, as future aviation activity will be much more diverse than it is today. A shift of 2 percent of today's commercial passengers to very light jets that seat 4–6 passengers would result in triple the number of flights necessary to carry the same number of passengers.[3] Furthermore, the challenges grow with the advent of other non-conventional aircraft, such as the UAS.

The future of air transportation contemplated in the Plan is complex, and the FAA believes that ADS–B technology is a key component in achieving many of the goals set forth in the Plan. This proposed rule embraces a new approach to surveillance performance requirements that can lead to greater and more efficient use of airspace. The Plan articulates several large transformation strategies to create the NextGen System. This proposal is a major step toward strategically ''establishing an agile air traffic system that accommodates future requirements and readily responds to shifts in demand from all users.'' ADS–B technology will assist in the transition to a system with less dependence on ground infrastructure and facilities, and would provide for more efficient use of airspace.

C. Today's Radar Environment

In the U.S., Air Traffic Control (ATC) surveillance and aircraft separation services are provided by the use of primary and secondary surveillance radar systems. While radar technology has advanced, it is essentially a product of 1940s World War II technology. Both primary and secondary radars are very large structures that are expensive to deploy and maintain; they also require the agency to lease land for site installation.

Primary radar is a passive detection method that requires no special equipment aboard the aircraft. It is a technology that transmits a beam that is reflected by a target. This reflection forms a return signal that is translated into an aircraft position by ATC automation systems. Primary radar, however, is not always able to distinguish aircraft from other objects that reflect radar beams, such as birds or severe weather, which can result in ''clutter'' on the ATC radar scope. In addition, with primary radar, ATC is provided only with an aircraft's position relative to time. It does not provide any other information about the aircraft.

Primary radar measures both the range and bearing of a particular aircraft. Bearing is measured by the position of the rotating radar antenna when it receives a response to its signal that is reflected from the aircraft. Range is measured by the time it takes for the radar to receive the reflected response. Detecting changes in an aircraft's velocity requires several radar sweeps that are spaced several seconds apart. Because the antenna beam becomes wider as the aircraft travels farther away from the radar, the accuracy of the radar is a function of range, and the accuracy decreases as the distance between the aircraft and the radar site increases. Consequently, aircraft on the outer fringes of radar coverage or in non-radar areas are separated by greater distances, directly affecting efficiency and ultimately capacity in the NAS.

A Secondary Surveillance Radar (SSR) system consists of antennas, transmitters, and processors installed in ATC facilities, and radio transponder devices that are installed in aircraft. This system enhances primary radar by improving the ability to detect and identify aircraft. An SSR transmits interrogation pulses that elicit responses from transponders on board the aircraft. A transponder installed on the aircraft ''listens'' for the interrogation signal and sends back a reply that provides aircraft information. The aircraft is then displayed as a tagged icon on the air traffic controller's radar screen.[4]

Each transponder category has unique characteristics, operating functions, and requirements. A transponder with Mode A functionality requires the pilot to input a discrete code. If the same transponder is connected with an encoding device then it will also report the aircraft's altitude (Mode C). Most aircraft operated in general aviation have Mode A/C transponders. Any aircraft required to have Traffic Alert and Collision Avoidance System (TCAS) II, or that voluntarily has TCAS II installed must also be equipped with a Mode S Transponder. (This generally includes aircraft operated under parts 121, 125, 129 and some aircraft operated under part 135.) Mode S transponders transmit both aircraft altitude and aircraft identification information. Both Mode A/C transponders and Mode S transponders require interrogation to provide information.

To accommodate the projected level of traffic without increasing delay, more comprehensive surveillance in the NAS, including more radar sites in certain areas, would be necessary. Even if more radar sites were commissioned, however, there are many areas in which radar coverage is not feasible, either geographically (e.g., mountainous areas) or in a cost-effective manner (e.g., remote areas). Furthermore, simply increasing the number of radars in the NAS does not solve the inherent limitation of radar technology, and would not allow the FAA to reduce current separation standards.[5] Consequently, the future of air traffic surveillance cannot be based solely on the use of radar. Radar technology also lacks the capability to provide services on the flight deck. However, the FAA is planning to maintain its current network of primary radars, and expects to be able to reduce a percentage of its secondary radars. This NPRM does not propose to reduce primary radar sites.[6]

[1] The Plan was submitted to Congress on December 12, 2004.

[2] A copy of the Plan has been placed in the docket for this rulemaking.

[3] Very light jets may revolutionize the industry by permitting more individuals and corporations to own aircraft. It addition, many airports that are too small for large jet operations should benefit because they can support very light jets.

[4] An aircraft without an operating transponder may still be observed by ATC using primary radar, but the aircraft will not have an identifying tag.

[5] The FAA currently separates aircraft by 5 NM in the en route environment and 3 NM in the terminal environment.

[6] While the FAA expects to be able to reduce a significant percentage of the national secondary surveillance radar infrastructure, primary radars will not be decommissioned as a function of this proposal. Primary radar will serve a role in

Instead, this NPRM would transfer future aircraft surveillance to newer and more advanced onboard avionics that provide more accurate and timely aircraft information. ADS–B has been identified as the technology to facilitate that goal.

II. The ADS–B System

A. General

The ADS–B system is an advanced surveillance technology that combines a satellite positioning service, aircraft avionics, and ground infrastructure to enable more accurate transmission of information between aircraft and ATC. The system enables equipped aircraft to continually broadcast information, such as identification, current position, altitude, and velocity. ADS–B uses information from a position service, e.g. Global Positioning System (GPS), to broadcast the aircraft's location, thereby making this information more timely and accurate than the information provided by the conventional radar system (which has a latency factor since it is based on interrogation and reply). ADS–B also can provide the platform for aircraft to receive various types of information, including ADS–B transmissions from other equipped aircraft or vehicles. ADS–B is automatic because no external interrogation is required, but is ''dependent'' because it relies on onboard position sources and onboard broadcast transmission systems to provide surveillance information to ATC and ultimately to other users.

Implementation of an ADS–B system would not completely replace the primary radar or SSR at this time. In addition, ADS–B does not replace the requirement for transponders. Transponders are still necessary for SSR, which is the FAA's backup strategy in case of ADS–B failure. For more information on the backup strategy, see section IV.C.4, Backup Surveillance Strategy.

The performance requirements for ADS–B avionics proposed in this NPRM would ensure that the aircraft is broadcasting the requisite information with the degree of accuracy and integrity necessary for ATC to use that information for surveillance.[7] This enhanced surveillance would provide ATC with the enhanced ability to surveil and separate aircraft so that efficiency and capacity could increase beyond current levels to meet the predicted demand for ATC services while continually maintaining safety. Incremental developments in capacity, efficiency, and air traffic control procedures based on radar technology cannot accommodate the anticipated increase in demand for surveillance and separation services, which could result in delays that would far exceed those experienced today. Without ADS–B, the increase in demand could result in increased congestion and the denial of ATC service to some users of the NAS.

ADS–B technology already has been demonstrated successfully in Alaska via the Capstone program.[8] In Alaska, radar coverage is either very limited or non-existent. ADS–B provides a level of surveillance performance that previously did not exist and has resulted in increases in both efficiency and capacity.

''ADS–B Out'' refers to an appropriately equipped aircraft's broadcasting of various aircraft information. ''ADS–B In'' refers to an appropriately equipped aircraft's ability to receive another aircraft's ADS–B Out information. This proposal only seeks to require ADS–B Out; the FAA is not proposing to require ADS–B In at this time.[9]

B. Ground Infrastructure

Implementing ADS–B in the NAS to provide surveillance requires avionics, ground infrastructure, automation, and data. This NPRM addresses the performance requirements for the avionics and the necessary data that must be broadcast from the aircraft in order for ATC to use that information for surveillance and separation. The ground infrastructure involves the installation of a multitude of ground stations throughout the NAS that first receive the ADS–B Out transmissions from an aircraft, then relay real-time information based on those transmissions to ATC facilities. The exact number of ground stations needed to provide broadcast services across the NAS will be negotiated as part of the national broadcast service contract. The preliminary estimate approved by the FAA's Joint Resource Council call for 548 ground stations to provide coverage NAS-wide and in the Gulf of Mexico.

On August 30, 2007, the FAA awarded a performance-based service contract to a consortium led by ITT Corporation. The contract is to provide ADS–B surveillance uplink (ground-to-air) and downlink (air-to-ground) services and Automatic Dependent Surveillance Rebroadcast (ADS–R), Traffic Information Services—Broadcast (TIS–B)[10], and Flight Information Services—Broadcast (FIS–B)[11] services. The vendor will install and maintain the ground equipment necessary to provide ADS–B uplink and downlink services to ATC. On November, 30, 2006, the FAA issued a Screening Information Request to determine which vendors understand the contract requirements well enough to proceed in the acquisition process. The FAA's schedule for ADS–B Out calls for all ground infrastructure, including the provision of broadcast services, to be in place and available where current surveillance exists by the end of fiscal year 2013. This schedule will provide reasonably ample time for operators to equip their aircraft for ADS–B Out and meet the proposed compliance date of 2020 in this notice.

III. Summary of the Proposal

The FAA is proposing ADS–B Out performance requirements for all aircraft operations in Class A, B, and C airspace areas in the NAS, and Class E airspace areas at or above 10,000 feet mean sea level (MSL) over the 48 contiguous United States and the District of Columbia. This proposal also would require that aircraft meet these performance requirements in the airspace out to 30 nautical miles (NM), from the surface up to 10,000 MSL, around certain identified airports that are among the nation's busiest. In addition, this proposal if adopted would require that aircraft meet ADS–B Out performance requirements to operate in

surveillance during the transition period of ADS–B avionics equipage.

[7] An aircraft equipped for ADS–B Out would transmit the aircraft's position, velocity and other specified, proposed message elements once per second. Radar data, on the other hand, is generated approximately once every 3–12 seconds for display to the air traffic controller depending on whether the aircraft is in the en route or terminal environment.

[8] For additional information on Capstone, see Section VI. later in the preamble. It should be noted that Special Federal Aviation Regulation No. 97, Special Operating Rules for the Conduct of Instrument Flight Rules (IFR) Area Navigation (RNAV) Operations Using Global Positioning Systems (GPS) in Alaska (68 FR 14072; March 21, 2003), would remain in effect to supplement the requirements in this proposal as it applies to Alaska.

[9] See Sections IV. later in the preamble for a detailed discussion of ADS–B Out and V. for a detailed discussion of ADS–B In.

[10] Traffic Information Services—Broadcast (TIS–B) is a ground-based uplink report to a pilot of proximate traffic that is under surveillance by ATC but is not ADS–B-equipped. This service would be available even with limited ADS–B implementation. The combinations of the surveillance and TIS–B services can enable pilots to have enhanced visual acquisition of other aircraft. Having traffic and other flight obstacles on a cockpit display will enable pilots to more quickly identify safety hazards and communicate with ATC if necessary. Aircraft that are equipped with ADS–B can be monitored through a direct reception of their ADS–B signals in an air-to-air environment.

[11] Flight Information Services—Broadcast (FIS–B) is a ground-based uplink of flight information services and weather data. Other flight information provided by the FIS–B service includes Notices to Airmen and Temporary Flight Restrictions.

Class E airspace over the Gulf of Mexico from the coastline of the United States out to 12 nautical miles (NM), at and above 3,000 feet MSL.

The FAA proposes to require aircraft flying at or above Flight Level 240 (FL240) to have ADS–B Out performance capabilities using the 1090 Extended Squitter (1090ES) broadcast link. Aircraft flying in the designated airspace below FL 240 would have to use either the 1090ES or Universal Access Transceiver (UAT) broadcast link. These proposals would affect all U.S. commercial air carrier operations, foreign-flag carriers operating in the designated classes of U.S. airspace, air charter operations, air cargo operations, and a significant portion of the general aviation fleet operating in the NAS.

The implementation of ADS–B requires two datalinks to support the full set of applications. UAT is intended to support applications for the general aviation user community that are not needed by air carriers because air carriers have weather radar, fly at high altitudes, and have other aeronautical links. UAT-equipped general aviation aircraft are not generally equipped with weather radar and would be flying at low altitudes. The 1090ES link is the internationally agreed upon link for ADS–B, and is intended to support applications for air carriers and other high-performance aircraft. The 1090ES broadcast link does not support applications available from FIS–B, like weather and related flight information. This is because of the bandwidth limitations of the 1090ES link for transmitting the large message structures required by FIS–B. Weather and flight information for 1090ES-equipped aircraft is generally provided by commercial products.

As described in the Plan, large increases in air traffic would result in mounting delays or limitations in service for many areas if the current surveillance system is not modified. An environment in which aircraft meet the proposed ADS–B Out performance requirements would result in greater capacity and efficiency in the NAS, maintain safety, and provide a flexible, expandable platform to accommodate future traffic growth while avoiding possible system delays and limitations in service.

In moving forward with a performance-based surveillance system, the FAA believes that communication with the affected industry is critical. The FAA hosted several Industry Days to brief the technology, the rulemaking and procurement processes and associated milestones to interested parties, including manufacturers and affected operators. As with any rulemaking, the FAA invites comments on the various elements of this proposal, and all comments will be carefully considered. If this proposal is adopted as a final rule, it may be modified in view of the submitted comments.

IV. The Proposal for ADS–B Out

A. Advantages of ADS–B Out

ADS–B Out, as proposed in this notice, would enhance surveillance and broadcast services in both the en route and terminal environments and provide ATC with more accurate information to safely separate aircraft in the air.

In today's radar surveillance environment, accuracy and integrity of radar information is a function of range and decreases as the distance between the radar antenna and the aircraft increases. Unlike radar, both the accuracy and integrity of ADS–B Out is uniform and consistent throughout the service area. A comprehensive, national surveillance system that utilizes ADS–B Out would provide ATC with the ability to accurately identify and locate aircraft that are either far away from the ATC facilities or at the outer boundaries of ground station service volume.

If ATC had more precise aircraft position information, it could position, separate, and provide speed and direction instructions to aircraft with improved precision and timing. This would result in the use of optimal flight paths and altitudes. This transmission of information would enable improvement of airspace capacity throughout the NAS. Additionally, with ADS–B Out, ATC would receive updated information broadcast by aircraft more frequently than with radar, and would be able to track a more closely monitored flight path. This would result in ATC providing fewer instructions to pilots, thus having more time to accommodate additional aircraft within the allotted airspace. These improved efficiencies for ATC ultimately should accommodate the increased number of aircraft able to operate in the NAS. In addition, we expect a reduction in aircraft fuel burn because better surveillance provides for more efficient use of the airspace, provides for optimal aircraft routing, and addresses the limits currently experienced with radar.

In the terminal radar environment today, ATC may have to request pilots to provide aircraft speed, heading, and in some cases, aircraft identification. Neither the primary radar nor SSR systems provide all that information. With ADS–B, ATC is automatically provided aircraft speed, heading, and other identifying information, including aircraft size, which are necessary to safely position and separate aircraft more rapidly than is possible today.

While more precise ADS–B derived aircraft position information improves ATC efficiencies under current separation standards, the potential for significantly greater capacity and efficiency gains may be realized by reducing separation standards between aircraft. Therefore, this rulemaking is expected to help achieve a level of surveillance accuracy that would support reducing aircraft separation standards. ADS–B is an essential component of the NextGen platform and is necessary to achieve a level of capacity in the NAS commensurate with future growth.

B. Avionics

This discussion first addresses the broadcast message links necessary to transmit aircraft information to the ground stations and the specific message elements that would be broadcast by the aircraft comprising the ADS–B Out transmission. Next we discuss the navigation position sensor and the necessary accuracy and integrity of the ADS–B message. Finally, we explain the necessary requirements for antenna diversity on the aircraft, and the required latency of the data in the ADS–B transmission from the aircraft.

1. 1090ES and UAT Broadcast Links

In 2002, the United States determined that two frequencies would be appropriate for ADS–B: 1090MHz and 978MHz. To broadcast the necessary data elements for ADS–B Out transmission under this proposal, aircraft would have to be equipped with either 1090ES or UAT that meet the latest version of either Technical Standard Order (TSO)–C166a or TSO–C154b, respectively.[12] Today, operators of air carriers and many private/commercial aircraft already are primarily equipped with avionics designed under TSO–C112, Air Traffic Control Radar Beacon System/Mode Select (ATCRBS/Mode S), which are required to function with the Traffic Alert and Collision Avoidance System

[12] A TSO is a minimum performance standard issued by the Administrator for specified materials, parts, processes, and appliances used on civil aircraft. TSO–C166a sets the minimum performance standards for Extended Squitter Automatic Dependent Surveillance—Broadcast (ADS–B) and Traffic Information Service Broadcast (TIS–B) Equipment Operating on the Radio Frequency of 1090 MHz. TSO–C154b sets the minimum performance standard for Universal Access Transceiver (UAT) Automatic Dependent Surveillance— Broadcast (ADS–B) Equipment.

(TCAS II) or ACAS.[13] Many TSO–C112 Mode S Transponders can be modified or are designed to provide 1090ES functionality under TSO–C166a. Most other general aviation aircraft, typically small aircraft operated in non-commercial service (that are not required to have TCAS II), would likely use the UAT broadcast link for ADS–B Out, which operates on the 978MHz frequency. Today, a small number of aircraft are equipped with UAT ADS–B In and are capable of receiving TIS–B and FIS–B services. While the 1090ES link does not support FIS–B, it does support TIS–B.

In December 2006, RTCA [14] published RTCA/DO–260A, Change 2, ''Minimum Operational Performance Standards (MOPS) for 1090 MHz Automatic Dependent Surveillance—Broadcast (ADS–B).'' This change revised RTCA/DO–260 1090ES MOPS. The major differences between RTCA/DO–260 and RTCA/ DO–260A are refinements of the Navigation Integrity Category (NIC), Navigation Accuracy Category (NAC), and Surveillance Integrity Level (SIL) parameters, which significantly improve the overall performance and interoperability of the ADS–B Out broadcast link. These modified parameters (NIC, NAC, and SIL) provide a level of accuracy and integrity with respect to the information transmitted in the ADS–B Out message that would enable ATC to provide improved surveillance and separation services based on the information it receives from the aircraft.

After RTCA issued its updates in December 2006, the FAA subsequently issued TSO–C166a, which adopted the recent modifications specified in change 2 to RTCA/DO–260A, and characterizes the parameters of NIC, NAC, and SIL.[15] There are some aircraft equipped today with legacy 1090ES ADS–B systems. Operators of these aircraft would need to modify their broadcast link equipment to meet the proposed requirements defined in TSO–C166a. This modification could include hardware, software, or both depending upon other avionics installed on the aircraft.

The transition to TSO–C166a and TSO–C154b has been identified as a requirement for use of ADS–B in the required airspace. The United States faces unique challenges in air traffic control due to its high density airspace and stringent safety requirements. In order to maintain safety and capacity, given a state of increased air traffic, advanced surveillance technologies will be necessary. The earlier standards in RTCA/DO–260 do not provide the performance standards necessary to meet the requirements of the NAS. RTCA/DO–260a provides a means to transmit the Secondary Surveillance Radar beacon codes that currently service the NAS and will continue to be required as a backup to ADS–B. RTCA/DO–260 does not provide that compatibility.

The International Civil Aviation Organization (ICAO) is in the process of updating the 1090ES Standards and Recommended Practices (SARPs) published in ICAO Annex 10, Amendment 77, to include those requirements identified in the publication of RTCA/DO–260A, Change 2. These updated SARPs are expected to become effective in November 2007.

Operators may, under this proposal, also choose to equip with dual link avionics, i.e. 1090ES and UAT, which would provide the capability to transmit and receive information on both broadcast links at the same time.

If an aircraft is to operate at or above FL240, which is discussed further in section IV.b.3. of this preamble (''Broadcast Link Requirements for Different Flight Levels''), the aircraft's broadcast link capabilities would have to meet the minimum performance requirements of TSO–C166a, (i.e., be equipped with 1090ES). Consequently, those aircraft operating at or above FL240 with Mode A/C transponders would need new transponders. Aircraft with Mode S transponders without compatible extended squitter capability installed would need to be reequipped with those providing 1090ES functionality, or supplement them with 1090ES to operate at or above FL240.

In December 2006, RTCA also issued RTCA/DO–282A, Change 1 for UAT, which clarified the definitions of the NIC, NAC, and SIL similar to those specified for 1090ES discussed above. TSO–C154b adopted the requirements of RTCA/DO–282A and clarifies performance parameters capable of ensuring interoperability with ground stations deployed to support the Capstone program in Alaska, and to provide for future NAS interoperability assurances. Aircraft equipped with UAT must meet the minimum performance standards in TSO–C154b, or later version. There are very few aircraft equipped with legacy UAT equipment. Operators of those aircraft would need to modify their equipment to meet the performance standards of TSO–C154b.

2. Broadcast Link Requirements for Different Flight Levels

The FAA proposes to require that aircraft flying at or above FL240 have ADS–B Out performance capability using the 1090ES broadcast link. For operations below FL240, operators could equip their aircraft with either the 1090ES or UAT broadcast links. Some general aviation aircraft are already equipped with the UAT broadcast link, and most general aviation operators are expected to equip with UAT under this proposal in order to have TIS–B and FIS–B services. Larger aircraft, particularly the transport category aircraft, generally operate at higher altitudes and are already equipped with 1090ES that meets TSO–C166 (which would require modification to upgrade to TSO–C166a under this proposal) or have equipment installed that uses the 1090 broadcast link. Furthermore, the international aviation communities, and for the most part, foreign-flag aircraft operating in the U.S., tend to operate large transport category aircraft that also operate at the higher altitudes. Having a single broadcast link at higher altitudes would enable aircraft equipped for ADS–B In to benefit from potential future applications such as aircraft merging and spacing, and self-separation. These applications are enabled by having aircraft identify each other on the same data link without the need to employ ADS–R, which would increase the latency of the transmission. The FAA believes that the approach articulated in the proposal to require 1090ES for operations at and above FL240 is largely consistent with how those affected operators would choose their respective broadcast link. While this NPRM does not require equipage for ADS–B In, we fully recognize that operators may choose to equip for that capability and that it is reasonable to lay the foundation so that operators may be able to take advantage of future applications if they so choose.

3. Part 91 Appendix H—Broadcast Message Elements

The FAA is proposing to add an appendix to 14 CFR part 91 to specify the broadcast message elements necessary for ADS–B Out. These message elements contain the data necessary for ATC to support aircraft

[13] Airborne Collision Avoidance System (ACAS) is comparable to TCAS II and is specified for use in Europe.

[14] RTCA, Incorporated is a not-for-profit corporation formed to advance the art and science of aviation and aviation electronic systems for the benefit of the public. The organization functions as a Federal Advisory Committee and develops consensus-based recommendations on contemporary aviation issues. The organization's recommendations are often used as the basis for government and private sector decisions as well as the foundation for many TSOs.

[15] TSO–C166a superseded TSO–C166.

surveillance by ADS–B. The message elements required support future NextGen air-to-air applications such as reduced horizontal separation and self separation. These message elements also support the capability for aircraft avionics to be verified during normal operations for continuing airworthiness in lieu of conducting ground checks of the avionics. We believe the message elements allow for further NextGen capabilities, at least to the extent we can predict those future needs at this time. However, in the future, additional elements such as predictive aircraft movement could be added to enable further capabilities.

These elements would be broadcast automatically from the aircraft except where pilot entry is necessary. Pilot entry would be necessary for elements (g) through (k). The following is a description of each message element.

(a) *The length and width of the aircraft.* This message element would provide ATC with quick reference to the aircraft's dimensions. On airport surfaces in particular, aircraft are in close proximity to each other and this information would facilitate ATC's ability to use the most appropriate landing and surface movement procedures for individual aircraft in managing traffic on the airport surfaces. This information would be pre-set when avionics equipment meeting the standards in TSO–C166a or TSO–C154b, as applicable, is installed on the aircraft.

(b) *An indication of the aircraft's lateral and longitudinal position.* This message element is derived from the aircraft's navigation position sensor [16] and would provide an accurate position based on latitude, longitude, and accuracy values for the display of information in a format that meets ATC requirements. This information is critical to the safe and efficient separation of aircraft.

(c) *An indication of the aircraft's barometric pressure altitude.* This message element would provide ATC with the aircraft's altitude information. Currently, § 91.217 requires Mode C and Mode S transponders to transmit pressure altitude. It is critical that the altitude transmitted by the Mode C and Mode S transponders is identical to that in the ADS–B transmission. Therefore, in addition to this proposed data element, we believe that § 91.217 should be amended as well. Section 91.217 requires Mode C and Mode S transponders to transmit pressure altitude. We propose to revise § 91.217 to also apply to the ADS–B transmission of altitude to ensure that the reported altitude from various avionics is consistent.

(d) *An indication of the aircraft's velocity.* This message element is also derived from the aircraft's navigation position sensor and would provide ATC with the aircraft's airspeed with a clearly stated direction and describes the rate at which an aircraft changes its position.

(e) *An indication if TCAS II or ACAS is installed and operating in a mode that may generate resolution advisory alerts.* This information would identify to ATC whether an aircraft is equipped with TCAS II or a later version or its European equivalent ACAS, and whether that equipment is operating in a mode that may generate resolution advisory alerts.

(f) *For aircraft with an operable TCAS II or ACAS, an indication if a resolution advisory is in progress.* Both TCAS II and ACAS improve safety by detecting impending airborne collisions or incursions and issuing commands to the pilot on how to avoid the hazard by climbing or descending. If two aircraft get too close to each other, the aircrafts' TCAS II or ACAS systems will provide a resolution advisory (RA), which gives the pilots a command to climb or descend to avoid the other aircraft. The RA command is provided independent of ATC instructions. It is critical for ATC to know why an aircraft is climbing or descending, i.e., responding to an RA, ATC instruction, or a previous flight plan path. ATC may respond more efficiently and safely in managing the air traffic environment by knowing whether an aircraft is responding to an RA.

(g) *An indication if ATC services are requested.* (*Requires flight crew entry.*) This message element would identify to air traffic controllers if services are requested and whether the aircraft is in fact receiving ATC services.

(h) *An indication of the Mode 3/A transponder code specified by ATC. (Requires flight crew entry.)* All transponder-equipped aircraft on Instrument Flight Rules (IFR) flights are directed by ATC to ''squawk'' a unique four-digit code, commonly referred to as a ''Mode 3/A transponder code.'' All transponder equipped aircraft on Visual Flight Rules (VFR) flights are directed by ATC to squawk 1200. The assigned Mode 3/A transponder code is used by ATC to identify each aircraft operating under IFR, and the 1200 transponder code identifies aircraft operating under VFR.

An aircraft equipped with ADS–B Out continually broadcasts its state vector (3-dimensional position and 3-dimensional velocity). It is critical for ATC to correlate and verify that the ADS–B Out information transmitted from each aircraft is displayed and identified correctly on the ATC radar display. Therefore, it is imperative that the ATC-assigned transponder code be identical to the assigned transponder code in the ADS–B Out message. If the aircraft's avionics are not capable of allowing a single point of entry for the transponder and ADS–B Out Mode 3A code, the pilot would have to ensure that conflicting codes are not transmitted to ATC. Operational procedures would have to be developed, including specific guidance, instructions, or training material provided by the equipment manufacturer, as well as the operator training programs, manuals, Operations Specifications, and Letters of Authorization, to ensure that conflicting codes are not transmitted to ATC.

(i) *An indication of the aircraft's call sign that is submitted on the flight plan, or the aircraft's registration number. (Aircraft call sign requires flight crew entry.)* This message element would correlate flight plan information with the data that ATC views on the radar display and facilitate ATC communication with the aircraft. The aircraft's call sign or registration number broadcast in the ADS–B message would have to be identical to information contained in its flight plan.

(j) *An indication if the flight crew has identified an emergency, and if so, the emergency status being transmitted.* (*Requires flight crew entry.*) This message element would alert ATC that the aircraft is experiencing emergency conditions and indicate the type of emergency. Applicable emergency codes would be found in the Aeronautical Information Manual. This information would alert ATC to potential danger to the aircraft so it could take appropriate action.

(k) *An indication of the aircraft's ''IDENT'' to ATC. (Requires flight crew entry.)* ATC may request an aircraft to ''IDENT,'' to aid controllers to quickly identify a specific aircraft. The pilot manually inputs the aircraft's identity, which then highlights the aircraft on the ATC scope. When activated, this message element allows identification of the aircraft with which ATC is in communication.

(l) *An indication of the aircraft's assigned ICAO 24-bit address.* ICAO 24-bit codes are unique and assigned to each individual aircraft. These codes are necessary for aircraft used for international operations. This code would provide the FAA with the future capability to identify aircraft using the

[16] The aircraft's navigation position sensor is discussed in detail in section IV.4. of this preamble.

ICAO 24-bit address. This capability addresses limits on future capacity due to the finite number of aircraft that can be tracked with discrete transponder codes.

(m) *An indication of the emitter category.* If ATC knows the emitter category, it can determine separation minima based in part on a particular aircraft's wake vortex. This information would be used to provide air traffic controllers and ground crews with more efficient information regarding a particular aircraft's constraints and capabilities. Once the emitter category is set at installation, it would not change. (Refer to TSO–C166a or TSO–C154b for additional information.) Some examples of emitter categories to be used (as specified in RTCA DO–260A, DO–242A, and DO–282A) include, but are not limited to, the following:

- Light (ICAO)—7,000 kg (15,500 lbs) or less.
- Small aircraft—7,000 kg to 34,000 kg (15,500 lbs to 75,000 lbs).
- Large aircraft—34,000 kg to 136,000 kg (75,000 lbs to 300,00 lbs).
- High vortex large (i.e., B–757).
- Heavy aircraft (ICAO)—136,000 kg (300,000 lbs) or more.
- Rotorcraft.

(n) *An indication whether a cockpit display of traffic information (CDTI) is installed and operable.* This message element would alert ATC as to whether an aircraft has an operable CDTI [17] installed. A CDTI is necessary for aircraft to have ADS–B In capability. This message element would indicate to ATC which aircraft are capable of receiving ADS–B In services.

(o) *An indication of the aircraft's geometric altitude.* The geometric altitude is a measure of altitude provided by a satellite-based position service, determined mathematically, based on a three-dimensional position in space. This message element is necessary to confirm accuracy or discrepancies between geometric and barometric altitude, which changes as a function of air pressure in the environment. The message element would serve as a tool for validating positioning services.

[17] CDTI is the function of presenting surveillance traffic information (e.g., airborne or surface) to the flight crew. To display traffic, the CDTI may use a dedicated display or a shared multi-function display (MFD) device. The CDTI is capable of displaying position information for nearby aircraft and ADS–B-equipped airport surface vehicles. The CDTI consolidates ADS–B traffic targets, terrain, weather, and other products relative to the pilot's own aircraft or flight operation. It allows pilots to display textual and graphical information provided by the ADS–B System and Broadcast Services.

4. Navigation Position Sensor and the Accuracy and Integrity of the ADS–B Message

ADS–B Out continuously transmits aircraft information through the selected broadcast data links of 1090ES or UAT. The aircraft's lateral and longitudinal position and velocity are proposed data elements transmitted in the broadcast message. The navigation position sensor is equipment onboard the aircraft that computes a geodetic position (latitude and longitude) that can be a separate sensor or integrated into other navigation equipment or system onboard the aircraft. (Examples of such equipment are LORAN C, GPS, GPS–WAAS, DME/DME and Inertial Reference Unit (IRU).)

The accuracy and integrity of these broadcast message elements transmitted from the aircraft to the ground stations depends on the aircraft's navigation position sensor and the signal source from which the position is derived. The accuracy and integrity of the transmitted aircraft position and velocity are critical for use in surveillance and various airborne and surface applications. The accuracy and integrity of transmitted information expressed by ADS–B avionics is measured by the Navigation Accuracy Category for Position (NACp), the Navigation Accuracy Category for Velocity (NACv), the NIC and the SIL.

An aircraft transmitting its position and velocity with the accuracy and integrity proposed in part 91, Appendix H, Section 3 (ADS–B Out Performance Requirements for NIC, NAC, and SIL) would be more accurately identified by ATC than it would be in today's radar environment. The confidence with respect to the accuracy of the position and velocity reported by ADS–B Out would enable the future applications discussed further in this proposal that simply could not be provided by existing surveillance systems. While existing surveillance systems provide information that is sufficient for separation purposes and the capacity needs of today's traffic environment, a more responsive and versatile ATC system will need improved accuracy and integrity of broadcast information for future surveillance performance. The values proposed would ensure that the information ATC receives has the level of performance and the requisite confidence in the accuracy of that information necessary to control aircraft. Increasing the quality and standards for surveillance information presents new opportunities for efficiency and capacity improvements in the NAS, and the potential for future self-separation or air-to-air applications of ADS–B.

The NACp specifies the accuracy of the aircraft's horizontal position information (latitude and longitude) and the vertical geometric position transmitted from the aircraft's avionics. All aircraft position information has a margin of error and the accuracy category specifies that margin. The NACp specifies with 95 percent probability that the reported information is correct within an associated allowance. (The horizontal 95% bound error allowance resembles an imaginary circle around the aircraft with a radius equivalent to the NACp defined value.) ATC and aircraft equipped for ADS–B In would monitor the NACp reporting to ensure that the accuracy supports the intended operational use. Not all navigation position sensors are capable of providing the necessary aircraft information with the accuracy and integrity needed to support certain surveillance applications.[18] In order to use ADS–B Out for surveillance and separation, the NACp value must have a small margin of error in position reporting.

In today's radar surveillance environment, aircraft position accuracy is required to be within 0.3 NM for operations in the en route airspace, and 0.1 NM for operations within terminal area airspace. An aircraft broadcasting its position with a NACp equal to or greater than 7 would provide a horizontal position accuracy of at least 0.1 NM with no specific requirement for vertical (geometric) position accuracy. Aircraft position reported at a NACp equal to or greater than 7 would meet the minimum radar accuracy requirement for terminal area operations and exceed radar performance for en route operations. Therefore, the FAA believes that the minimum accuracy requirement necessary to maintain an equivalent level of surveillance in the terminal airspace area (and provide for equivalent separation as that in today's radar environment) would be a NACp of 7. The FAA is not, however, engaging in this rulemaking simply to meet the level of surveillance that exists in the current infrastructure, or to establish a new surveillance system that would only enable separation performance equivalent to that realized today. ADS–B performance is intended to go beyond today's standards for accuracy and provide a platform for NextGen. In order to accomplish that goal, we propose a minimum accuracy value of NACp 9 in

[18] Surveillance applications are discussed further in Section V of this NPRM.

all airspace areas that ADS–B would be required. This proposed accuracy requirement would provide horizontal position information for ADS–B Out equipped aircraft to within 30 meters (0.016NM) horizontally and vertical (geometric) position accuracy to within 45 meters. This proposed accuracy requirement could make it possible for future airspace separation to be reduced from today's current separation minima. At this time the FAA cannot determine the extent to which separation standards might be reduced. Significant testing and certification is required before any reduction in separation standards might be applied. The FAA may examine the possible reduction of separation standards once ADS–B has been certified to meet existing separation standards safely and consistently.

Under this proposal, any aircraft not operating with at least this level of performance would not be permitted in the designated airspace without first obtaining authorization from ATC. If the aircraft broadcast message element for position has an NACp of less than 9, ATC would be notified and it could choose to revert to a backup system or apply procedural mitigation.

This proposed NACp of 9 would also provide the necessary accuracy to enable certain applications on the surface at the nation's busiest airports. For various operational applications including situational awareness and traffic alerting, it would be necessary for aircraft position accuracy to be transmitted with an error of 30 meters or less horizontally, particularly for surface operations. The proposed requirement for an NACp equal to or better than 9 would meet the 30 meter or less performance requirement for surface operations and would apply to all aircraft equipped with ADS–B Out. If the aircraft broadcast message element for position has an NACp of less than 9, ATC and aircraft equipped with ADS–B In would be automatically notified that the ADS–B Out performance for a particular aircraft is degraded and therefore, the information is unusable to support either situational awareness on the surface or awareness of runway occupancy on approach to airports. The NACp values are specified in greater detail in RTCA/DO–260A and RTCA/DO–282A, which are recognized performance standards by the applicable TSOs identified under this proposal.

The NACv is a measured value similar to the NACp value except that it applies to the computed velocity derived from navigation position sensor or navigation system. In accordance with TSO–C166a and TSO–C154b, which recognize the performance standards of DO–260A and DO–282A respectively, the NACv must be greater than or equal to 1. This means that the estimate of aircraft velocity must be accurate to within 10 meters per second and must be reported with 95 percent probability.

NIC differs from NAC in that a NIC value specifies aircraft integrity containment often referred to as the ''containment radius,'' which is the maximum error for the broadcast position as described in RTCA/DO–260A, Change 2 and DO–282A, Change 1. NIC and NAC performance values will vary depending upon the positioning service and navigation position sensor. NIC/NAC values may be enhanced or degraded by external NAS infrastructure or by characteristics of avionics systems performance. For instance, a GPS outage would interrupt the integrity and accuracy of the broadcast information. Avionics failures also could degrade expected performance. The NIC value is broadcast so that surveillance services may determine whether the horizontal and vertical (geometric) position meets an acceptable level of integrity containment for the intended operation or phase of flight. For ADS–B Out, the FAA proposes a NIC value of 7. This value would bound the error to within 0.2 NM. The NIC parameter combined with the SIL parameter described in the next paragraph provides integrity assurance in broadcast position.

The SIL specifies the ADS–B Out avionics integrity level and the probability that the position error may be larger than the reported NIC. The SIL may be configured at the time of installation. SIL is typically based on the design assurance level [19] of the ADS–B Out avionics and its navigation position sensor. While a NIC value varies based on computed navigation sensor position, SIL is typically a static (unchanging) value for the ADS–B Out avionics. For example, while the NIC is dependent on the satellite constellation (or number of available satellites), the SIL's reporting of the installed ADS–B avionics is not dependent upon the satellite constellation and would not be affected by changes in the number of available satellites being used in the derived position. To achieve performance at least equivalent to existing radar systems, the FAA proposes a SIL of 2 or better. This value would provide integrity assurance that meets a failure rate probability of 99.999 per flight hour.

The proposed NIC, NACp, NACv, and SIL requirements would support not only ATC services, but also advisory applications for those who choose to equip aircraft with ADS–B In. The proposed values for accuracy and integrity would meet the needs of all the ADS–B In applications discussed in this proposal. Terminal area and surface applications such as Final Approach and Runway Occupancy Awareness would not be enabled unless all aircraft in the surface environment report their position accurately on runways and taxiways (NACp equal to or greater than 9). Universal compliance with accuracy and integrity requirements would ensure that ADS–B In applications could provide accurate data even in a closely spaced environment such as an airport surface.

This proposal specifies performance standards for aircraft avionics equipment for operation to enable ADS–B Out. These performance standards would accommodate and facilitate the use of new technology. Presently, GPS augmented by the Wide Area Augmentation System (WAAS) is the only navigation position service that provides the level of accuracy and integrity (NIC, NACp, and NACv) to enable ADS–B Out to be used for NAS-based surveillance operations with sufficient availability. The FAA is considering whether other navigation position systems such as the Global Navigation Satellite System (GNSS) combined with tightly coupled inertial navigation systems are also capable of meeting the proposed performance standards. Other types of positioning systems that meet the requisite performance requirements may be developed in the future, and may include satellite constellations similar to the Galileo system, or tightly coupled IRU to existing GPS. At this point, however, the agency is still studying the ability of these other navigation position systems to meet the performance standards articulated in this proposal.

In order to meet the proposed performance requirements using the GPS/WAAS system, aircraft would be required to have equipment installed onboard the aircraft that meets one of the following: (1) TSO–C145b, Airborne Navigation Sensors using the GPS augmented by WAAS; or (2) TSO–C146b Stand-Alone Airborne Navigation

[19] ADS–B Out avionics design assurance is dependent on both the hardware and software levels. There are 5 hardware design assurance failure classifications; (1) Catastrophic, (2) Hazardous/Severe-Major, (3) Major, (4) Minor, and (5) No Safety Effect. RTCA/DO–178B ''Software Considerations in Airborne Systems and Equipment Certification'' software classifications are; (1) Level A, (2) Level B, (3) Level C, (4) Level D, and (5) Level E which directly map to the hardware design assurance failure classifications. The minimum requirement for systems development assurance for ADS–B Out is a hardware design assurance (failure classification) of ''major'' dependent upon RTCA/DO–178B Level ''C'' software.

Equipment using the GPS augmented by WAAS.

5. ADS–B Aircraft Antenna Diversity and Transmit Power Requirements

The aircraft antenna is an important part of the overall ADS–B Out system because antennas are major contributors to the system link performance. The location, number of antennas and transmit power required for the airborne ADS–B Out system is a function of the equipment class for the selected broadcast link (UAT or 1090ES). This proposal specifies the classes of 1090ES and UAT equipment that would meet the performance standards for ADS–B Out. The equipment classes include requirements for aircraft antenna diversity and transmit power, as explained below.

Optimal link performance requires both a top and bottom antenna (antenna diversity). Accordingly, the agency is proposing to require that the aircraft be equipped with both a top and bottom antenna to support ADS–B Out applications as well as future air-to-air ADS–B In applications. Antenna diversity is a requirement of the equipment classes identified in the proposed rule.

For aircraft already equipped with a Mode S transponder (TSO–C112), which incorporates antenna diversity, no additional antennas would be required for ADS–B Out using 1090ES. For ADS–B In, however, additional 1090 MHz receive antennas may be necessary depending on the additional avionics equipment installed on the aircraft. It may be possible to share the TCAS 1090 MHz receiver, as long as it can be shown that TCAS performance is not degraded. This shared approach is addressed in TSO–C166a.

For ADS–B installations using UAT, it may be possible to share the aircraft's existing bottom ATCRBS transponder (TSO–C74c) antenna through the use of an antenna diplexer, thus only requiring installation of a top antenna. Specifications for the diplexer are addressed in TSO–C154b. This dual antenna system would not result in degraded performance relative to that which would have been produced by a single system having a bottom-mounted antenna.

Antennas would also have to transmit their signal at a certain level of power in order to ensure that transmitted signals are received by ground stations, and by ADS–B In equipped aircraft and vehicles. The UAT requires a 16 watt minimum transmit power. Therefore, aircraft equipped with the UAT would be required to have Class A1H, A2, A3, or B1 equipment, as defined in TSO–C154b. The 1090ES broadcast link requires a 125 watt minimum transmit power. Correspondingly, aircraft operating with 1090ES would also be required to have Class A1, A2, A3 or B1 equipment, as defined in TSO–C166a. The transmitted power level supports the coverage requirements for each equipment class, including the impact of loss of antenna system performance.

These proposed antenna requirements are necessary so that receivers of the ADS–B system on the ground and in other aircraft could receive ADS–B Out messages with sufficient strength, consistency, and update rate to provide the necessary information for surveillance and broadcast services.

6. Latency of the ADS–B Out Broadcast Message Elements

This proposal defines the latency for the ADS–B message from the time information enters the aircraft through the aircraft antenna(s) until the time it is transmitted from the aircraft. A specific limit between the time the information is received and then processed through onboard avionics is necessary to ensure timely transmission of information and to realize the benefits of the ADS–B system. As discussed previously, ADS–B Out transmits accurate and timely information more frequently than information transmitted under the current radar surveillance system. With ADS–B, information is sent to the aircraft from satellites, processed on the aircraft and sent to ground stations. The information would enter the aircraft through an antenna(s), be processed by the onboard avionics (e.g., navigation sensor, navigation processor, and either 1090ES or UAT broadcast links), then transmitted to the ground stations through another antenna(s) on either the 1090 or 978 MHz frequencies, depending upon the aircraft's avionics.

Under this proposal, the navigation sensor would process information received by the aircraft's antenna(s) and forward this information to the ADS–B broadcast link avionics in less than 0.5 seconds. That processed information would then be transmitted in the ADS–B message from the ADS–B Out broadcast link avionics in less than 1.0 second from the time it was received from the navigation sensor. This latency would support the proposed requirement that the aircraft transmit its position and velocity at least once per second while airborne, or while the aircraft is moving on the surface. Additionally, the aircraft would be required to transmit its position information at least once every 5 seconds while stationary on the airport surface.

Latency requirements for the reception and processing of ADS–B Out by the ground station for display to the ATC automation system are described in the FAA surveillance and broadcast services acquisition documents.[20]

7. Maintenance

This NPRM would not require additional maintenance requirements for the installation of ADS–B avionics equipment. The current requirements of 14 CFR 21.50, ''Instructions for continued airworthiness and manufacturer's maintenance manuals having airworthiness limitations sections,'' are applicable to all ADS–B equipment. Since any alteration of equipment is subject to the requirements of that section, the existing requirements would apply to any new avionics equipment installed in an aircraft.

C. Operational Procedures

1. Applicability

With specific and limited exceptions, the ADS–B Out performance requirements proposed here would apply to all aircraft operating in certain U.S. designated airspace.[21] These requirements would be applicable to operations conducted by domestic and foreign operators in U.S. territorial airspace. The efficiency and capacity benefits that can be realized with ADS–B Out are largely obtainable if all aircraft are equipped for ADS–B Out broadcast. There are some aircraft, however, that were not originally certified with an electrical system, or that have not been subsequently certified with such a system installed, for which installation of equipment that meets ADS–B Out performance standards is impractical. These aircraft may include certain airplanes, balloons, and gliders. There may be instances where a pilot of an aircraft without an electrical system (such as a glider) may want to operate in airspace where ADS–B Out performance standards would be required under this proposal. The procedures for requesting authorization to enter the airspace where ADS–B is required would be the same procedures used today for aircraft not equipped with a transponder to enter certain airspace. In these cases, an operator may request an ATC authorization to operate

[20] Final Program Requirements for Surveillance and Broadcast Services, En Route and Oceanic Services, Air Traffic Organization, Federal Aviation Administration.

[21] See section IV.c.2. for a further discussion of the airspace where ADS–B Out would be required.

in the airspace and the FAA addresses those requests on a case-by-case basis. In formulating this proposal, the FAA considered various options including whether to require ADS–B Out performance standards for aircraft based on the type of operation conducted (e.g., part 121 and 135 operations), or based on the type of aircraft (e.g., large or small). The agency concluded that there is no distinguishing operational need for differing performance standards based on aircraft type or category of the operation, as many different types of operators and aircraft operate in the same airspace.

The FAA also considered proposing ADS–B Out performance standards for aircraft operations at and above specified altitudes. Since aircraft operate at various altitudes between the en route and terminal environments, this option was dismissed as confusing to pilots and impractical to implement. ADS–B requirements based on specific altitudes could result in different equipment requirements applying within different segments of the same class of airspace.

Lastly, the FAA considered whether to propose ADS–B Out for all aircraft operations in domestic airspace (Classes A–G). Domestic airspace includes airspace over the territorial United States that extends out to 12 NM from the coastline that is controlled by ATC (Classes A, B, C, D, and E) and uncontrolled airspace (Classes G). While this would result in almost 100% of aircraft meeting ADS–B Out performance requirements and increase the number of identifiable aircraft in the NAS, it also would place an unnecessary financial and operational burden on aircraft operators who do not operate in controlled airspace, or who are not under ATC surveillance.

2. Airspace

In February 1988, the FAA promulgated an ATC transponder and altitude reporting equipment final rule, which established § 91.215 of 14 CFR and articulated the operating requirements for ATC transponder and altitude reporting equipment and use.[22] The rule specifies the airspace for which Mode A/C, and S transponders are required, and the process for when an operator may request a deviation from the transponder requirements. Under § 91.215, transponders are required for all aircraft operating in Classes A, B, and C airspace areas, and in all airspace at and above 10,000 feet MSL over the 48 contiguous United States and the District of Columbia. In addition, transponders are required for operations within 30 NM of an airport listed in 14 CFR part 91, Appendix D, from the surface upwards to 10,000 feet MSL. (The airports listed in Appendix D are in Class B airspace areas.)[23]

ADS–B Out would provide for enhanced surveillance in areas where SSR surveillance currently exists. Consequently, the FAA believes that it is reasonable to require that aircraft meet the performance requirements necessary for ADS–B Out for operation in airspace that currently requires transponders. Similar to § 91.215, proposed § 91.225 would require that aircraft meet ADS–B Out performance requirements to operate in Class A, Class B, and Class C airspace areas, and in Class E airspace areas at and above 10,000 ft MSL over the 48 contiguous United States and the District of Columbia. In addition, this proposal would require that aircraft meet ADS–B Out performance requirements to operate in Class E airspace over the Gulf of Mexico, from the coastline of the United States out to 12 NM at and above 3,000 feet MSL. Similar to the transponder requirements, ADS–B Out also would be required within 30 NM of an airport listed in 14 CFR part 91, appendix D, from the surface upward to 10,000 feet MSL.

This proposal would permit aircraft not originally certificated with an electrical system or not subsequently certified with such a system installed (such as a balloon or glider) to conduct operations without ADS–B Out in the airspace within 30 NM of an airport listed in part 91 appendix D if the operations are conducted: (1) Outside any Class B or Class C airspace area; and (2) below the altitude of the ceiling of a Class B or Class C airspace area designated for an airport or 10,000 feet MSL, whichever is lower.

Generally, Class A airspace is that airspace from 18,000 feet MSL to and including FL 600, including the airspace overlying the waters within 12 NM of the coastline of the United States. This proposal would not require aircraft to meet the proposed ADS–B Out performance standards for aircraft that operate in Class A airspace that extends beyond 12 NM from the U.S. coastline and that do not enter U.S. territorial airspace.[24]

Class B airspace is designated from the surface to 10,000 feet MSL surrounding the nation's busiest airports in terms of airport operations or passenger enplanements. (Class B airspace areas generally are configured and appear as an upside down wedding cake.) The configuration of each Class B airspace area is individually tailored and consists of a surface area and two or more layers, and is designed to contain all published instrument procedures. An ATC clearance is required for all aircraft to operate in the area, and all aircraft that are cleared receive separation services within the airspace. Under this proposal, ADS–B Out would be required for aircraft operating in Class B airspace areas. In addition, for those airports listed in part 91 appendix D, ADS–B Out would be required for operations within 30 NM of the airport from the surface up to 10,000 feet MSL. This area can experience a high volume of aircraft operations and complex transitions from the en route environment to the terminal area around the nation's busiest airports. Consequently, we expect ADS–B Out to result in better surveillance across a larger area, leading to better ATC situational awareness.

Generally, Class C airspace is designated from the surface to 4,000 feet above the airport elevation surrounding those airports that have an operational control tower, are serviced by a radar approach control, and have a certain number of IFR operations or passenger enplanements. Although the configuration of each Class C area is individually tailored, the airspace usually consists of a surface area with a 5 NM radius and an outer circle within a 10 NM radius that extends from no lower than 1,200 feet up to 4,000 feet above the airport elevation. Each person must establish two-way radio communications with the ATC facility providing air traffic services prior to entering the airspace and must thereafter maintain those communications while within the airspace.

Similar to the transponder requirements, we are proposing that all

[22] Transponder with Automatic Altitude Reporting Capability Requirement, 53 FR 4306; February 12, 1988.

[23] This section excludes from the transponder requirements all aircraft not originally certificated with an electrical system or not subsequently certified with such a system installed, such as balloons or gliders. These operations may be conducted in the airspace within 30 nautical miles of an airport listed in part 91 appendix D provided that the operations are conducted: (1) Outside any Class A, Class B, or Class C airspace area; and (2) below the altitude of the ceiling of a Class B or Class C airspace area designated for any airport or 10,000 feet MSL, whichever is lower.

[24] There are numerous Offshore Airspace Areas that are designated as Class A airspace and the boundaries of those airspace areas extend beyond 12 NM from the coastline of the U.S. into international waters. Under agreement with ICAO, the U.S. provides ATC services in these areas and may designate the airspace accordingly in order to indicate to pilots the type of ATC services that may be provided.

aircraft in Class E airspace of the 48 contiguous United States and the District of Columbia, at and above 10,000 feet MSL, meet ADS–B Out performance requirements.

Additionally, the FAA proposes that aircraft operating in Class E airspace over the Gulf of Mexico, from the coastline of the United States out to 12 NM at and above 3,000 feet MSL, meet the performance requirements for ADS–B Out. The proposed 3,000 feet MSL will be the lowest altitude that surveillance and communication coverage will exist for the purposes of ATC services. The rule is restricted to 12 NM from the coastline, which is the extent of the NAS in that area.

This proposal includes an option for pilots to request an authorization from ATC to operate in certain designated airspace with aircraft that do not meet the ADS–B Out performance standards. As stated previously, aircraft that do not have an electrical system, and therefore are not ADS–B Out compliant, may receive an ATC authorization to operate in the designated airspace. This provision would provide ATC with the flexibility to control aircraft that may have been directed to turn off ADS–B or to reroute non-equipped aircraft through a regulated area if that is necessary for safety.[25]

ATC authorizations may contain conditions necessary to provide a level of safety equivalent to operation by an aircraft equipped with ADS–B Out equipment. ATC may not be able to grant authorization in all cases.

3. Pilot Procedures

In accordance with proper preflight actions,[26] each operator would have to verify ADS–B Out availability for the flight planned route through the appropriate flight planning information sources. If the aircraft cannot meet the proposed performance requirements using a given position service, the operator would have to use either a different, available position service, re-route, or reschedule the flight. Under this proposal, pilot procedures are expected to be minimal. Pilots would have to: (1) Check that the ADS–B avionics equipment is turned on and operating properly; (2) ensure that message elements (g)–(k) of part 91, appendix H, section 4 are entered during the appropriate phase of flight; (3) turn off the ADS–B equipment if directed by ATC; and (4) if notified by ATC that the aircraft's ADS–B information is not being transmitted, request special handling that may include accommodation (on a case-by-case basis), or direction to exit the present airspace.

4. Backup Surveillance Strategy

The FAA recognizes there are vulnerabilities in using a GPS system as the aircraft's position service. There are times when GPS may be unreliable in certain areas and during certain times due to planned testing or solar flare activity. Unintentional interference is historically infrequent in the U.S. In the event of GPS outages, a backup strategy is necessary for ATC to continue surveillance capability.

The FAA identified and analyzed several potential backup strategies. The strategies varied from SSR, active and passive multilateration, Distance Measuring Equipment (DME)/IRU, Satellite Navigation (SATNAV), and combinations thereof. The FAA reviewed the cost estimates and performance of the various combinations and conducted comparative safety assessments. In May 2006, the Surveillance/Positioning Backup Strategy Technical Team was formed to review candidate strategies. The team members consisted of representatives from air transport, general aviation, avionics manufacturers, and the FAA's Aircraft Certification Service and Air Traffic Organization. In addition, a steering committee was organized under the RTCA ADS–B Working Group and the RTCA Air Traffic Management Advisory Committee to ensure that user needs were being addressed.

The FAA specified that the backup strategy must meet certain minimum requirements to meet the needs of the airspace users. The strategy must be able to support ATC surveillance to at least the same extent as current back up surveillance capabilities. In other words, at least the same level of capacity must be maintained during a loss of GPS signal as would be experienced during a comparative loss of radar services today in both the terminal and en route areas over several days.[27]

The FAA has concluded that a strategy of maintaining a reduced network of SSRs best meets the agency's back up needs given the limitations of ADS–B surveillance capabilities. Under this strategy, secondary radar services will be provided in high density terminal airspace (surrounding approximately the top 40 airports in terms of capacity), all en route airspace above 18,000 feet MSL, and medium density terminal airspace above certain altitudes, as determined by proximate en route SSR coverage (identical to today's Center Radar Automated Radar Terminal Systems Processing (CENRAP) coverage). This approach would require retaining 40 terminal SSRs and 150 en route SSRs beyond 2020, which is approximately one-half of the quantity in use today. Primary surveillance radar services will be retained in all terminal areas covered by primary radar today (approximately 200 locations), to serve as the means of mitigating single aircraft avionics failures. No new avionics would be required to support this strategy. The legacy transponders (Mode A/C/S) continue to support secondary radar surveillance. A copy of the FAA's Surveillance/Positioning Backup Strategy Alternatives Analysis Final Report, dated December 8, 2006, has been placed in the docket for this rulemaking.

During interference outages of GNSS (scheduled or unscheduled), the FAA expects to revert to the backup ground-based surveillance system and temporarily allow operations without ADS–B Out in required airspace. Pilots would be notified of such action via the Notice to Airmen (NOTAM) system. The FAA also expects to revert to the backup surveillance system during significant degradation in the GPS constellation. When deciding to issue NOTAMs to allow operations by aircraft with inoperable ADS–B Out equipment, the FAA will weigh the impact of denying airspace access to those aircraft that do not comply with the performance requirements against the reduction in operational capability due to the limitations of the backup surveillance system.

5. Compliance Schedule for ADS–B Out Requirements

The FAA proposes that affected aircraft meet ADS–B Out performance requirements by January 1, 2020. The FAA's schedule for ADS–B Out calls for

[25] If the Air Traffic Controller identifies that the aircraft avionics is not operating properly (such as providing erroneous or incomplete information), the pilot would be instructed to turn off the avionics. A simple switch or button in the cockpit to disable ADS–B avionics would provide this feature. Aircraft would then be controlled using the backup surveillance system or procedurally. This is similar to the methods used today in removing faulty transponder information from a controllers display. Pilots currently have the capability to turn off transponders. Aircraft are then handled procedurally or through primary radar returns.

[26] See 14 CFR 91.103.

[27] Generally, a loss of radar services for a given area is mitigated in one of several ways: by providing terminal capabilities (e.g., 3 NM separations) with reduced coverage using a nearby terminal radar; by providing en route capabilities (e.g., 5 NM separations) with reduced coverage using the nearest en route radar; or by reversion to procedural separation if neither of the first two options are feasible.

the ground infrastructure, including the provision of broadcast services, to be in place and available by the end of 2013 where surveillance exists today. The FAA is committed to meeting this schedule, but if unforeseen circumstances prevent ADS–B Out services from being available by the end of 2013 where surveillance exists today, the FAA would follow notice and comment rulemaking procedures to adjust the compliance date. Although compliance of the rule would not be necessary until 2020, it is necessary to have the final requirements published to allow avionics manufacturers time to produce compliant equipment. It is also preferable to give operators time to schedule equipment installation consistent with the aircraft's normal maintenance cycle. A 10-year compliance window gives the aviation community ample time to manage costs and minimize the impact of ADS–B installation on their normal operations.

V. ADS–B In

A. Avionics

The FAA is not proposing to mandate ADS–B In performance requirements at this time. While ADS–B In provides substantial benefits to operators, it has not been identified as a requirement for maintaining the safety and efficiency of NAS operations at this time. However, this NPRM includes a discussion of ADS–B In because ADS–B Out transmissions provide the aircraft information viewed by the flight crew in aircraft equipped for ADS–B In. Operators who voluntarily equip with ADS–B In could receive additional benefits compared to those that equip only with ADS–B Out. ADS–B In provides the capability to display ADS–B message information to pilots in the flight deck. The ADS–B In function is a combination broadcast link processor (i.e., it receives information) and flight deck display.

The ADS–B Out broadcast message elements support the initial ADS–B In applications discussed in this proposal. However, future ADS–B In applications may require additional broadcast message elements in the ADS–B Out transmission. The reason for the differences is that the information displayed to ATC may be a subset of information displayed to the pilots. Additional ADS–B Out broadcast message elements beyond those described in this document could be needed to support a fully functional ADS–B In CDTI for future operational applications. Additional message elements cannot be defined until future applications have been developed. The current set of ADS–B Out message elements will meet the needs of the initial services and applications and the future applications currently pursued by the FAA.

As some operators may voluntarily equip with ADS–B In avionics to take advantage of emerging technology, the ground infrastructure will be designed to accommodate ADS–B Out and ADS–B In. In order to provide ADS–B In equipped aircraft with the capability to use the information transmitted, a service called ADS–R has been developed. In this proposal, ADS–R is considered part of the ground infrastructure that will need to be in place to enable a fully functional ADS–B system. ADS–R provides aircraft with a more complete traffic picture of other ADS–B equipped aircraft using a different data-link (i.e., 1090ES versus UAT). For example, ADS–R takes the aircraft's ADS–B information that is transmitted by 1090ES and ''re-broadcasts'' that information to any aircraft that is equipped for ADS–B In and uses UAT. ADS–R similarly makes the corresponding rebroadcast of information from UAT equipped aircraft to ADS–B In equipped aircraft using 1090ES. As stated previously, this proposal does not seek to require ADS–B In. The FAA does realize, however, that some operators may voluntarily equip with ADS–B In avionics to take advantage of emerging technology. The ADS–B ARC is investigating ways to encourage operators to equip with ADS–B prior to the compliance date of the rule. The FAA will review the ARC's recommendations on how to facilitate the transition between legacy surveillance and ADS–B.

B. Applications and Services

As this proposal lays the foundation for the entire ADS–B system, it is appropriate to briefly discuss the applications and services that would be available with ADS–B In. Functions and associated applications that enable an aircraft to be able to receive ADS–B messages from ground stations and from other aircraft are collectively referred to as ADS–B In. If aircraft are voluntarily equipped with ADS–B In, pilots could see real-time information similar to what ATC views and have access to similar services and applications. Pilots would have better situational awareness because their flight deck displays would depict all aircraft equipped with ADS–B or transponders. Pilots may be able to use this information to monitor and maintain safe separation from other aircraft with fewer instructions from ATC. At night and in poor visual conditions, pilots could also see where they are in relation to the ground using onboard avionics and terrain maps associated with a multi-function display. The information would be clear and accurate regardless of inclement weather conditions.

Also, like ATC, aircraft CDTIs could display precise locations of all ADS–B equipped aircraft and ground vehicles, along with data that shows their direction of movement in flight or on the airport surface. With this information, pilots would be able to follow the progress of other aircraft or ground vehicles using the cockpit display, and correlate that position by reference to outside visual cues. The increased position and traffic awareness would allow more efficient movement on airport surfaces by pilots.

Aircraft equipped with ADS–B In capabilities could receive traffic information for other aircraft regardless of whether those aircraft are equipped with a functional ADS–B system. Aircraft equipped with ADS–B In would also be able to identify other ADS–B equipped aircraft regardless of the broadcast link being used. This comprehensive air traffic situational awareness would be provided by Traffic Information Service-Broadcast (TIS–B) until all aircraft are equipped with ADS–B Out, at which time TIS–B would be decommissioned and the information would be transmitted by ADS–R. Existing radar surveillance information is provided to ground stations and sent out on both 1090ES and UAT as a part of the TIS–B message.

The FAA expects the following two services and five applications to be available to operators voluntarily equipping with ADS–B In:

- Traffic Information Service-Broadcast (TIS–B). This is a ground-based uplink report of traffic that is under surveillance by ATC. During implementation of the ADS–B system, TIS–B would provide surveillance information on aircraft that are not yet ADS–B equipped. The ground infrastructure would support air-to-air operations by broadcasting TIS–B messages on both the 978 MHz UAT and 1090 MHz ES broadcast links for targets detected and reported by radar or other surveillance systems. TIS–B would be available during the transition period and until all affected aircraft are equipped for ADS–B Out. Once all aircraft are equipped to meet ADS–B Out performance requirements, TIS–B would be decommissioned as it would no longer be necessary since aircraft would receive traffic information through ADS–B.
- Flight Information Service-Broadcast (FIS–B). FIS–B provides the

broadcast of weather and non-control advisory information providing users aeronautical information supporting safe and efficient operations. FIS–B products include, but are not limited to, graphical and textual weather reports and forecasts, NextGen radar precipitation information, special use airspace information, NOTAMS, electronic pilot reports, and other similar meteorological and aeronautical information. FIS–B products would be uplinked using the 978 MHz UAT broadcast link, but would not be available on the 1090 MHz ES broadcast link. The FIS–B service could accommodate additional products in the future. Both government and commercial sources would provide uplink products.

The following applications would be available to all pilots whose aircraft are voluntarily equipped to receive ADS–B In messages:

• Airport Surface Situational Awareness. This application would reduce the potential for deviations, errors, and collisions through an increase in pilots' situational awareness while operating an aircraft on the airport movement area. Pilots would use a flight deck display to increase awareness of other traffic positions on the airport movement area. Additionally, the display may be used to determine the position of ground vehicles, e.g., snowplows, emergency vehicles, tugs, follow-me vehicles, and airport maintenance vehicles, if they meet ADS–B Out performance requirements. Surface vehicles operating on the movement area (runways and taxiways) would need to be ADS–B Out equipped.

• Final Approach and Runway Occupancy Awareness. This application would reduce the likelihood of pilot errors associated with runway occupancy and would improve the capability of the flight crew to detect ATC errors. It involves using a cockpit display to depict the runway environment and display traffic from the surface up to approximately 1,000 feet AGL on final approach. It would be used by the flight crew to help determine runway occupancy.

• Enhanced Visual Acquisition. This application would provide the pilots with enhanced traffic situational awareness in controlled and uncontrolled airspace and airports. The application uses a cockpit display to enhance out-of-the-window visual acquisition of air traffic. Pilots would refer to the display during the instrument scan to supplement visual observations. The display would be used to aid in initial detection of an aircraft or to receive further information on an aircraft that has been reported by ATC. The application provides the pilots with the relative range, altitude, and bearing of other aircraft.

• Enhanced Visual Approach. This application would enhance sequential approaches for aircraft cleared to maintain visual separation from another aircraft on the approach in order to maintain visual approach procedure operation arrival rates even during periods of reduced visibility or obstructions to vision (e.g., haze, fog, and sunlight). Pilots would have a cockpit display of nearby traffic that would continually update identity and position information to assist the pilots with achieving and maintaining visual contact with relevant traffic. Additional information such as range and speed would be provided to assist pilots in monitoring their distance from the preceding aircraft. The display may also be used to monitor aircraft on approach to parallel runways.

• Conflict Detection. This application would alert the pilot to potential conflicts with other aircraft and provide relevant traffic information. Aircraft equipped with a cockpit display have the capability to display aircraft location and projected flight path. More than simply displaying traffic, the application would alert pilots of developing conflicts. Also, the surveillance range afforded by ADS–B would enable alerts to be issued in time to resolve potential conflicts with minimum disruption to the flight path. The conflict detection application is an ADS–B-enabled capability for properly equipped aircraft and is not intended as a TCAS replacement.

ADS–B In is not limited to the reception of these services and applications. The ability to receive ADS–B In messages provides a platform for services that may be developed in the future by the FAA or by independent vendors.

Users with ADS–B In may also have greater predictability of flight duration because they would have more information on the state of air traffic and the procedures being used by air traffic controllers to handle traffic. Greater predictability of arrival and departure times could allow air carriers to have ground crews ready sooner, and with less margin of error. Shared situational awareness may also allow pilots to observe patterns in the flight of traffic around them and may increase the efficiency of their flight by allowing them to operate in concert with other traffic with less radio communication.

VI. FAA Experience With ADS–B

A. Capstone

The Capstone project was initially proposed as an operational demonstration program for Alaska in the Bethel and Yukon-Kuskokwim (Y–K) Delta area. Flights below 6,000 feet in the Y–K Delta are conducted in a non-radar environment. The only radar coverage in the area is high-altitude coverage for aircraft controlled from Anchorage. Capstone's traffic awareness function, which lets anyone with an ADS–B receiver see the locations and altitudes of Capstone-equipped aircraft, enhances situational awareness to aircraft operators in the Y–K Delta.

Phase II of Capstone, which extended the Capstone program into Southeast Alaska, officially began in March 2003. The FAA is integrating Phase II of the Capstone program into the national ADS–B program. Statewide deployment of ADS–B is expected to be completed by 2013.

Special Federal Aviation Regulation (SFAR) 97 allows suitably equipped aircraft to conduct IFR Area Navigation (RNAV) operations in Alaska on published air traffic routes using TSO–C145a/C146a navigation systems as the only means of IFR navigation. It also allows pilots to conduct IFR en route RNAV operations in Alaska using Special Minimum En Route Altitudes that are outside the operational service volume of ground-based navigation aids. This SFAR opened more than 40,000 square miles of airspace that included more than 1,500 NM of new routes. As discussed previously, SFAR No. 97 would remain in effect to supplement the requirements of this proposal.

According to FAA accident statistics compiled by the MITRE Corporation, the Capstone safety program reduced the aircraft fatal accident rates for Alaska part 135 operators equipped with Capstone avionics by 45%. While this accident reduction is not solely attributable to ADS–B, the ADS–B information in the flight deck did provide increased pilot awareness of surrounding traffic and directly contributed to the accident rate reduction. In addition, search and rescue efforts for individuals in equipped aircraft have been dramatically improved over efforts towards those in non-equipped aircraft. Knowing a more precise location of the aircraft's last known position has minimized the response times and reduced the search area.

B. Gulf of Mexico

Air traffic across the Gulf of Mexico has experienced significant growth over

the past decade, at a rate twice that of domestic airspace. The northern portion of the Gulf of Mexico is home to one of the largest helicopter fleets in the world. More than 650 helicopters provide support for 5,500 off-shore oil and gas production platforms. The helicopter fleet in the Gulf of Mexico logs approximately 2.1 million operations per year. These operations are contained in a 500 mile area along the Texas, Louisiana, and Mississippi coastline, extending 250 miles into the Gulf of Mexico. The majority of helicopter operations take place between the surface and 7,000 feet. Much of this fleet flies without the ability to communicate with or be seen by ATC, or to obtain current weather data. When IFR conditions are prevalent, capacity is reduced nearly 95%. On IFR days, many operators are forced to cancel flights due to the lack of both en route and destination weather information and surveillance. Adverse weather conditions impact the region an average of one day out of every four.

On March 24, 2006, the National Traffic Safety Board (NTSB) issued safety recommendations A–06–19 through 23 to the FAA in response to a helicopter accident that occurred in the Gulf of Mexico on March 23, 2004. Specifically, the NTSB recommended, in A–06–21, that ''FAA should ensure that the infrastructure for the National Automatic Dependent Surveillance-Broadcast Program in the Gulf of Mexico is operational by fiscal year 2010.''

In May 2006, the FAA established a cooperative government/industry business relationship to enhance communications, weather, and surveillance capabilities in the Gulf of Mexico through a Memorandum of Agreement (MOA). Through the MOA, the FAA teamed with the Helicopter Association International and others to deliver a higher level of aviation service in the Gulf of Mexico. The FAA plans to build a Gulf of Mexico infrastructure to enhance low and high altitude voice communication and surveillance, and low altitude weather observation capability. While chiefly intended for helicopter use, the enhancements offer potential benefit to all aircraft operating in Gulf airspace. The MOA continues in effect for 5 years and can be renewed. The FAA plans to install communications equipment in the 2007/2008 timeframe, weather equipment in the 2008 timeframe, and surveillance equipment in the 2008/2009 timeframe. The FAA expects initial operational capability of the communications, weather, and surveillance equipment in the 2009/2010 timeframe.

C. UPS—Louisville

The FAA and the United Parcel Service (UPS) are working together to implement a system at Louisville, Kentucky (SDF) airport that would increase airport capacity and efficiency while significantly reducing vulnerability to runway incursion events and reduce the events themselves. UPS and the FAA have developed a concept to create a system that would use ADS–B surveillance at SDF, along with a Surface Management System and a scheduling and sequencing system to meet the demands of the future. ADS–B Out is expected to be operational on certain UPS aircraft by fall 2007. UPS is also installing a CDTI display for certain proposed operational applications such as merging and spacing, Surface Area Moving Management, and CDTI Assisted Visual Spacing capability in all of its B–757, B–767, B–747–400, A–300, and MD–11 fleets.

D. Surveillance in Non-Radar Airspace

Today, there are pockets of airspace across the NAS that are outside of radar coverage and are managed by ATC using non-radar procedural separation. While the FAA has not yet decided whether to place GBTs in these areas, it could decide to do so. Since the vast majority of the fleet would already be equipped with ADS–B Out, placing GBTs in these areas would result in the types of benefits experienced in Alaska and predicted for the Gulf of Mexico.

Presently ATC controls IFR operations in non-radar airspace using inefficient separation techniques and is unable to provide many advisory services otherwise available in a surveillance environment. Consequently, non-radar separation between aircraft in a non-radar environment within the domestic U.S. is up to 10 minutes (80 miles for jet traffic) compared to 3 or 5 miles in a radar environment. Operators would realize significant efficiency gains, if ATC were able to utilize traffic monitoring techniques currently only available in a surveillance environment (e.g., aircraft vectoring and speed control).

Surveillance capability also allows ATC to offer other safety-related services to both VFR and IFR aircraft, including traffic safety alerts when aircraft that are on conflicting courses, minimum safe altitude warnings (MSAW), and navigational assistance.

VII. ADS–B in Other Countries

The European Organisation for the Safety of Air Navigation, known as EUROCONTROL, a cooperative organization of 37 member states in Europe, is focused on developing a seamless, pan-European Air Traffic Management system. In support of its objective, EUROCONTROL is considering a plan to install ADS–B ground broadcast transceivers in European areas that do not have adequate radar coverage. EUROCONTROL proposed guidance is to use ADS–B for surveillance in medium density airspace where there is currently no surveillance capability.

In April 2007, the Australian Civil Aviation Safety Authority (CASA) published a Notice of Final Rule Making (NFRM) [28] adopting operational and technical standards for aircraft that are voluntarily equipped for ADS–B services in Australian airspace. CASA stated that it will not consider mandatory use of ADS–B until Airservices Australia makes a final decision on the replacement of its enroute radar systems. Until such determination is made, operators may choose to equip with ADS–B to operate in Australian airspace. Airservices Australia is installing ADS–B ground stations for operational use that can receive and process both RTCA DO–260 and DO–260A transmissions to apply a 5NM air traffic separation standard.[29]

NAV Canada is deploying ADS–B in northern Canada to provide surveillance in the airspace over Hudson Bay where there currently is no radar coverage today. Future deployments of ADS–B in Canadian airspace are targeted for the Northwest Territories and northern B.C., which also do not have radar coverage. NAV Canada anticipates having ADS–B in the rest of Canada as a replacement for, or complement to, radar.

The FAA is working with EUROCONTROL, Airservices Australia and NAV CANADA to internationally harmonize operational concepts and minimum safety and performance requirements for ADS–B.

VIII. Alternatives to ADS–B

Multilateration is a non-radar system that has limited deployment in the U.S. The FAA considered multilateration as an alternative to ADS–B. Multilateration is a process by which an aircraft's position is determined by measuring the time difference between the arrival of

[28] This NFRM summarizes the comments received in response to proposal 0601AS and presents CASA's evaluation of those comments. This document also sets forth the amendments for ADS–B equipage and related guidance material.

[29] The FAA's decision to propose performance standards that meet TSO–166a is because the FAA intends to use ADS–B transmissions to provide surveillance using the existing separation standards of 3 NM in terminal environments and 5 NM miles in the enroute environment.

the aircraft's signal to multiple receivers on the ground. At a minimum, multilateration requires upwards of four ground stations to deliver the same volume of coverage and integrity of information as ADS–B, due to the need to ''triangulate'' the aircraft's position. While both radar and multilateration meet today's surveillance needs, it would be substantially more costly to expand these systems than to implement ADS–B to meet future surveillance demands. Moreover, future uses of these systems would not provide a platform for air-to-air applications, as ADS–B does.

Radars have different update rates, accuracies, ranges, and functions. Alternatively, since ADS–B employs one type of receiving equipment, it does not have to accommodate for transition between differing surveillance systems. The consistency of the signal and information could increase the productivity of air traffic controllers by eliminating the need to account for different surveillance systems and environments. The deployment of secondary surveillance as a backup would entail some of the costs, but these would be significantly less than the costs of a full NAS-wide secondary surveillance solution.

IX. Rulemaking Notices and Analyses

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Automatic Dependent Surveillance-Broadcast (ADS–B) Out performance requirements to support air traffic control service.

Summary: This proposal requires performance requirements for certain avionics equipment on aircraft operating in specified classes of airspace within the United States National Airspace System. The proposed rule would facilitate the use of ADS–B for aircraft surveillance by FAA air traffic controllers to accommodate the expected increase in demand for air transportation. In addition to accommodating the anticipated increase in operations, this proposal, if adopted, would provide aircraft operators with a platform for additional flight applications and services.

Use of: This proposal would support the information needs of the FAA by requiring avionics equipment that continuously transmits aircraft information to be received by the FAA, via automation, for use in providing surveillance services.

Respondents (including number of): The likely respondents to this proposed information requirement are stated in the chart below.

Frequency: The FAA estimates that each respondent would incur costs of installing the equipment onboard the aircraft, as provided below. The FAA does not attribute any costs to each individual transmission from the electronics onboard the aircraft. Attempts to capture each aircraft transmission would be impossible and even if it could be captured, the cost would be minimal.

Annual Burden Estimate: This proposal would result in unit aircraft costs for new equipment installation and associated labor as follows:

ADS–B Equipment and Installation Hours & Cost & Respondents

Aircraft group	Aircraft unit costs—includes equipment and installation costs		Installation costs by aircraft				Number of operators
			Labor costs		Labor hours		
	Low	High	Low	High	Low	High	
GA	$4,328	$17,283	$2,250	$5,000	30	50	n/a
TurboProp	12,906	463,706	minimal	23,000	minimal	230	2,522
TurboJet	3,862	135,736	minimal	23,000	minimal	230	294

Note: ADS–B Equipment could be hardware, software or combination of both.

The agency is soliciting comments to—

(1) Evaluate whether the proposed information requirement 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;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of collecting information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Individuals and organizations may send comments on the information collection requirement by January 3, 2008, and should direct them to the address listed in the **ADDRESSES** section at the end of this preamble. Comments also should be faxed to the Office of Information and Regulatory Affairs, OMB, (202) 395–6974, Attention: Desk Officer for FAA.

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 the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO SARPS to the maximum extent practicable. Considering that the long-term global capabilities of ADS–B are not yet fully defined, ICAO SARPS are still evolving and are not yet fully developed. However, the FAA researched existing ICAO requirements for ADS–B Out operations (using one of the ADS–B links, either 1090ES or UAT) to the maximum extent practicable. Specifically, the FAA reviewed applications to avionics and airframe manufacturers, air carriers, and general aviation operating under 14 CFR parts 91, 121, 125, or 135, and foreign air carriers conducting operations in U.S. airspace. The FAA has identified no differences with these proposed regulations.[30]

[30] ICAO references: PANS–ATM, Doc 4444, Amendment 4 (24/11/05), Procedures for Air Navigation Services—Air Traffic Management; Doc 9694, ICAO Manual of Air Traffic Services Data Link Applications; Annex 2, Rules of the Air; Annex 4, Aeronautical Charts; Annex 6 Part II, Operation of Aircraft; Annex 11, Air Traffic

Continued

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 proposed rule. We suggest readers seeking greater detail read the full regulatory impact analysis, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

Request for Comment

While we welcome and encourage, all comments on the regulatory evaluation, we specifically request comment in the regulatory evaluation as follows:

- We solicit comments from manufacturers of large category turbojet, regional turboprop and general aviation aircraft on when they intend to start delivering new aircraft to comply with the rule if enacted. We need clarification of the avionics currently installed on new production airplanes and expected enhancements that would occur without the rule. Lastly, we solicit comment regarding the remaining assumptions.
- We assumed the weight for an ADS–B Out transponder, on a GA aircraft, would be about the same as weight as existing transponders and therefore the change would be negligible and there would be no additional weight or fuel burn costs. We request comments from industry on this assumption.
- We request comments from industry on the estimated costs, maintenance intervals MTBF replacement, and MTTR requirements for the ADS–B Out transponder and position source units.
- The FAA solicits comments on the benefits that we have identified and estimated and whether there are any potential benefits of ADS–B that we have not identified.
- We solicit comments from the industry on what they expect avionics costs of equipping with ADS–B In to be as well as whether the industry will voluntarily equip and the benefits of ADS–B In equipage.
- We request comments from the aviation industry about FAA surveillance deployment strategies that could permit acceleration of realized benefits.
- The FAA seeks comment, with supportive justification, to determine the degree of hardship the proposed rule will have on these small entities.
- Overall, in terms of competition, this rulemaking reduces small operators ability to compete. We request comments from industry on the results of the competitive analysis.
- The FAA assumed that maintenance and replacement costs for ADS–B Out for GA aircraft equals zero because the maintenance and replacement times would occur beyond 2035. The FAA seeks comment on this assumption.

Total Benefits and Costs of this Rule

The demand for air travel is growing in the U.S. and around the world. The FAA's forecasts project a doubling in U.S. airline passenger traffic by 2025. The forecasts also show strong growth for general aviation, especially with the advent of very light jets.

The solution to managing the anticipated growth in the use of the NAS is the Next Generation Air Transportation System, or NextGen, which will assure the safe and efficient movement of people and goods as demand increases. NextGen will use technology to allow precise navigation, permit accurate real-time communication, and vastly improve situational awareness.

ADS–B is the chosen new technology for surveillance in the NextGen system. It is a key component in achieving many of the goals set forth in the Next Generation Air Transportation System (NextGen) Integrated Plan.

We review the following three alternatives for surveillance in this analysis:

1. Baseline radar—maintain the current radar based surveillance system and replace radar facilities when they wear out;

2. ADS–B—Aircraft operators equip to meet performance requirements proposed by the rule and the FAA provides surveillance services based on downlinked aircraft information.

3. Multilateration—The FAA would provide surveillance using multilateration.

The proposed rule requires aircraft to equip only with ADS–B Out when flying in certain airspace. Operators may choose to more fully equip with ADS–B In and Out, and so we also address these costs and benefits.

The estimated cost of this proposed rule ranges from a low of $2.3 billion ($1.6 billion at 7% present value) to a high of $8.5 billion dollars ($4.5 billion at 7% present value).[31] These costs include costs to the government, as well as to the aviation industry and other users of the airspace, to deploy ADS–B and are incremental to maintaining surveillance via current technology (radar). The aviation industry would begin incurring costs for avionics equipage in 2012 and would incur total costs ranging from $1.27 billion ($670 million at 7% present value)[32] to $7.46 billion ($3.6 billion at 7% present value)[33] with an estimated midpoint of

Services; Annex 15, Aeronautical Information Services; Doc 9689, Manual for determination of separation minima; Circular 311, SASP Circular—ADS–B Comparative Assessment; Circular 278, National Plan for CNS/ATM Systems Guidance Material; Annex 10 Vol. IV, Amendment 77, Aeronautical Telecommunications; Doc 9871, Technical Provisions for Mode S Services and Extended Squitter (Approved draft to be published in 2006); Doc 9688, ICAO Manual on Mode S Specific Services.

[31] Costs at 3% present value range from $1.9 billion to $6.3 billion.

[32] $950 million at 3% present value.

[33] $5.35 billion at 3% present value.

$4.32 billion ($2.12 billion at 7% present value) [34] from 2012 to 2035.

The estimated quantified potential benefits of the proposed rule are about $10 billion ($2.7 billion at 7% present value) [35] and primarily result from fuel, operating cost and time savings from more efficient flights.

The proposed rule would make it more likely that aircraft operators would equip with ADS–B In equipment, which could result in estimated additional benefits of $3.9 billion ($1.0 billion at 7% present value).[36] The additional cost of the ADS–B In ground segment is estimated at $533 million ($283 million at 7% present value).[37] We did not estimate the cost for aircraft operators to equip with ADS–B In because we concluded the requirements for ADS–B In are insufficient in detail and do not yet support the development of a cost estimate. The FAA will continue to study ADS–B In technology and intends to provide an adoption cost estimate for the final rule. Benefits of both ADS–B In and Out have been estimated at $13.8 billion ($3.7 billion at 7% present value).[38] Estimated costs of ADS–B In and Out (excluding ADS–B In avionics costs), relative to the radar baseline, range from $2.8 billion ($1.8 at 7% present value) [39] to $9.0 billion ($4.8 at 7% present value).[40]

While we do not have estimates of ADS–B In avionics costs, we can derive an upper bound for what that cost cannot exceed if the ADS–B In and Out scenario is to be cost beneficial relative to radar for each of the two possibilities described below.

Given that we have a range of costs (low to high) we considered two possibilities: (1) Low cost, and (2) high cost:

- We concluded that ADS–B In and Out would be cost beneficial at a present value of 7% if the costs for the ADS–B Out avionics are low ($670 million at 7% present value) and the avionics costs for ADS–B In do not exceed $1.85 billion at 7% present value.
- We also concluded that ADS–B In and Out would be cost beneficial at a 3% present value if the costs for the ADS–B Out avionics are low ($950 million at 3% present value) and the ADS–B In avionics costs do not exceed $5.3 billion at 3% present value or if the costs for the ADS–B Out avionics are high ($5.35 billion at 3% present value) and the ADS–B In avionics costs do not exceed $870 million.

ADS–B is a critical component of the Next Generation Air Transportation System Plan (NextGen) that is being developed to transform today's radar-based aviation system to handle increased aviation demand. By itself, ADS–B presents significant benefits, but as a component of the NextGen system the benefits will substantially increase. The Draft Regulatory Impact Analysis has been placed in the docket for this rulemaking.

Reduced Carbon Dioxide Emissions

Besides the cost savings made possible by this proposed rulemaking, there will also be potential environmental benefits. ADS–B is an enabling technology critical to the concept of operations for the Next Generation Air Transportation System (NextGen) plan. Under the NextGen operational concept there will be less fuel used on many flights because of fewer potential conflicts needing resolution, more efficient en route conflict resolution aircraft maneuvers, and more efficient taxi and ground idle operations. Additionally, having more precise knowledge of the position of an aircraft with ADS–B may assist the implementation of such environmentally friendly flight procedures like continuous descent arrivals (CDA) to be employed in higher density traffic times.

The FAA estimates that between 2017 and 2035 ADS–B technology would allow more efficient handling of potential en route conflicts, which will result in a total of 410 million gallons of fuel savings in the national airspace system over that time period. This decrease in fuel use would result in about 4 million metric tons less carbon dioxide emissions.[41] The increased use of continuous descent approaches that ADS–B would allow would lead to about 10 billion pounds of total fuel savings from 2017 through 2035. This would result in about 14 million tons less carbon dioxide emissions. Additionally, the FAA has estimated a decline in fuel use on airline flights over the Gulf of Mexico due to optimal routing because of this proposed rulemaking. This savings in fuel use would result in an additional cumulative decrease of 300,000 metric tons of carbon dioxide emissions over the 2012 to 2035 time period.

Reduced fuel consumption will also translate into fewer emissions such as oxides of nitrogen, which potentially impact, both local air quality and climate (as a greenhouse gas emission), as well as hydrocarbons and carbon monoxide-both of which impact local air quality. Reduction in local air quality impacts associated with increasing capacity is vital in maintaining compliance with national ambient air quality standards.

The FAA solicits comments on the benefits that we have identified and estimated and whether there are any potential benefits of ADS–B that we have not identified.

Initial Regulatory Flexibility Determination ADS–B

Introduction and Purpose of This Analysis

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 proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 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 FAA believes that this proposal would result in a significant economic impact on a substantial number of small entities. The purpose of this analysis is

[34] $3.13 billion at 3% present value.
[35] $5.48 billion at 3% present value.
[36] $2.1 billion at 3% present value.
[37] $392 million when discounted by 3%.
[38] $7.6 billion at 3% present value.
[39] $2.3 billion at 3% present value.
[40] $6.7 billion at 3% present value.

[41] For more information on the methodology used to calculate this estimate, see ''ADS–B Benefits Enabled from Improved en Route Conflict Probe Performance'' in the docket established for this rulemaking. The specific data in this regulatory evaluation however, is more conservation than the data in the report just mentioned.

to provide the reasoning underlying the FAA determination.

Under Section 603(b) of the RFA, the analysis must address:

- Description of reasons the agency is considering the action,
- Statement of the legal basis and objectives for the proposed rule,
- Description of the record keeping and other compliance requirements of the proposed rule,
- All federal rules that may duplicate, overlap, or conflict with the proposed rule,
- Description and an estimated number of small entities to which the proposed rule will apply,
- Analysis of small firms' ability to afford the proposed rule,
- Estimation of the potential for business closures,
- Conduct a competitive analysis,
- Conduct a disproportionality analysis, and
- Describe the alternatives considered.

Reasons Why the Rule Is Being Proposed

Public Law 108–176, referred to as ''The Century of Aviation Reauthorization Act,'' was enacted December 12, 2003 (Pub. L. 108–176). This law set forth requirements and objectives for transforming the air transportation system to progress further into the 21st century. Section 709 of this statute requires the Secretary of Transportation to establish in the FAA a joint planning and development office (JPDO) to manage work related to the Next Generation Air Transportation System (NextGen). Among its statutorily defined responsibilities, the JPDO coordinates the development and utilization of new technologies to ensure that when available, they may be used to the fullest potential in aircraft and in the air traffic control system.

The FAA, the National Aeronautics and Space Administration (NASA) and the Departments of Commerce, Defense, and Homeland Security have launched an effort to align their resources to develop and further the NextGen. The goals of NextGen, as stated in section 709, are addressed by this proposal and include:

(1) Improve the level of safety, security, efficiency, quality, and affordability of the NAS and aviation services;

(2) take advantage of data from emerging ground-based and space-based communications, navigation, and surveillance technologies;

(3) be scalable to accommodate and encourage substantial growth in domestic and international transportation and anticipating and accommodating continuing technology upgrades and advances; and

(4) accommodate a wide range of aircraft operations, including airlines, air taxis, helicopters, general aviation, and unmanned aerial vehicles.

The JPDO was also charged to create and carry out an integrated plan for NextGen. The NextGen Integrated Plan,[42] transmitted to Congress on December 12, 2004, ensures that the NextGen system meets the air transportation safety, security, mobility, efficiency and capacity needs beyond those currently included in the FAA's Operational Evolution Plan (OEP). As described in the NextGen Integrated Plan, the current approach to air transportation, i.e., ground based radars tracking congested flyways and passing information among the control centers for the duration of the flights, is becoming operationally obsolete. The current system is increasingly inefficient and large increases in air traffic will only result in mounting delays or limitations in service for many areas.

This growth will result in more air traffic than the present system can handle. The current method of handling traffic flow will not be able to adapt to the highest volume and density of it in the future. It is not only the number of flights but also the nature of the new growth that is problematic, as the future of aviation will be much more diverse than it is today. For example, a shift of 2 percent of today's commercial passengers to micro-jets that seat 4–6 passengers would result in triple the number of flights in order to carry the same number of passengers. Furthermore, the challenges grow as other non-conventional aircraft, such as unmanned aircraft, are developed for special operations, e.g. forest fire fighting.

The FAA believes that ADS–B technology is a key component in achieving many of the goals set forth in the plan. This proposed rule embraces a new approach to surveillance that can lead to greater and more efficient utilization of airspace. The NextGen Integrated Plan articulates several large transformation strategies in its roadmap to successfully creating the Next Generation System. This proposal is a major step toward strategically ''establishing an agile air traffic system that accommodates future requirements and readily responds to shifts in demand from all users.'' ADS–B technology would assist in the transition to a system with less dependence on ground infrastructure and facilities, and provide for more efficient use of airspace.

Statement of the Legal Basis and Objectives

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

This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103, Sovereignty and use of airspace, and Subpart III, section 44701, General requirements. Under section 40103, the FAA is charged with prescribing regulations on the flight of aircraft, including regulations on safe altitudes, navigating, protecting, and identifying aircraft, and the safe and efficient use of the navigable airspace. Under section 44701, the FAA is charged with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce.

This proposal is within the scope of sections 40103 and 44701 since it proposes aircraft performance requirements that would meet advanced surveillance needs to accommodate the projected increase in operations within the National Airspace System (NAS). As more aircraft operate within the U.S. airspace, improved surveillance performance is necessary to continue to balance the growth in air transportation with the agency's mandate for a safe and efficient air transportation system.

Projected Reporting, Recordkeeping and Other Requirements

We expect no more than minimal new reporting and recordkeeping compliance requirements to result from this proposed rule. Costs for the initial installation of new equipment and associated labor constitute a burden under the Paperwork Reduction Act and are accounted for in this document.

Overlapping, Duplicative, or Conflicting Federal Rules

We are unaware that the proposed rule will overlap, duplicate or conflict with existing Federal Rules.

Estimated Number of Small Firms Potentially Impacted

Under the RFA, the FAA must determine whether a proposed rule significantly affects a substantial

[42] A copy of the Plan has been placed in the docket for this rulemaking.

number of small entities. This determination is typically based on small entity size and cost thresholds that vary depending on the affected industry. Using the size standards from the Small Business Administration for Air Transportation and Aircraft Manufacturing, we defined companies as small entities if they have fewer than 1,500 employees.[43]

We considered the economic impact on small-business part 91, 121, and 135 operators. Many of the General Aviation (GA) aircraft are operating in part 91 are not for hire or flown for profit so we will not include these operators in our small business impact analysis.

This proposed rule would become final in 2009 and fully effective in 2020. Although the FAA forecasts traffic and air carrier fleets to 2030, our forecasts do not have the granularity to determine if an operator will still be in business or will still remain a small business entity. Therefore we will use current U.S. operator's fleet and employment in order to determine the number of operators this proposal would affect.

We obtained a list of part 91, 121 and 135 U.S. operators from the FAA Flight Standards Service.[44] Using information provided by the U.S. Department of Transportation Form 41 filings, World Aviation Directory and ReferenceUSA, operators that are subsidiary businesses of larger businesses and businesses with more than 1,500 employees were eliminated from the list of small entities. In many cases the employment and annual revenue data was not public and we did not include these companies in our analysis. For the remaining businesses, we obtained company revenue and employment from the above three sources.

The methodology discussed above resulted in the following list of 34 U.S. part 91, 121 and 135 operators, with less than 1,500 employees, who operate 341 airplanes. Due to the sparse amount of publicly available data on internal company financial statistics for small entities, it is not feasible to estimate the total population of small entities affected by this proposed rule. These 34 U.S. small entity operators are a representative sample to assess the cost impact of the total population of small businesses, who operate aircraft affected by this proposed rulemaking.

Operator name	Number of aircraft
Air 1ST Aviation Companies of Oklahoma, Inc	9
Air Flight Enterprises Inc	2
Air Transport International	12
Aircraft Charter Services Inc	2
Allegiant Air	26
American Check Transport Inc	11
Anaconda Aviation Corp	2
Arrow Services	2
Bankair Inc	10
Caribbean Sun Airlines	6
Champion Air	16
Copper Station Holdings, LLC	1
EPPS Air Service, Inc	11
ERA Aviation Inc	9
Executive Airlines	38
Falcon Air Express	4
GOJET Airlines	15
Lynden Air Cargo	6
Miami Air International	11
Midwest Airlines	36
North American Airlines	9
Northeast Aviation, Inc	1
Northern Air Cargo	10
Omni Air International	16
Pace Airlines	8
Premier Jets Inc	1
Professional Aviation Services	4
Royal Air Freight, Inc	3
Ryan International Airlines	12
Samaritan's Purse	2
Sun Country Airlines	13
USA Jet Airlines	10
World Airways	17
XTRA Airways	6
Total	341

Cost and Affordability for Small Entities

To assess the cost impact to small business part 91, 121 and 135 operators, we contacted manufacturers, industry associations, and ADS–B equipage providers to estimate ADS–B equipage costs. We requested estimates of airborne installation costs, by aircraft model, for the output parameters listed in the *Equipment Specifications* section of the Regulatory Evaluation.

This proposed rule would become final in 2009 and fully effective in 2020. Although the FAA forecast traffic and air carrier fleets to 2030, our forecasts do not have the granularity to determine if an operator will still be in business or will still remain a small business entity. Therefore we will use current U.S. operator's revenues and apply the industry-provided costs in order to determine if this proposal would have a significant impact on a substantial number of small entity operators.

To satisfy the manufacturer's request to keep individual aircraft pricing confidential, we calculated a low, baseline, and high range of costs by equipment class. The baseline estimate equals the average of the low and high industry estimates. The dollar value ranges consist of a wide variety of avionics within each aircraft group. The aircraft architecture within each equipment group can vary, causing different carriage, labor and wiring requirements for the installation of ADS–B. Volume discounting versus single line purchasing also affects the dollar value ranges. On the low end, the dollar value may represent a software upgrade or OEM option change. On the high end, the dollar value may represent a new installation of upgraded transponder systems necessary to assure accuracy, reliability and safety. We used the estimated baseline dollar value cost by equipment class in determining the impact to small business entities.

We estimated each operator's total compliance cost by multiplying the baseline dollar value cost, by equipment class, by the number of aircraft each small business operator currently has in its fleet. We summed these costs by equipment class and group. We then measured the economic impact on small entities by dividing the estimated baseline dollar value compliance cost for their fleet by the small entity's annual revenue. Each equipment group operated by a small entity may have to comply with different requirements in the proposed rule depending on the state the aircraft's avionics. In the *ADS–B Out Equipage Cost Estimate* section of the Regulatory Evaluation we detail our methodology to estimate operator's total compliance cost by equipment group.

As shown in the following table, the ADS–B cost is estimated to be greater than two percent of annual revenues for 12 small entity operators and greater than one percent of annual revenues for 19 small entity operators.

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[43] 13 CFR part 121.201, Size Standards Used to Define Small Business Concerns, Sector 48–49 Transportation, Subsector 481 Air Transportation.

[44] AFS–260.

Operator Name	Annual Operating Revenue	P.V. Cost As A % of Revenue
GOJET Airlines	$12,202,479	15.37%
Air 1ST Aviation Companies of Oklahoma, Inc.	$1,750,000	10.39%
Air Flight Enterprises Inc.	$500,000	7.79%
Air Transport International	$182,156,862	6.68%
Aircraft Charter Services Inc.	$750,000	5.22%
Allegiant Air	$132,500,000	5.20%
American Check Transport Inc.	$15,500,000	5.20%
Anaconda Aviation Corp.	$750,000	4.29%
Arrow Services	$500,000	3.46%
Bankair Inc.	$13,000,000	3.46%
Caribbean Sun Airlines	$44,000,000	2.23%
Champion Air	$160,027,359	2.14%
Copper Station Holdings, LLC	$7,500,000	1.96%
EPPS Air Service, Inc.	$15,000,000	1.41%
ERA Aviation Inc.	$42,000,000	1.30%
Executive Airlines	$48,022,547	1.23%
Falcon Air Express	$6,330,275	1.14%
Lynden Air Cargo	$78,336,626	1.01%
Miami Air International	$83,794,847	1.00%
Midwest Airlines	$150,700,000	0.95%
North Ameriacan Airlines	$239,953,776	0.92%
Northeast Aviation, Inc.	$1,500,000	0.90%
Northern Air Cargo	$43,973,951	0.88%
Omni Air International	$311,215,362	0.87%
Pace Airlines	$56,605,449	0.54%
Premier Jets Inc	$1,000,000	0.47%
Professional Aviation Services	$500,000	0.43%
Royal Air Freight, Inc.	$500,000	0.43%
Ryan International Airlines	$126,316,672	0.37%
Samaritan's Purse	$242,000,000	0.36%
Sun Country Airlines	$260,000,000	0.31%
USA Jet Airlines	$127,405,144	0.17%
World Airways	$770,000,000	0.12%
XTRA Airways	$27,640,833	0.01%

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Thus, from this sample population, the FAA determined that a substantial number of small entities would be significantly affected by the proposed rule. Every small entity who operates an aircraft in the airspace defined by this proposal would be required to install ADS–B out equipage and therefore would be affected by this rulemaking.

Business Closure Analysis

For commercial operators, the ratio of present-value costs to annual revenue shows that 7 of 34 small business air operator firms analyzed would have rations in excess of five percent. Since many of the other commercial small business air operator firms do not make their annual revenue publicly available, it is difficult to assess the financial impact of this proposed rule on their business. To fully assess whether this proposed rule could force a small entity into bankruptcy requires more financial information than is publicly available.

The FAA seeks comment, with supportive justification, to determine the degree of hardship, and feasible alternative methods of compliance, the proposed rule will have on these small entities.

Competitive Analysis

The aviation industry is an extremely competitive industry with slim profit margins. The number of operators who entered the industry and have stopped operations because of mergers, acquisitions, or bankruptcy litters the history of the aviation industry.

The FAA analyzed five years of operating profits for the affected small-entity operators listed above. We were able to determine the operating profit for 18 of the 34 small business entities. The FAA discovered that 33% of these 18 affected operator's average operating profit is negative. Only four of the 18 affected operators had average annual operating profit that exceeded $10,000,000. These results are shown in the following table.

Average Annual Operating Profit						
Operator	2002	2003	2004	2005	2006	Average
Air Transport International	$25,259,594	$20,516,387	$29,553,564	$35,070,648	$11,613,977	$24,402,834
Allegiant Air	-$631,187	$1,429,851	$6,346,342	$8,517,922	$8,651,000	$4,862,786
Caribbean Sun	$0	$0	-$23,190,481	-$29,617,061	-$18,794,128	-$14,320,334
Champion Air	$18,321,113	$6,035,660	$2,143,909	$9,311,269	$1,149,074	$7,392,205
Executive Airlines	-$16,924,371	$12,000,869	$16,369,047	-$9,142,157	$9,762,306	$2,413,139
Falcon Air Express	-$3,899,762	-$3,419,760	-$444,872	-$7,844,115	-$1,739,524	-$3,469,607
GOJET Airlines	$0	$0	$0	-$3,298,171	$9,671,520	$1,274,670
Lynden Air Cargo	$13,412,317	$10,926,496	$14,211,808	$14,090,263	$12,658,937	$13,059,964
Miami Air	$2,779,976	$5,879,393	$7,783,233	$10,980,149	$5,640,357	$6,612,622
Midwest Express	-$16,302,342	-$18,946,585	-$38,369,211	-$38,214,446	$930,783	-$22,180,360
North American	-$745,507	$17,222,024	$672,389	$7,960,614	-$1,788,609	$4,664,182
Northern Air Cargo	$1,314,387	$167,433	-$237,756	-$389,134	$428,445	$256,675
Omni Air Express	$3,483,654	$43,612,117	$60,934,518	$60,852,750	$47,709,288	$43,318,465
Pace Aviation	-$1,486,919	-$3,369,128	-$2,431,661	-$5,574,974	-$3,081,794	-$3,188,895
Ryan International	$3,304,520	$4,518,526	$8,184,232	-$407,782	-$278,197	$3,064,260
Sun Country	-$16,686,898	$1,374,448	-$628,461	-$11,140,311	-$121,934	-$5,440,631
USA Jet Airlines	-$6,189,176	-$8,873,208	-$60,794	-$2,011,326	-$15,142,008	-$6,455,302
World	$9,071,000	$28,429,000	$40,903,000	$52,493,000	-$1,261,000	$25,927,000

In this competitive industry, cost increases imposed by this proposed regulation would be hard to recover by raising prices, especially by those operators showing an average five-year negative operating profit. Further, large operators may be able to negotiate better pricing from outside firms for inspections and repairs, so small operators may need to raise their prices more than large operators. These factors make it difficult for the small operators to recover their compliance costs by raising prices. If small operators cannot recover all the additional costs imposed by this regulation, market shares could shift to the large operators.

Small operators successfully compete in the aviation industry by providing unique services and controlling costs. To the extent the affected small entities operate in niche markets enhances small entity's ability to pass on costs. Currently small operators are much more profitable than the established major scheduled carriers. This proposed rule would offset some of the advantages of older aircraft lower capital cost.

Overall, in terms of competition, this rulemaking reduces small operators ability to compete. We request comments from industry on the results of the competitive analysis.

Disproportionality Analysis

The disproportionately higher impact of the proposed rule on the fleets of small operators result in disproportionately higher costs to small operators. Due to the potential of fleet discounts, large operators may be able to negotiate better pricing from outside sources for inspections, installation, and ADS–B hardware purchases. Based on the percent of potentially affected current airplanes over the analysis period, small U.S. business operators may bear a disproportionate impact from the proposed rule.

Comments received and final rule changes on regulatory flexibility issues will be addressed in the statement of considerations for the final rule.

Analysis of Alternatives

Alternative One

The status quo alternative has compliance costs to continue the operation and commissioning of radar sites. The FAA rejected this status quo alternative because the ground based radars tracking congested flyways and passing information among the control centers for the duration of the flights is becoming operationally obsolete. The current system is not efficient enough to accommodate the estimated increases in air traffic, which would result in mounting delays or limitations in service for many areas.

Alternative Two

This alternative would employ a technology called multilateration. Multilateration is a separate type of secondary surveillance system that is not radar and has limited deployment in the U.S. At a minimum, multilateration requires upwards of four ground stations to deliver the same volume of coverage and integrity of information as ADS–B, due to the need to ''triangulate'' the aircraft's position. Multilateration is a process wherein an aircraft position is determined using the difference in time of arrival of a signal from an aircraft at a series of receivers on the ground. Multilateration meets the need for accurate surveillance and is less costly than ADS–B (but more costly than radar), but cannot achieve the same level of benefits that ADS–B can. Multilateration would provide the same benefits as radar, but at a higher cost.

Alternative Three

This alternative would provide relief by having the FAA provide an exemption to small air carriers from all requirements of this rule. This alternative would mean that the small air carriers would rely on the status quo ground based radars tracking their flights and passing information among the control centers for the duration of the flights. This alternative would require compliance costs to continue for

the commissioning of radar sites. Air traffic controller workload and training costs would increase having to employ two systems in tracking aircraft. Small entities may request ATC deviations prior to operating in the airspace affected by this proposal. It would also be contrary to our policy for one level of safety in part 121 operations to exclude certain operators simply because they are small entities. Thus, this alternative is not considered to be acceptable.

Alternative Four

This alternative is the proposed ADS–B rule. ADS–B does not employ different classes of receiving equipment or provide different information based on its location. Therefore, controllers will not have to account for transitions between surveillance solutions as an aircraft moves closer or farther away from an airport. In order to meet future demand for air travel without significant delays or denial of service, ADS–B was found to be the most cost effective solution to maintain a viable air transportation system. ADS–B provides a wider range of services to aircraft users and could enable applications unavailable to multilateration or radar.

Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) 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.

ICAO is developing a set of standards that are influenced by, and similar to, the U.S. RTCA developed standards. Initial discussions with the international community lead us to conclude that U.S. aircraft operating in foreign airspace would not have to add any equipment or incur any costs in addition to what they would incur to operate in domestic airspace under this proposed rulemaking. Foreign operators may incur additional costs to operate in U.S. airspace, if their national rules, standards and, current level of equipage are different than those required by this proposed rule. The FAA is actively engaged with the international community to ensure that the international and US. ADS–B standards are as compatible as possible. For a fuller discussion of what other countries are planning with regard to ADS–B, see Section VII of this preamble. By 2020 ICAO standards may change to harmonize with this proposed rule and foreign operators will not have to incur additional costs.

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 (adjusted annually for inflation with the base year 1995) 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 $128.1 million in lieu of $100 million. This proposed rule is not expected to impose significant costs on small governmental jurisdictions such as state, local, or tribal governments, but the FAA calls for comment on whether this expectation is correct. However, this proposed rule would result in an unfunded mandate because it would result in expenditures in excess of an inflation-adjusted value of $128.1 million. We have considered three alternatives to this rulemaking, which are discussed in section 4.0 and in the regulatory flexibility analysis in section 7.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action 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, and therefore would not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed 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 NPRM 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.

List of Subjects in 14 CFR Part 91

Aircraft, Airmen, Air traffic control, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend chapter I of title 14, Code of Federal Regulations, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat.1180).

2. Amend § 91.1 by revising paragraph (b) to read as follows:

§ 91.1 Applicability.

* * * * *

(b) Each person operating an aircraft in the airspace overlying the waters between 3 and 12 nautical miles from the coast of the United States must comply with §§ 91.1 through 91.21; §§ 91.101 through 91.143; §§ 91.151 through 91.159; §§ 91.167 through 91.193; § 91.203; § 91.205; §§ 91.209 through 91.217; § 91.221, § 91.225; §§ 91.303 through 91.319; §§ 91.323 through 91.327; § 91.605; § 91.609; §§ 91.703 through 91.715; and § 91.903.

* * * * *

3. Revise § 91.217 to read as follows:

§ 91.217 Data correspondence between automatically reported pressure altitude data and the pilot's altitude reference.

(a) No person may operate any automatic pressure altitude reporting equipment associated with a radar beacon transponder—

(1) When deactivation of that equipment is directed by ATC;

(2) Unless, as installed, that equipment was tested and calibrated to transmit altitude data corresponding within 125 feet (on a 95 percent probability basis) of the indicated or calibrated datum of the altimeter

normally used to maintain flight altitude, with that altimeter referenced to 29.92 inches of mercury for altitudes from sea level to the maximum operating altitude of the aircraft; or

(3) Unless the altimeters and digitizers in that equipment meet the standards of TSO–C10b and TSO–C88, respectively.

(b) After January 1, 2020, no person may operate any automatic pressure altitude reporting equipment associated with a radar beacon transponder or with ADS–B Out equipment unless the pressure altitude reported for ADS–B Out and Mode C/S is derived from the same source for aircraft equipped with both a transponder and ADS–B Out.

4. Add § 91.225 to read as follows:

§ 91.225 Automatic Dependent Surveillance-Broadcast (ADS–B) Out equipment and use.

(a) After January 1, 2020, and unless otherwise authorized by ATC, no person may operate an aircraft below Flight Level 240 (FL240) and in airspace described in paragraph (b) of this section unless the aircraft is equipped with ADS–B Out equipment that:

(1) Meets the performance requirements in TSO–C166a (1090ES), or later version; or

(2) Meets TSO–C154b (UAT), or later version; and

(3) Meets the requirements in part 91, Appendix H;

(b) Airspace:

(1) Class A airspace below FL240;

(2) Class B and Class C airspace areas;

(3) All aircraft in all airspace within 30 nautical miles of an airport listed in appendix D, section 1 of this part from the surface upward to 10,000 feet MSL;

(4) All aircraft in all airspace above the ceiling and within the lateral boundaries of a Class B or Class C airspace area designated for an airport upward to 10,000 feet MSL.

(c) After January 1, 2020, and unless otherwise authorized by ATC, no person may operate an aircraft at or above FL240 unless the aircraft is equipped with ADS–B Out equipment that:

(1) Meets the performance requirements in TSO–C166a or later version; and

(2) Meets the requirements of part 91, Appendix H.

(d) The requirements of paragraphs (a) and (c) of this section, as appropriate, apply to:

(1) All aircraft in Class E airspace over the Gulf of Mexico from the coastline of the United States out to 12 nautical miles at and above 3,000 feet MSL;

(2) All aircraft, except for any aircraft that was not originally certificated with an electrical system, or which has not subsequently been certified with such a system installed, including balloons and gliders, in Class E airspace within the 48 contiguous states and the District of Columbia at and above 10,000 feet MSL.

(e) The requirements of paragraphs (a), (c), and (d) of this section do not apply to any aircraft that was not originally certificated with an electrical system, or which has not subsequently been certified with such a system installed, including balloons and gliders, which may conduct operations without ADS–B Out in airspace within 30 nautical miles of an airport listed in appendix D, section 1 of this part provided such operations are conducted:

(1) Outside any Class B or Class C airspace area; and

(2) Below the altitude of the ceiling of a Class B or Class C airspace area designated for an airport, or 10,000 feet MSL, whichever is lower.

(f) Each person operating an aircraft equipped with ADS–B Out must operate this equipment in the transmit mode at all times except as otherwise directed by ATC.

(g) Requests for ATC authorized deviations must be made to the ATC facility having jurisdiction over the concerned airspace within the time periods specified as follows:

(1) For operation of an aircraft with an inoperative ADS–B Out, to the airport of ultimate destination, including any intermediate stops, or to proceed to a place where suitable repairs can be made or both, the request may be made at any time.

(2) For operation of an aircraft that is not equipped with ADS–B Out, the request must be made at least one hour before the proposed operation.

5. Amend appendix D to part 91 by revising section 1 introductory text to read as follows:

Appendix D to Part 91—Airports/ Locations: Special Operating Restrictions

Section 1. Locations at which the requirements of § 91.215(b)(2) and § 91.225(b)(3) apply. The requirements of § 91.215(b)(2) and § 91.225(b)(3) apply below 10,000 feet above the surface within a 30-nautical-mile radius of each location in the following list:

* * * * *

6. Add appendix H to part 91 to read as follows;

Appendix H—Performance Requirements for Automatic Dependent Surveillance—Broadcast (Ads–B) Out

Section 1. Terms of Reference

ADS–B Out is a function of an aircraft's onboard avionics that periodically broadcasts the aircraft's state vector (3-dimensional position and 3-dimensional velocity) and other required information as described in this appendix.

ADS–B Out operating requirements are defined in 14 CFR 91.225.

Navigation Accuracy Category for Position (NACp) specifies the accuracy of reported aircraft's position as defined in TSO–C166a and TSO–C154b.

Navigation Accuracy Category for Velocity (NACv) specifies the accuracy of reported aircraft's velocity as defined in TSO–C166a and TSO–C154b.

Navigation Integrity Category (NIC) specifies an integrity containment region around the aircraft's reported position, as defined in TSO–C166a and TSO–C154b.

Navigation Position Sensor is the equipment installed onboard an aircraft used to process and transmit aircraft position (e.g. location, latitude and longitude, state vector) information.

Surveillance Integrity Level (SIL) indicates the potential risk that the reported aircraft's position is outside the integrity containment region described by the NIC parameter, as defined in TSO–C166a and TSO–C154b.

Section 2. 1090ES and UAT Broadcast Links and Power Requirements

(a) Aircraft operating above FL240 with equipment installed that meets the minimum performance requirements of TSO–C166a or later version, must meet the performance requirements of Class A1, A2, A3, or B1 equipment as defined in TSO–C166a or later version.

(b) Aircraft operating in airspace designated for ADS–B Out and below FL240 must have equipment installed that meets the performance requirements of either:

(1) Class A1, A2, A3 or B1 equipment as defined in TSO–C166a or later version; or

(2) Class A1H, A2, A3, or B1 equipment as defined in TSO–C154b or later version.

Section 3. ADS–B Out Performance Requirements for NIC, NAC, and SIL

(a) For aircraft broadcasting ADS–B Out as required under § 91.225(a), (c), and (d):

(1) The aircraft's NACp for the positioning source must be greater than or equal to 9;

(2) The aircraft's NACv for the positioning source must be greater than or equal to 1;

(3) The aircraft's NIC must be greater than or equal to 7; and

(4) The aircraft's SIL must be 2 or 3.

(b) Changes in the NIC, NAC, or SIL must be broadcast within 10 seconds.

Section 4. Minimum Broadcast Message Element Set for ADS–B Out

Each aircraft must broadcast the following information, as defined in TSO–C166a or later version, or TSO–C154b or later version. The pilot must enter information for message elements (g)–(k) of this section during the appropriate phase of flight:

(a) The length and width of the aircraft;

(b) An indication of the aircraft's lateral and longitudinal position;

(c) An indication of the aircraft's barometric pressure altitude;

(d) An indication of the aircraft's velocity;

(e) An indication if TCAS II or ACAS is installed and operating in a mode that can generate resolution advisory alerts;

(f) If an operable TCAS II or ACAS is installed, an indication if a resolution advisory is in effect;

(g) An indication if the flight crew has selected to receive ATC services;

(h) An indication of the Mode 3/A transponder code specified by ATC;

(i) An indication of the aircraft's call sign that is submitted on the flight plan, or the aircraft's registration number;

(j) An indication if the flight crew has identified an emergency and if so, the emergency status being transmitted;

(k) An indication of the aircraft's ''IDENT'' to ATC;

(l) An indication of the aircraft assigned ICAO 24-bit address;

(m) An indication of the aircraft's emitter category;

(n) An indication whether a cockpit display of traffic information (CDTI) is installed and operable; and

(o) An indication of the aircraft's geometric altitude.

Section 5. ADS–B Latency Requirements

(a) Upon receipt of the information by the aircraft antenna(s), the navigation position sensor must process the information in less than 0.5 seconds.

(b) The processed information from the navigation position sensor must be transmitted in the ADS–B Out message in less than 1.0 second.

(c) The aircraft must transmit its position and velocity at least once per second while airborne or while moving on the airport surface.

(d) The aircraft must transmit its position at least once every 5 seconds while stationary on the airport surface.

Issued in Washington, DC, on October 1, 2007.

Michael A. Cirillo,

Vice President, System Operations Services.

Rick Day,

Vice President, En Route and Oceanic Services.

[FR Doc. 07–4938 Filed 10–2–07; 9:08 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[CCGD05–07–092]

RIN 1625–AA00

Safety Zone: Christmas Holiday Boat Parade and Fireworks, Appomattox River, Hopewell, VA

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a 600 foot radius safety zone in the vicinity of Hopewell, VA centered on position 37–19.18′ N/077–16.93′ W (NAD 1983) in support of the Christmas Holiday Boat Parade and Fireworks Event. This action is intended to restrict vessel traffic on the Appomattox River as necessary to protect mariners from the hazards associated with fireworks displays.

DATES: Comments and related material must reach the Coast Guard on or before November 5, 2007.

ADDRESSES: You may mail comments and related material to Commander, Sector Hampton Roads, Norfolk Federal Building, 200 Granby St., 7th Floor, Attn: Lieutenant Junior Grade TaQuitia Winn, Norfolk, VA 23510. Sector Hampton Roads maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Norfolk Federal Building between 9 a.m. and 2 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade TaQuitia Winn, Assistant Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking, CGD05–07–092, and indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not plan to hold a public meeting, but you may submit a request for a meeting by writing to the Commander, Sector Hampton Roads at the address under **ADDRESSES** explaining why one 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**.

Background and Purpose

On December 1, 2007, the Christmas Holiday Boat Parade and Fireworks event will be held on the Appomattox River in Hopewell, VA. Due to the need to protect mariners and spectators from the hazards associated with the fireworks display, vessel traffic will be temporarily restricted within 600 feet of the display.

Discussion of Proposed Rule

The Coast Guard proposes to establish a 600 foot radius safety zone on specified waters of the Appomattox River in the vicinity of Hopewell, VA centered on position 37–19.18′ N/077–16.93′ W (NAD 1983). This regulated area will be established in the interest of public safety during the Christmas Holiday Boat Parade and Fireworks event and will be enforced from 6 p.m. on December 1, 2007 to 8 p.m. on December 2, 2007. General navigation in the safety zone will be restricted during the event. Except for participants and vessels authorized by the Captain of the Port or his designated Coast Guard Representative on scene, no person or vessel may enter or remain in the regulated area.

Regulatory Evaluation

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary. Although this proposed regulation would restrict access to the regulated area, the effect of this rule will not be significant because: (i) The safety zone will be in effect for a limited duration of time; and, (ii) the Coast Guard will provide notifications via maritime advisories so mariners can adjust their plans accordingly.

Small Entities

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

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because the zone will only be in place for a limited duration of time and maritime advisories will be issued allowing the mariners to adjust their plans accordingly. However, this rule may affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in that portion of the Appomattox River between 6 p.m. on December 1, 2007 to 8 p.m. on December 2, 2007.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Junior Grade TaQuitia Winn, Assistant Chief, Waterways Management Division, Sector Hampton Roads at (757) 668–5580. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Commandant Instruction M16475.lD and Department of Homeland Security Management Directive 5100.1, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is not likely to have a significant effect on the human environment. Draft documentation supporting this preliminary determination is available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add temporary § 165.T05–092, to read as follows:

§ 165.T05–092 Safety Zone: Christmas Holiday Boat Parade and Fireworks, Appomattox River, Hopewell, VA.

(a) *Location.* The following area is a safety zone: All waters, from bottom to surface, within 600 feet of position 37–19.18′ N/077–16.93′ W (NAD 1983) in the vicinity of Hopewell, VA on the Appomattox River.

(b) *Definition: Captain of the Port Representative* means any U.S. Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf.

(c) *Regulations:* (1) In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads or his designated representatives.

(2) The operator of any vessel in the immediate vicinity of this safety zone must:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on shore or on board a vessel that is displaying a U.S. Coast Guard Ensign.

(3) The Captain of the Port, Hampton Roads and the Sector Duty Officer at Sector Hampton Roads in Portsmouth, Virginia can be contacted at telephone Number (757) 668–5555 or (757) 484–8192.

(4) The Coast Guard Representatives enforcing the safety zone can be contacted on VHF–FM 13 and 16.

(d) Effective date: This regulation is effective from 6 p.m. on December 1, 2007 to 8 p.m. on December 2, 2007.

Dated: September 18, 2007.

Patrick B. Trapp,

Captain, U.S. Coast Guard, Captain of the Port, Hampton Roads.

[FR Doc. E7–19676 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2007–0423–200743(b); FRL–8475–5]

Approval of Implementation Plans; North Carolina: Clean Air Interstate Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the North Carolina State Implementation Plan (SIP) submitted by the State of North Carolina, through the North Carolina Department of Environmental and Natural Resources on August 7, 2006. These revisions will incorporate provisions related to the implementation of EPA's Clean Air Interstate Rule (CAIR), promulgated on May 12, 2005, and subsequently revised on April 28, 2006, and December 13, 2006, and the CAIR Federal Implementation Plan (FIP) concerning sulfur dioxide (SO_2), nitrogen oxides (NO_X) annual, and NO_X ozone season emissions for the State of North Carolina, promulgated on April 28, 2006, and subsequently revised December 13, 2006. EPA is not proposing to make any changes to the CAIR FIP, but is proposing to amend, to the extent EPA approves North Carolina's SIP revisions, the appropriate appendices in the CAIR FIP trading rules simply to note that approval.

On July 3, 2007, North Carolina requested that EPA only act on a portion of the August 7, 2006, submittal as an abbreviated SIP. Consequently, EPA is proposing to approve the abbreviated SIP revisions that address the methodology to be used to allocate annual and ozone season NO_X allowances to existing and new units under the CAIR FIPs and CAIR FIP opt-in provisions.

This action is being taken pursuant to section 110 of the Clean Air Act. The intended effect of these revisions is to clarify certain provisions and to ensure consistency with the requirements of the CAA. In the Final Rules Section of this **Federal Register**, the EPA is approving the State's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before November 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2007–0423, by one of the following methods:

1. *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *E-mail: ward.nacosta@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* EPA–R04–OAR–2007–0423, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Nacosta C. Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

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

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

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

Dated: September 21, 2007.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

[FR Doc. E7–19318 Filed 10–4–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2007–0511; FRL–8477–1]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Carbon Monoxide Maintenance Plan Update; Limited Maintenance Plan in Philadelphia County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Pennsylvania for the purpose of establishing a limited maintenance plan for carbon monoxide in Philadelphia County for the maintenance period of 2007–2017. In the Final Rules section of this **Federal Register**, EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by November 5, 2007.

ADDRESSES: Submit your comments, identified by Docket ID Number EPA–R03–OAR–2007–0511 by one of the following methods:

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

B. *E-mail: powers.marilyn@epa.gov.*

C. *Mail:* EPA–R03–OAR–2007–0511, Marilyn Powers, Acting 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–2007–0511. EPA's policy is that all comments received will be included in the public docket without change, and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov,* your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the electronic docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, i.e., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the State submittal are available at the Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania 17105; and the Department of Public Health, Air Management Services, 321 University Avenue, Philadelphia, Pennsylvania 19104.

FOR FURTHER INFORMATION CONTACT: Catherine L. Magliocchetti, (215) 814–2174, or by e-mail at *magliocchetti.catherine@epa.gov.*

SUPPLEMENTARY INFORMATION: For further information regarding this SIP revision submitted by the State of Pennsylvania for the purpose of establishing a limited maintenance plan for carbon monoxide in Philadelphia County for the maintenance period of 2007–2017, please see the information provided in the direct final action, with the same title, that is located in the ''Rules and Regulations'' section of this **Federal Register** publication.

Dated: September 14, 2007.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. E7–19517 Filed 10–4–07; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–D–7822]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed Base (1% annual chance) Flood Elevations (BFEs) and proposed BFEs modifications for the communities listed below. The BFEs are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed BFEs for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Engineering Management Section, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) proposes to make determinations of BFEs and modified BFEs for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act. This proposed rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. An environmental impact assessment has not been prepared.

Regulatory Flexibility Act. As flood elevation determinations are not within the scope of the Regulatory Flexibility Act, 5 U.S.C. 601–612, a regulatory flexibility analysis is not required.

Regulatory Classification. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 13132, Federalism. This proposed rule involves no policies that have federalism implications under Executive Order 13132.

Executive Order 12988, Civil Justice Reform. This proposed rule meets the applicable standards of Executive Order 12988.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

■ 1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

■ 2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Lexington-Fayette Urban County Government, Kentucky, and Incorporated Areas				
Bowman Mill Tributary	At the confluence with South Elkhorn Creek	None	+890	Lexington-Fayette Urban County Government.
	Approximately 920 feet upstream of Palomar Boulevard.	None	+940	
Bryant Tributary	At the confluence with North Elkhorn Creek	None	+943	Lexington-Fayette Urban County Government.
	Approximately 2,200 feet upstream of Polo Club Boulevard.	None	+985	
Cave Hill Tributary	At the confluence with Bowman Mill Tributary	None	+907	Lexington-Fayette Urban County Government.
	Approximately 2,780 feet upstream of the confluence with Bowman Mill Tributary.	None	+954	
Southpoint Tributary	At the confluence with West Hickman Creek	None	+890	Lexington-Fayette Urban County Government.
	Approximately 2,800 feet upstream of Southpoint Drive.	None	+947	
Wolf Run	Approximately 280 feet upstream of Beacon Hill Tributary.	+923	+922	Lexington-Fayette Urban County Government.
	At Nicholasville Road	None	+990	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Lexington-Fayette Urban County Government

Maps are available for inspection at Division of Planning, Current Planning Section, 101 East Vine Street, Lexington, KY 40507.
Send comments to The Honorable Jim Newberry, Mayor, Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507.

Tate County, Mississippi, and Incorporated Areas				
Arkabutla Reservoir	Arkabutla Reservoir	None	+245	Town of Coldwater, Unincorporated Areas of Tate County.
Coldwater River	0.7 Miles Downstream of Arkabutla Reservior Dam	None	+195	Unincorporated Areas of Tate County.
	At County Boundary	None	+252	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Pidgeon Roost Creek	0.6 Miles Downstream of Pidgeon Roost Road	None	+292	Unincorporated Areas of Tate County.
	400 Ft Downstream of Pidgeon Roost Road	None	+295	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Town of Coldwater

Maps are available for inspection at 444 Court Street, Coldwater, MS 38618.
Send comments to The Honorable Jessie Edwards, Mayor, Town of Coldwater, 444 Court Street, Coldwater, MS 38618.

Unincorporated Areas of Tate County

Maps are available for inspection at 201 Ward Street, Senatobia, MS 38668.
Send comments to Mr. James Sowell, President, Tate County Board of Supervisors, 201 Ward Street, Senatobia, MS 38668.

Clay County, North Carolina and Incorporated Areas

Blair Creek	At the confluence with Hiwassee River	None	+1,800	Clay County (Unincorporated Areas).
	Approximately 0.4 mile upstream of NC–69	None	+1,840	
Brasstown Creek	At the confluence with Hiwassee River	None	+1,587	Clay County (Unincorporated Areas).
	Approximately 400 feet upstream of West Road (State Road 1111).	None	+1,713	
Chatuga Lake	Entire shoreline within Clay County	None	+1,929	Clay County (Unincorporated Areas).
Coleman Creek	At the confluence with Hyatt Mill Creek	None	+1,934	Clay County (Unincorporated Areas).
	Approximately 800 feet upstream of the confluence with Hyatt Mill Creek.	None	+1,934	
Crawford Creek	At the confluence with Brasstown Creek	None	+1,698	Clay County (Unincorporated Areas).
	Approximately 1,430 feet upstream of Pine Ridge Drive.	None	+1,837	
Downing Creek	At the confluence with Hiwassee River	None	+1,796	Clay County (Unincorporated Areas).
	Approximately 0.4 mile upstream of Lawrence Smith Road (State Road 1324).	None	+1,959	
Eagle Fork Creek	At the confluence with Shooting Creek	None	+2,045	Clay County (Unincorporated Areas).
	Approximately 200 feet upstream of Sally Gap Road	None	+2,211	
Fires Creek	At the confluence with Hiwassee River	None	+1,724	Clay County (Unincorporated Areas).
	Approximately 1.5 miles upstream of Fires Creek Road (State Road 1300).	None	+1,834	
Giesky Creek	At the confluence with Shooting Creek	None	+1,981	Clay County (Unincorporated Areas).
	Approximately 1,530 feet upstream of Sally Gap Road.	None	+2,172	
Gumlog Creek	At the confluence with Brasstown Creek	None	+1,669	Clay County (Unincorporated Areas).
	Approximately 300 feet upstream of Pine Log Road (State Road 1104).	None	+1,703	
Hiwassee River	Approximately 500 feet downstream of Old Highway 64W (State Road 1100).	None	+1,590	Clay County (Unincorporated Areas), Town of Hayesville.
	Approximately 1,380 feet upstream of the confluence of Hiwassee River Tributary 1.	None	+1,885	
Tributary 1	At the confluence with Hiwassee River	None	+1,811	Clay County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Chatuge Dam Road (State Road 1146).	None	+1,811	
Hothouse Branch	At the confluence with Shooting Creek	None	+1,943	Clay County (Unincorporated Areas).
	Approximately 0.7 mile upstream of Fred and Carl Lane.	None	+2,015	
Hyatt Mill Creek	At the confluence with Hiwassee River	None	+1,802	Clay County (Unincorporated Areas).
	At the confluence of Coleman Creek	None	+1,934	

Flooding source(s)	Location of referenced elevation	*Elevation in feet (NGVD) +Elevation in feet (NAVD) #Depth in feet above ground		Communities affected
		Effective	Modified	
Licklog Creek	Approximately 200 feet downstream of U.S. Highway 64.	None	+1,929	Clay County (Unincorporated Areas).
	Approximately 450 feet upstream of Peckerwood Road (State Road 1328).	None	+2,005	
Muskrat Branch	At the confluence with Shooting Creek and Thompson Creek.	None	+2,183	Clay County (Unincorporated Areas).
	Approximately 1.5 miles upstream of the confluence with Shooting Creek and Thompson Creek.	None	+2,429	
Nantahala River	At the Clay/Macon County boundary	None	+3,013	Clay County (Unincorporated Areas).
	Approximately 450 feet downstream of Thunderstruck Lane.	None	+3,089	
Pinelong Creek	At the confluence with Brasstown Creek	None	+1,641	Clay County (Unincorporated Areas).
	Approximately 1.0 mile upstream of Royal Oaks Trail	None	+1,914	
Qually Creek	At the confluence with Hiwassee River	None	+1,788	Clay County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Ali Drive	None	+1,837	
Shooting Creek	Approximately 800 feet upstream of Old Highway 64E.	None	+1,929	Clay County (Unincorporated Areas).
	Approximately 90 feet upstream of Old Highway 64E	None	+2,183	
Sweetwater Creek	At the confluence with Hiwassee River	None	+1,686	Clay County (Unincorporated Areas).
	Approximately 1.2 miles upstream of U.S. Highway 64.	None	+1,844	
Thompson Creek	At the confluence with Shooting Creek	None	+2,183	Clay County (Unincorporated Areas).
	Approximately 0.5 mile upstream of Muskrat Creek Road (State Road 1173).	None	+2,283	
Town Creek	At the confluence with Hiwassee River	None	+1,793	Clay County (Unincorporated Areas), Town of Hayesville.
	Approximately 0.5 mile upstream of Anderson Street	None	+1,831	
Tusquitee Creek	At the confluence with Hiwassee River	None	+1,783	Clay County (Unincorporated Areas).
	Approximately 2.0 miles upstream of Chairmaker Drive.	None	+2,214	
Winchester Creek	At the confluence with Brasstown Creek	None	+1,671	Clay County (Unincorporated Areas).
	Approximately 1,090 feet upstream of West Gum Log Road (State Road 1107).	None	+1,716	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Clay County

Maps are available for inspection at Clay County Building, 33 Main Street, Hayesville, NC.
Send comments to Mr. Paul Leek, Clay County Manager, P.O. Box 118, Hayesville, NC 28904.

Town of Hayesville

Maps are available for inspection at Hayesville Town Hall, 235 Sanderson Street, Hayesville, NC.
Send comments to The Honorable Harrell Moore, Mayor of the Town of Hayesville, P.O. Box 235, Hayesville, NC 28904.

Dyer County, Tennessee, and Incorporated Areas

Mississippi River	Approximately 720 feet downstream from the confluence of Obion River.	None	+268	Unincorporated Areas of Dyer County.
	County boundary	None	+281	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.

ADDRESSES

Unincorporated Areas of Dyer County

Maps are available for inspection at Building Inspector's Office, #1 Veterans Square, Dyersburg, TN 38025.
Send comments to The Honorable Richard Hill, Mayor, Dyer County, Dyer County Courthouse, P.O. Box 1360, Dyersburg, TN 38025–1360.

Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.''

Dated: September 21, 2007.

David I. Maurstad,

Federal Insurance Administrator of the National Flood Insurance Program, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E7–19680 Filed 10–4–07; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AV19

Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding and Proposed Rule To List the Polar Bear (Ursus maritimus) as Threatened Throughout Its Range

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period; notice of availability of new information.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the extension of the public comment period on nine new United States Geological Survey (USGS) reports produced for the Service to provide current data and modeling results relevant to the final determination of whether the polar bear (*Ursus maritimus*) qualifies for listing under the Endangered Species Act of 1973, as amended (Act). We intend to take these reports into consideration as we make our final listing determination on the polar bear, and are extending the reopened public comment period on the January 9, 2007, proposed rule to list the polar bear as threatened throughout its range under the Act (72 FR 1064) for an additional 15 days to allow interested parties to comment on the USGS reports. We are limited in how long we can extend the public comment period because of the statutory deadline, which requires a final listing determination within one year of publication of the proposed rule, unless an extension of up to six months is granted due to substantial disagreement regarding the sufficiency or accuracy of the available data relevant to the determination.

Please note that comments previously submitted should not be resubmitted. This comment period is open only for comments on the nine USGS reports listed below. Comments submitted during the prior comment period have been incorporated into the public record and will be fully considered during preparation of our final determination.

DATES: We will accept public comments until October 22, 2007.

ADDRESSES: You may submit comments and materials to us by any one of the following methods:

(1) You may mail or hand-deliver written comments and information to the Supervisor, U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503.

(2) You may send comments by electronic mail (e-mail) to: *Polar_Bear_Finding@fws.gov*. For instructions on how to file comments electronically, see the ''Public Comments Solicited'' section below. In the event that our Internet connection is not functional, please submit your comments by one of the alternate methods listed in this section.

(3) You may submit your comments via the Federal eRulemaking Portal at *http://www.regulations.gov*. Follow the instructions for submitting comments.

For information on obtaining copies of the nine USGS reports, see the ''Obtaining Copies of the Nine USGS reports'' section below.

FOR FURTHER INFORMATION CONTACT: Rosa Meehan, Marine Mammals Management Office (see **ADDRESSES**) (telephone 907–786–3800). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION: On January 9, 2007, the Service published a 12-month petition finding and proposed rule to list the polar bear (*Ursus maritimus*) as threatened throughout its range under the Act (72 FR 1064). The document announced a 3-month public comment period on the proposed rule, which closed on April 9, 2007. We also held three public hearings during the proposed rule's comment period, as announced in the February 15, 2007, **Federal Register** (72 FR 7381).

On September 7, 2007, the Service received nine reports prepared by the USGS that provide new data and modeling outputs relevant to the final determination of whether the polar bear qualifies for listing as threatened or endangered under the Act. These reports are:

(1) Polar Bear Population Status in the Northern Beaufort Sea by Stirling et al.

(2) Polar Bear Population Status in Southern Hudson Bay Canada by Obbard et al.

(3) Polar Bears in the Southern Beaufort Sea I: Survival and Breeding in Relation to Sea Ice Conditions, 2001–2006 by Regehr et al.

(4) Polar Bears in the Southern Beaufort Sea II: Demography and Population Growth in Relation to Sea Ice Conditions by Hunter et al.

(5) Polar Bears in the Southern Beaufort Sea III: Stature, Mass, and Cub Recruitment in Relationship to Time and Sea Ice Extent Between 1982 and 2006 by Rode et al.

(6) Uncertainty in Climate Model Predictions of Arctic Sea Ice Decline: An Evaluation Relevant to Polar Bears by DeWeaver.

(7) Predicting the Future Distribution of Polar Bear Habitat in the Polar Basin from Resource Selection Functions Applied to 21st Century General Circulation Model Projections of Sea Ice by Durner et al.

(8) Predicting Movements of Female Polar Bears between Summer Sea Ice Foraging Habitats and Terrestrial Denning Habitats of Alaska in the 21st Century: Proposed Methodology and Pilot Assessment by Bergen et al.

(9) Forecasting the Range-wide Status of Polar Bears at Selected Times in the 21st Century by Amstrup et al.

On September 20, 2007, we published a notice in the **Federal Register** announcing the availability of these nine reports and our intention to consider them in making our final listing determination (72 FR 53749). In that notice we also reopened the public comment period on the January 9, 2007, proposed rule to list the polar bear as threatened under the Act (72 FR 1064) for 15 days to provide the public the opportunity to submit comments or information on these reports. Because of the volume and complexity of the information in the reports, we are extending the public comment period for an additional 15 days. The comment period now closes on October 22, 2007. We are asking for public comments on these reports and a review of the extent to which they add to the knowledge base for making the final decision. In particular we are seeking information regarding whether the reports raise an issue of substantial disagreement among scientists knowledgeable about polar bears regarding the accuracy or sufficiency of the available data relevant to the listing determination.

Obtaining Copies of the Nine USGS Reports

You may obtain copies of any of the nine USGS reports:

- By mail from the U.S. Department of the Interior, United States Geological Survey, Office of Communication, 119 National Center, Reston, VA 20192;

• By calling USGS Public Affairs at (703) 648–4460;

• By visiting the USGS Web site at *http://www.usgs.gov/newsroom/special/polar_bears/;* or

• Via link to the USGS Web site from the Service's Web site: *http://www.fws.gov/.*

Copies of the reports are also available for public inspection, by appointment during normal business hours, at the U.S. Fish and Wildlife Service, Marine Mammals Management Office (see **ADDRESSES**).

Public Comments Solicited

Comments and information submitted during the initial comment period on the January 9, 2007 (72 FR 1064), proposed rule should not be resubmitted, as this comment period is open only for comments on the nine USGS reports listed above. Our final determination of whether the polar bear qualifies as threatened or endangered under the Act will take into consideration all comments and information we receive during both comment periods.

You may submit your comments and any materials concerning the above reports by any one of several methods (see **ADDRESSES**). If you use e-mail to submit your comments, please include ''Attn: Polar Bear Finding'' in your e-mail subject header, preferably with your name and return address in the body of your message.

Before including your address, phone number, e-mail address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold from public view your personal identifying information, we cannot guarantee that we will be able to do so.

Author

The primary author of this notice is staff of the U.S. Fish and Wildlife Service.

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.).

Dated: September 28, 2007.

Kenneth Stansell,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 07–4946 Filed 10–2–07; 11:36 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 72, No. 193
Friday, October 5, 2007

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.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the Advisory Committee on Voluntary Foreign Aid (ACVFA).

Date: Wednesday, October 24, 2007 (9 a.m. to 3 p.m.).

Location: National Press Club Ballroom, 529 14th Street, NW., Washington, DC 20045.

Please note that this is the anticipated agenda and is subject to change.

ACVFA Working Groups: The ACVFA has created working groups corresponding to two objectives of the U.S. foreign assistance framework: humanitarian assistance and investing in people. The two working groups will present draft papers with recommendations and lessons learned.

Following this, respondents from the foreign assistance community will provide feedback. In addition, the general public will be given the opportunity to provide comments and pose questions. The working groups' final recommendations will be made available on the ACVFA Web site in early December: *http://www.usaid.gov/about_usaid/acvfa.*

Keynote: USAID Acting Administrator and Acting Director of United States Foreign Assistance Henrietta H. Fore has been invited to address the ACVFA on Transformational Diplomacy and the Foreign Assistance reforms.

HELP Commission: Gayle Smith and William Lane, two members of the Helping to Enhance the Livelihood of People Around the Globe (HELP) Commission, a bi-partisan Commission tasked by Congress to review U.S. foreign assistance programs and make actionable recommendations on reform to the President, Secretary of State and Congress, have been invited to address the ACVFA on the Commission's forthcoming recommendations.

Mission Directors: USAID Mission Directors from Latin America, Africa, and Asia have been invited to speak about the implementation of the foreign assistance reforms as seen on the ground.

The meeting is free and open to the public. Persons wishing to attend the meeting can register online at *http://www.usaid.gov/about_usaid/acvfa* or with Hannah Kim of the Hill Group at *hkim@thehillgroup.com* or 301-897–2789 ext. 124, or with Jocelyn Rowe at *jrowe@usaid.gov* or 202–712–4002.

Dated: September 28, 2007.

Jocelyn M. Rowe,

Executive Director, Advisory Committee on Voluntary Foreign Aid (ACVFA), U.S. Agency for International Development.

[FR Doc. E7–19687 Filed 10–4–07; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2007–0019]

Pioneer Hi-Bred International, Inc.; Availability of Petition and Environmental Assessment for Determination of Nonregulated Status for Soybean Genetically Engineered for Tolerance to Glyphosate and Acetolactate Synthase-Inhibiting Herbicides

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has received a petition from Pioneer Hi-Bred International, Inc., seeking a determination of nonregulated status for soybean designated as transformation event 356043, which has been genetically engineered for tolerance to glyphosate and acetolactate synthase-inhibiting herbicides. The petition has been submitted in accordance with our regulations concerning the introduction of certain genetically engineered organisms and products. In accordance with those regulations, we are soliciting comments on whether this genetically engineered soybean is or could be a plant pest. We are also making available for public comment an environmental assessment for the proposed determination of nonregulated status.

DATES: We will consider all comments we receive on or before December 4, 2007.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov,* select ''Animal and Plant Health Inspection Service'' from the agency drop-down menu, then click ''Submit.'' In the Docket ID column, select APHIS–2007–0019 to submit or view public comments and to view supporting and related materials available electronically. Information on using *Regulations.gov,* including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''User Tips'' link.
- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Docket No. APHIS–2007–0019, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2007–0019.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at *http://www.aphis.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Cordts, Biotechnology Regulatory Services, APHIS, 4700 River Road Unit 147, Riverdale, MD 20737–1236; (301) 734–5531, *john.m.cordts@aphis.usda.gov.* To obtain copies of the petition or environmental assessment (EA), contact Ms. Cynthia Eck at (301) 734–0667; *cynthia.a.eck@aphis.usda.gov.* The petition and EA may be viewed on the Internet at *http://www.aphis.usda.gov/brs/aphisdocs/06_27101p.pdf* and

http://www.aphis.usda.gov/brs/aphisdocs/06_27101p_ea.pdf.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 340, ''Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests,'' regulate, among other things, the introduction (importation, interstate movement, or release into the environment) of organisms and products altered or produced through genetic engineering that are plant pests or that there is reason to believe are plant pests. Such genetically engineered organisms and products are considered ''regulated articles.''

The regulations in § 340.6(a) provide that any person may submit a petition to the Animal and Plant Health Inspection Service (APHIS) seeking a determination that an article should not be regulated under 7 CFR part 340. Paragraphs (b) and (c) of § 340.6 describe the form that a petition for a determination of nonregulated status must take and the information that must be included in the petition.

On September 28, 2006, APHIS received a petition seeking a determination of nonregulated status (APHIS Petition Number 06–271–01p) from Pioneer Hi-Bred International, Inc., of Johnston, IA (Pioneer), for soybean (*Glycine max* L.) designated as transformation event 356043, which has been genetically engineered for tolerance to glyphosate and acetolactate synthase (ALS)-inhibiting herbicides, stating that soybean line 356043 does not present a plant pest risk and, therefore, should not be a regulated article under APHIS' regulations in 7 CFR part 340.

As described in the petition, 356043 soybean plants have been genetically engineered to express modified glyphosate acetyltransferase (GAT 4601) and acetolactate synthase (ALS) proteins, which confers tolerance to glyphosate and acetolactate synthase-inhibiting herbicides. The *gat4601* gene is derived from *gat* genes from *Bacillus licheniformis,* a common soil bacterium. Expression of the *gat4601* gene is driven by a synthetic constitutive promoter (SCP1). The gene that confers tolerance to ALS-inhibiting herbicides is *gm-hra* and is a modified soybean ALS gene. Expression of the *gm-hra* gene is driven by a constitutive soybean S-adenosyl-L-methionine synthetase (SAMS) promoter. A single copy of these genes and their regulatory sequences were introduced into soybean somatic embryos using microprojectile bombardment.

Pioneer's 356043 soybean plants have been considered regulated articles under the regulations in 7 CFR part 340 because they contain gene sequences from plant pathogens. Pioneer's 356043 soybean plants have been field tested in the United States since 2003 under permits issued by APHIS. In the process of reviewing the permits for field trials of the subject soybean plants, APHIS determined that the vectors and other elements used to introduce the new genes were disarmed and that the trials, which were conducted under conditions of reproductive and physical confinement or isolation, would not present a risk of plant pest introduction or dissemination.

APHIS has prepared an environmental assessment (EA) in which it presents two alternatives based on its analyses of data submitted by Pioneer, a review of other scientific data, and field tests conducted under APHIS oversight. APHIS may: (1) Take no action, i.e., APHIS would not change the regulatory status of 356043 soybeans and they would continue to be regulated articles, or (2) deregulate 356043 soybeans in whole.

In § 403 of the Plant Protection Act (7 U.S.C. 7701 *et seq.*), ''plant pest'' is defined as any living stage of any of the following that can directly or indirectly injure, cause damage to, or cause disease in any plant or plant product: A protozoan, a nonhuman animal, a parasitic plant, a bacterium, a fungus, a virus or viroid, an infectious agent or other pathogen, or any article similar to or allied with any of the foregoing. APHIS views this definition broadly to cover direct or indirect injury, disease, or damage not just to agricultural crops, but also to other plants, for example, native species, as well as organisms that may be beneficial to plants, such as honeybees.

The U.S. Environmental Protection Agency (EPA) is responsible for the regulation of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (7 U.S.C. 136 *et seq.*). FIFRA requires that all pesticides, including herbicides, be registered prior to distribution or sale, unless exempt from EPA regulation. Under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended (21 U.S.C. 301 *et seq.*), pesticides added to (or contained in) raw agricultural commodities generally are considered to be unsafe unless a tolerance or exemption from tolerance has been established. Residue tolerances for pesticides are established by the EPA under the FFDCA, and the Food and Drug Administration (FDA) enforces tolerances set by the EPA. Pioneer submitted the appropriate regulatory package to the EPA for registering the use of glyphosate herbicide on 356043 soybeans.

The FDA's policy statement concerning regulation of products derived from new plant varieties, including those genetically engineered, was published in the **Federal Register** on May 29, 1992 (57 FR 22984–23005). Under this policy, FDA uses what is termed a consultation process to ensure that human and animal feed safety issues or other regulatory issues (e.g., labeling) are resolved prior to commercial distribution of a bioengineered food. Pioneer submitted a food and feed safety and nutritional assessment summary to the FDA for 356043 soybeans. A final FDA decision is pending.

National Environmental Policy Act

To provide the public with documentation of APHIS' review and analysis of any potential environmental impacts associated with the proposed determination of nonregulated status for 356043 soybeans, an EA has been prepared. The EA was prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

In accordance with § 340.6(d) of the regulations, we are publishing this notice to inform the public that APHIS will accept written comments regarding the petition for a determination of nonregulated status from interested or affected persons for a period of 60 days from the date of this notice. During the same comment period, we are also soliciting written comments from interested or affected persons on the EA prepared to examine any environmental impacts of the proposed deregulation determination for the subject soybean event. The petition and the EA and any comments we receive are available for public review, and copies of the petition and the EA are available as indicated in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

After the comment period closes, APHIS will review the data submitted by the petitioner, all written comments received during the comment period, and any other relevant information. After reviewing and evaluating the

comments on the petition and the EA and other data and information, APHIS will furnish a response to the petitioner, either approving the petition in whole or in part, or denying the petition. APHIS will then publish a notice in the **Federal Register** announcing the regulatory status of Pioneer's glyphosate and ALS-inhibiting, herbicide-tolerant soybean and the availability of APHIS' written decision.

Authority: 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.8, and 371.3.

Done in Washington, DC, this 3rd day of October 2007.

Cindy J. Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E7–19801 Filed 10–4–07; 8:45 am]

BILLING CODE 3410–34–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

ACTION: Proposed Additions to and Deletion from the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List a product and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a product previously furnished by such agencies.

Comments Must be Received On or Before: November 4, 2007.

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: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail: *CMTEFedReg@jwod.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 product and service 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 product and service to the Government.

2. If approved, the action will result in authorizing small entities to furnish the product and 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 product and service 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 product and service are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Product

Coveralls, Disposable, Recycled Tyvek
NSN: 8415–LL–L05–0056—Small/Medium.
NSN: 8415–LL–L05–0057—Large/Extra Large.
NSN: 8415–LL–L05–0058—XXLarge/XXXLarge.
Coverage: C-List for the requirements of the Norfolk Naval Shipyard, Portsmouth, VA.
NPA: Northeastern Association of the Blind at Albany, Inc., Albany, NY.
Contracting Activity: Norfolk Naval Shipyard, Portsmouth, VA.

Service

Service Type/Location: Document Destruction, Internal Revenue Service, 200 Granby Street, Norfolk, VA.
Service Type/Location: Document Destruction, Internal Revenue Service, 903 Gateway Blvd, Hampton, VA.
NPA: Louise W. Eggleston Center, Inc., Norfolk, VA.
Contracting Activity: U.S. Department of Treasury, Internal Revenue Service, Chamblee, GA.

Deletion

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 may 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 product 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 product proposed for deletion from 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 product is proposed for deletion from the Procurement List:

Product:

JRROTC Shoulder Board
NSN: 8455–01–468–0520—JRROTC Shoulder Board.
NSN: 8455–01–468–0536—JRROTC Shoulder Board.
NSN: 8455–01–468–0538—JRROTC Shoulder Board.
NSN: 8455–01–468–0539—JRROTC Shoulder Board.
NSN: 8455–01–468–0563—JRROTC Shoulder Board.
NSN: 8455–01–468–0564—JRROTC Shoulder Board.
NSN: 8455–01–468–0565—JRROTC Shoulder Board.
NSN: 8455–01–468–0569—JRROTC Shoulder Board.
NSN: 8455–01–468–0571—JRROTC Shoulder Board.
NSN: 8455–01–468–0572—JRROTC Shoulder Board.
NSN: 8455–01–468–0595—JRROTC Shoulder Board.
NSN: 8455–01–468–0726—JRROTC Shoulder Board.
NPA: Westmoreland County Blind Association, Greensburg, PA.
NPA: Blind Industries & Services of Maryland, Baltimore, MD.
Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–19716 Filed 10–4–07; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletion

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the Procurement List.

SUMMARY: This action adds to the Procurement List products and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a product previously furnished by such agencies.

DATES: *Effective Date:* November 4, 2007.

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: Kimberly M. Zeich, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@jwod.gov*.

SUPPLEMENTARY INFORMATION:

Additions

On June 22 and August 3, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 34433; 43230) 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 products and services 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 service to the Government.

2. The action will result in authorizing small entities to furnish the products and 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 products and service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and service are added to the Procurement List:

Products

Cartridge, Toner, Remanufactured
NSN: 7510–00–NSH–0075—Remanufactured HP LJ Toner Cartridge—OEM C7115X.
NSN: 7510–00–NSH–0076—Remanufactured HP LJ Toner Cartridge—OEM C3909A.
NSN: 7510–00–NSH–0077—Remanufactured HP LJ Toner Cartridge—OEM C4096A.
NSN: 7510–00–NSH–0078—Remanufactured HP LJ Toner Cartridge—OEM C4127X.
NSN: 7510–00–NSH–0079—Remanufactured HP LJ Toner Cartridge—OEM C8061X.
Coverage: A–List for the total Government requirement as specified by the General Services Administration.
NPA: Thresholds Rehabilitation Inc., Chicago, IL.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr., New York, NY.

Long Format Replacement Pages—FCCL
NSN: 7510–00–NSH–0257—Refill sheets for long format Flight Crew Check List Binder.
Coverage: A–List for the total Government requirement as specified by the General Services Administration.

Standard Format Replacement Pages, FCCL
NSN: 7510–01–537–1400—Refill sheets for Flight Crew Checklist Binders—5.5″ × 8.00″ w/16 holes for rings.
Coverage: A–List for the total Government requirement as specified by the General Services Administration.
NPA: Pueblo Diversified Industries, Inc., Pueblo, CO.
Contracting Activity: General Services Administration, Federal Supply Services, Region 2, New York, NY.

USB Flash Drives
NSN: 7520–00–NIB–1832—512MB.
NSN: 7520–00–NIB–1833—1GB.
NSN: 7520–00–NIB–1834—2GB.
NSN: 7520–00–NIB–1835—4GB.
NSN: 7520–00–NIB–1836—8GB.
NSN: 7520–00–NIB–1837—16GB.
NSN: 7520–00–NIB–1838—512MB.
NSN: 7520–00–NIB–1839—1GB.
NSN: 7520–00–NIB–1840—2GB.
NSN: 7520–00–NIB–1841—4GB.
NSN: 7520–00–NIB–1842—8GB.
NSN: 7520–00–NIB–1843—16GB.
Coverage: A–List for the total Government requirement as specified by the General Services Administration.
NPA: North Central Sight Services, Inc., Williamsport, PA.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr., New York, NY.

Service

Service Type/Location: Custodial Services, Department of Energy—Lindsay Complex, 775 Lindsay Blvd, Idaho Falls, ID.
NPA: Development Workshop, Inc., Idaho Falls, ID.
Contracting Activity: Department of Energy—IDAHO, Idaho Falls, ID.

Deletion

On August 3, 2007, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (72 FR 43230) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the product listed below is no longer 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 may result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product 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 product deleted from the Procurement List.

End of Certification

Accordingly, the following product is deleted from the Procurement List:

Product

Perforator, Paper, Desk
NSN: 7520–01–431–6247—Perforator, Paper, Desk.
NSN: 7520–01–431–6249—Perforator, Paper, Desk.
NPA: Foothill Workshop for the Handicapped, Inc., Pasadena, CA.
Contracting Activity: General Services Administration, Office Supplies & Paper Products Acquisition Ctr., New York, NY.

Kimberly M. Zeich,

Director, Program Operations.

[FR Doc. E7–19717 Filed 10–4–07; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–830]

Stainless Steel Bar from Germany; Final Results of the Sunset Review of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''the Department'') has conducted a full sunset review of the antidumping duty order on stainless steel bar (''SSB'') from Germany pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''). As a result of this review, the Department finds that revocation of the antidumping duty order on SSB from Germany would likely lead to the continuation or recurrence of dumping.

EFFECTIVE DATE: October 5, 2007.

FOR FURTHER INFORMATION CONTACT: Audrey R. Twyman or Brandon Farlander, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC, 20230; telephone: 202–482–3534 and 202–482–0182, respectively.

SUPPLEMENTARY INFORMATION:

Background

On May 30, 2007, the Department published a notice of preliminary results of the full sunset review of the antidumping duty order on SSB from Germany pursuant to section 751(c) of the Act. *See Stainless Steel Bar From Germany; Preliminary Results of the Sunset Review of Antidumping Duty Order*, 72 FR 29970 (May 30, 2007), as corrected in 72 FR 31660 (June 7, 2007) (''*Preliminary Results*''). We provided interested parties an opportunity to comment on our *Preliminary Results*. The Department received a case brief from BGH Edelstahl Freital GmbH, BGH Edelstahl Lippendorf GmbH, BGH Edelstahl Lugau GmbH, and BGH Edelstahl Siegen GmbH (collectively, ''BGH'') on June 29, 2007, and a rebuttal brief from Carpenter Technology Corp.; North American Stainless; Crucible Specialty Metals Division of Crucible Materials Corp.; Electralloy; Outokumpu Stainless Bar, Inc.; Universal Stainless & Alloy Products, Inc.; and Valbruna Slater Stainless, Inc. (collectively, ''the domestic interested parties'') on July 5, 2007. A hearing was not held because none was requested.

Scope of the Order

For the purposes of this order, the term ''stainless steel bar'' includes articles of stainless steel in straight lengths that have been either hot–rolled, forged, turned, cold–drawn, cold–rolled or otherwise cold–finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons. Stainless steel bar includes cold–finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot–rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

Except as specified above, the term does not include stainless steel semi–finished products, cut length flat–rolled products (*i.e.*, cut length rolled products which if less than 4.75 mm in thickness have a width measuring at least 10 times the thickness, or if 4.75 mm or more in thickness having a width which exceeds 150 mm and measures at least twice the thickness), products that have been cut from stainless steel sheet, strip or plate, wire (*i.e.*, cold–formed products in coils, of any uniform solid cross section along their whole length, which do not conform to the definition of flat–rolled products), and angles, shapes and sections.

The stainless steel bar subject to this review is currently classifiable under subheadings 7222.11.00.05, 7222.11.00.50, 7222.19.00.05, 7222.19.00.50, 7222.20.00.05, 7222.20.00.45, 7222.20.00.75, and 7222.30.00.00 of the *Harmonized Tariff Schedule of the United States* (''HTSUS''). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the order is dispositive.

Analysis of Comments Received

All issues raised in this sunset review are addressed in the ''Issues and Decision Memorandum for the Sunset Review of the Antidumping Duty Order on Stainless Steel Bar from Germany; Final Results,'' to David M. Spooner, Assistant Secretary for Import Administration, dated October 1, 2007 (''Decision Memo''), which is hereby adopted by this notice. The issues discussed in the Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail if the antidumping duty order on SSB from Germany were revoked. Parties can find a complete discussion of all issues raised in this sunset review and the corresponding recommendations in this public memorandum, which is on file in room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at *http://ia.ita.doc.gov/frn/index.html*. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

The Department determines that revocation of the antidumping duty order on SSB from Germany is likely to lead to a continuation or recurrence of dumping at the following weighted–average margins:

Manufacturers/Producers/Exporters	Weighted–Average Margin (Percentage)
BGH Edelstahl Seigen GmbH / BGH Edelstahl Freital GmbH ..	0.73
Edelstahl Witten–Krefeld GmbH	10.82
Krupp Edelstahlprofile	31.25
All Others	15.16

This notice serves as a final reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary material disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This sunset review and notice are in accordance with sections 751(c), 752(c), and 777(i)(1) of the Act.

Dated: October 1, 2007.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E7–19710 Filed 10–4–07; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Electronic Education Fairs for China and India

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The deadline for U.S. accredited colleges and universities to sponsor the U.S. Electronic Education Fairs for China and India by purchasing space on the corresponding internet

landing pages has been extended to October 26, 2007.

DATES: Applications will be accepted from the date of this Notice until 3 p.m. EDT October 26, 2007. The initiative is scheduled to commence on or around October 30, 2007.

FOR FURTHER INFORMATION CONTACT: Jennifer Moll, U.S. Department of Commerce. Tel: (248) 508 8404; John Siegmund, U.S. Department of Commerce, Room 1104. Tel: (202) 482 4781; David Long, U.S. Department of Commerce, Room 1104. Tel: (202) 482 3575.

SUPPLEMENTARY INFORMATION: The U.S. Electronic Education Fairs for China and India are part of a joint initiative between the U.S. Department of Commerce and the U.S. Department of State. The purpose of the initiative is to inform Chinese and Indian students who are interested in studying outside of their home countries about the breadth and depth of the higher education opportunities available in the United States. The initiative utilizes a three-pronged multimedia approach through the Internet, on-ground activities, and television, including two, twenty-three minute TV programs and a series of short, 1–2 minute programs airing on local cable and national satellite TV stations throughout China and India. All programming directs viewers to the corresponding Internet landing page. DVDs distributed through education trade fairs and EducationUSA advising centers throughout China and India will further this message.

Accredited U.S. educational institutions are invited to sponsor the China and India Internet landing pages. Sponsorships for China OR India will be available in Gold and Silver categories. Institutions that purchase Gold Sponsorship, priced at $8,000, will receive a banner-sized ad with their school's logo and name which will link to their institution's Web site. Institutions that purchase Silver Sponsorship, priced at $3,000, will have their name listed on the site with a link to their institution's Web site. If an institution would like to sponsor and purchase space on both the China and India Internet landing pages, they will receive a 50 percent discount for the second sponsorship, for a total of $12,000 for Gold and $4,500 for Silver.

Applications by qualifying institutions will be selected on a rolling basis, capacity permitting.

Dated: October 2, 2007.

David Long,

Director, Office of Service Industries, International Trade Administration.

[FR Doc. E7–19734 Filed 10–4–07; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 070924535–7536–01]

RIN 0648–XC78

Listing Endangered and Threatened Species and Designating Critical Habitat: Petition to List Five Rockfish Species in Puget Sound (Washington) as Endangered or Threatened Species under the Endangered Species Act

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

ACTION: Notice of finding.

SUMMARY: We, NMFS, have received a petition to list bocaccio (*Sebastes paucispinis*), canary rockfish (*S. pinniger*), yelloweye rockfish (*S. ruberrimus*), greenstripe rockfish (*S. elongatus*) and redstripe rockfish (*S. proriger*) as endangered or threatened species under the Endangered Species Act (ESA). We find that the petition does not present substantial scientific or commercial information indicating that the petitioned actions may be warranted.

ADDRESSES: Copies of the petition and related materials are available on the Internet at *http://www.nwr.noaa.gov/Other-Marine-Species/PS-Marine-Fishes.cfm*, or upon request from the Chief, Protected Resources Division, NMFS, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232.

FOR FURTHER INFORMATION CONTACT: Dr. Scott Rumsey, NMFS, Northwest Region, (503) 872–2791; or Marta Nammack, NMFS, Office of Protected Resources, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

On April 9, 2007, we received a petition from Mr. Sam Wright (Olympia, Washington) to list Distinct Population Segments (DPSs) of bocaccio, canary rockfish, yelloweye rockfish, greenstripe rockfish, and redstripe rockfish in Puget Sound as endangered or threatened species under the ESA. Copies of this petition are available from NMFS (see **ADDRESSES**, above).

ESA Statutory and Policy Provisions

Section 4(b)(3) of the ESA contains provisions concerning petitions from interested persons requesting the Secretary of Commerce (Secretary) to list species under the ESA (16 U.S.C. 1533(b)(3)(A)). Section 4(b)(3)(A) requires that, to the maximum extent practicable, within 90 days after receiving such a petition, the Secretary make a finding whether the petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted. Our ESA implementing regulations define Asubstantial information@ as the amount of information that would lead a reasonable person to believe that the measure proposed in the petition may be warranted. In evaluating a petitioned action, the Secretary considers whether the petition contains a detailed narrative justification for the recommended measure, including: past and present numbers and distribution of the species involved, and any threats faced by the species (50 CFR 424.14(b)(2)(ii)); and information regarding the status of the species throughout all or a significant portion of its range (50 CFR 424.14(b)(2)(iii)). In addition to the information presented in a petition, we review other data and publications readily available to our scientists (i.e., currently within agency files) to determine whether it is in general agreement with the information presented in the petition.

Under the ESA, a listing determination may address a species, subspecies, or a DPS of any vertebrate species which interbreeds when mature (16 U.S.C. 1532(15)). On February 7, 1996, we and the U.S. Fish and Wildlife Service adopted a joint policy to clarify the agencies' interpretation of the phrase ''Distinct population segment of any species of vertebrate fish or wildlife'' (ESA section 3(15)) for the purposes of listing, delisting, and reclassifying a species under the ESA (51 FR 4722). The joint DPS policy established two criteria that must be met for a population or group of populations to be considered a DPS: (1) The population segment must be discrete in relation to the remainder of the species (or subspecies) to which it belongs; and (2) the population segment must be significant to the remainder of the species (or subspecies) to which it belongs. A population segment may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same biological taxon as a consequence of physical, physiological, ecological, or behavioral

factors (quantitative measures of genetic or morphological discontinuity may provide evidence of this separation); or (2) it is delimited by international governmental boundaries across which there is a significant difference in exploitation control, habitat management or conservation status. If a population is determined to be discrete, the agency must then consider whether it is significant to the taxon to which it belongs. Considerations in evaluating the significance of a discrete population include: (1) persistence of the discrete population in an unusual or unique ecological setting for the taxon; (2) evidence that the loss of the discrete population segment would cause a significant gap in the taxon's range; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere outside its historical geographic range; or (4) evidence that the discrete population has marked genetic differences from other populations of the species.

A species, subspecies, or DPS is ''endangered'' if it is in danger of extinction throughout all or a significant portion of its range, and ''threatened'' if it is likely to become endangered within the foreseeable future throughout all or a significant portion of its range (ESA Sections 3(6) and 3(19), respectively).

Distribution and Life-History Traits of Rockfishes

Rockfishes are a tremendously diverse group of marine fishes (about 102 species worldwide and at least 72 species in the northeastern Pacific (Kendall, 1991)), and are among the most common benthic fish on the Pacific coast of North America (Love *et al.*, 2002). Adult rockfish can be the most abundant fish in various coastal benthic habitats such as relatively shallow subtidal kelp forests, rocky reefs, and rocky outcrops in submarine canyons at depths greater than 300m (Yoklavich, 1998). The life history of rockfish is different than that of most other bony fishes. Whereas most bony fishes fertilize their eggs externally, fertilization and embryo development in rockfishes is internal, and female rockfish give birth to larval young. Larvae are found in surface waters, and may be distributed over a wide area extending several hundred kilometers offshore (Love *et al.*, 2002). Larvae and small juvenile rockfish may remain in open waters for several months being passively dispersed by ocean currents. The dispersal potential for larvae varies by species depending on the length of time larvae remain in the pelagic environment (i.e., ''pelagic larval duration''), and the fecundity of females (i.e., the more larval propagules a species produces the greater the potential that some larvae will be transported long distances). Larval rockfish feed on diatoms, dinoflagellates, tintinnids, and cladocerans, and juveniles consume copepods and euphausiids of all life stages (Sumida and Moser, 1984). Survival and subsequent recruitment of young rockfishes exhibit considerable interannual variability (Ralston and Howard, 1995). New recruits may be found in tide pool habitats, and shallow coastal waters associated with rocky bottoms and algae (Love, 1996; Sakuma and Ralston, 1995). Juvenile and subadults may be more common than adults in shallow water, and be associated with rocky reefs, kelp canopies, and artificial structures such a piers and oil platforms (Love *et al.*, 2002). Adults generally move into deeper water as they increase in size and age (Garrison and Miller, 1982; Love, 1996), but generally exhibit strong site fidelity with rocky bottoms and outrcrops (Yoklavich *et al.*, 2000). Adults eat demersal invertebrates and small fishes, including other species of rockfish, associated with kelp beds, rocky reefs, pinnacles, and sharp drop-offs (Love, 1996; Sumida and Moser, 1984). Many species of rockfishes are slow-growing, long-lived (50–140yrs; Archibald *et al.*, 1981), and mature at older ages (6–12 yrs; Wyllie-Echeverria, 1987).

Bocaccio – Bocaccio range from Punta Blanca, Baja California, to the Gulf of Alaska off Krozoff and Kodiak Islands (Chen, 1971; Miller and Lea, 1972). They are most common within this range between Oregon and northern Baja California (Love *et al.*, 2002). Bocaccio are most common between 50 and 250 m depth, but may be found as deep as 475 m (Orr *et al.*, 2000). Bocaccio larvae have relatively high dispersal potential with a pelagic larval duration of approximately 155 days (Shanks and Eckert, 2005), and fecundity ranging from 20,000 to over 2 million eggs, considerably more than many other rockfish species (Love *et al.*, 2002). Approximately 50 percent of adults mature in 4 to 6years (MBC, 1987). Adults are difficult to age, but are suspected to live as long as 50 years (Love *et al.*, 2002).

Canary Rockfish – Canary rockfish range between Punta Colnett, Baja California, and the Western Gulf of Alaska (Boehlert, 1980; Mecklenburg *et al.*, 2002). Within this range canary rockfish are most common off the coast of central Oregon (Richardson and Laroche, 1979). Canary rockfish primarily inhabit waters 50 to 250m deep (Orr *et al.*, 2000), but may be found up to 425 m depth (Boehlert, 1980). Canary rockfish larvae have relatively high dispersal potential with a pelagic larval duration of approximately 116 days (Shanks and Eckert, 2005), and fecundity ranging from 260,000 to 1.9 million eggs, considerably more than many other rockfish species (Love *et al.*, 2002). Approximately 50 percent of adults are mature at 35.6 cm (5 to 6 years of age) (Hart, 1973). Canary rockfish can live to be 75 years old (Love, 1996).

Greenstripe Rockfish – Greenstripe rockfish range from Cedros Island, Baja California, to Green Island in the Gulf of Alaska. Within this range greenstripe rockfish are common between British Columbia and Punta Colnett in Northern Baja California (Eschmeyer *et al.*, 1983; Hart, 1973; Love *et al.*, 2002). Greenstripe rockfish is a deep-water species that can inhabit waters from 52 to 828 m in depth, but is most common between 100 and 250 m depth (Orr *et al.*, 2000). Estimates of pelagic larval duration and fecundity are not available for greenstripe rockfish to infer dispersal potential, although we expect that larval duration would be similar to or lower than that for bocaccio or canary rockfish (116–155 days; Varanasi, 2007). Approximately 50 percent of adults mature at 18–19 cm (Love *et al.*, 1990). Male greenstripe rockfish can live to approximately 37 years of age, and females to approximately 28 years of age (Love *et al.*, 1990).

Redstripe Rockfish – Redstripe rockfish occur from southern Baja California to the Bering Sea (Hart, 1973; Love *et al.*, 2002). Redstripe rockfish have been reported between 12 and 425 m in depth, but 95 percent occur between 150 and 275 m (Love *et al.*, 2002). Estimates of pelagic larval duration and fecundity are not available for redstripe rockfish to infer dispersal potential, although we expect that larval duration would be similar to or lower than that for bocaccio or canary rockfish (116–155 days; Varanasi, 2007). Approximately 50 percent of adults mature at 28–29 cm (Garrison and Miller, 1982), and may reach 55 years of age (Munk, 2001).

Yelloweye Rockfish – Yelloweye rockfish range from northern Baja California to the Aleutian Islands, Alaska, but are most common from central California northward to the Gulf of Alaska (Clemens and Wilby, 1961; Eschmeyer *et al.*, 1983; Hart, 1973; Love, 1996). Yelloweye rockfish occur in waters 25 to 475 m deep (Orr *et al.*, 2000), but are most commonly found between 91 to 180 m depth (Love *et al.*,

2002). Approximately 50 percent of adults are mature by 41 cm length (about 6 years) (Love, 1996). Estimates of pelagic larval duration are not available for yelloweye rockfish, although we expect that it would be similar to or lower than that for bocaccio or canary rockfish (116–155 days; Varanasi, 2007). Fecundity ranges from 1.2 to 2.7 million eggs, considerably more than many other rockfish species (Love *et al.*, 2002). Yelloweye rockfish are among the longest lived of rockfishes, living to be at least 118 years old (Love, 1996; O'Connell and Funk, 1986; Love *et al.*, 2002).

Previous Rockfish Status Review and Petitions Received

In February 1999 we received a petition from Mr. Wright to list 18 species of marine fishes in Puget Sound under the ESA, including 14 species of rockfish. We issued a positive 90–day finding on June 21, 1999 (64 FR 33037), accepting the petition and initiating ESA status reviews for seven of the petitioned species, including three rockfish species (copper, brown and quillback rockfishes). For the remaining 11 petitioned rockfish species, which included the five rockfish species that are the subject of this notice, we found that there was insufficient information to evaluate stock structure, status and trends. Consequently, we did not accept the petition for these 11 species, finding that the petition failed to present substantial information to suggest that listing these species in Puget Sound may be warranted.

In 2001 we convened a Biological Review Team (BRT) to evaluate the population structure and biological status of the three rockfish species accepted for review. The BRT concluded that the brown, copper and quillback rockfishes in Puget Sound Proper (defined as east of Deception Pass and to the south and east of Admiralty Head, encompassing southern Puget Sound, Whidbey Basin, Hood Canal, and the main Basin) constitute DPSs for consideration as ''species'' under the ESA (Stout *et al.*, 2001). On April 3, 2001, we concluded that these DPSs did not warrant listing as threatened or endangered species (66 FR 17659). Although these DPSs had experienced declines over the last 40 years, likely due to overharvest, we noted that the populations appeared stable over the most recent 5 years.

In September 2006, we received another petition from Mr. Wright to list the Puget Sound DPSs of copper and quillback rockfishes as endangered or threatened species under the ESA. The petition did not include new data or information regarding the abundance, trends, productivity, or distribution for these species. The petitioner criticized the risk assessment methods of the 2001 BRT and disagreed with our conclusion that the two DPSs did not warrant listing. The petitioner criticized the findings of the 2001 BRT for inadequately considering the loss of age structure and longevity in rockfish populations due to overfishing, and, consequently, for underestimating the extinction risk of these rockfish DPSs. The petitioner also criticized the management of rockfish fisheries by the Washington Department of Fish and Wildlife (WDFW). In a finding published in January 2007, we determined that the September 2006 petition from Mr. Wright failed to present substantial scientific and commercial information to suggest that the ESA listing of copper and quillback rockfishes in Puget Sound may be warranted (72 FR 2863; January 23, 2007). We disagreed with the petitioner that the risk assessment methods employed by the 2001 BRT were flawed. The risk assessment methods employed by the 2001 BRT were similar in nature to those used in numerous other ESA status reviews over the last 16 years. This approach utilizes a diversity of expertise and perspectives and applies a consistent and transparent methodology to evaluate the best available scientific data and analyses, including both quantitative and qualitative information. Details regarding the risk assessment methods used by BRT are provided in the 2001 status review which is available online (see *http://www.nmfs.noaa.gov/pr/species/statusreviews.htm*). With respect to the consideration of age structure and longevity in rockfish populations, we acknowledged the potential significance of laboratory studies suggesting the importance of these factors in evaluating the extinction risk of rockfish populations (essentially, that the oldest and largest females may be particularly important to population viability by producing larvae with greater average survival than larvae from younger females). However, we noted that the importance of this ''maternal-age effect'' in the wild depends upon the age structure and age-at-maturity of the populations under consideration (see 72 FR at 2865 for further discussion). We noted that the necessary data to evaluate the actual importance of the maternal-age effect for the two petitioned rockfish species in Puget Sound was not available, and that other published studies on closely related rockfish species indicated that it is unlikely that the maternal-age effect would alter the conclusions of the 2001 status review (Varanasi, 2006). We also recognized that the petitioner believes that WDFW could enact regulations to further protect Puget Sound rockfish stocks. However, the fishing regulations the petitioner criticizes represent a reduction from previous fishing levels, and do not portend an increasing threat due to fishing for rockfish stocks in Puget Sound.

Analysis of the April 2007 Petition

We evaluated the information provided and/or cited in Mr. Wright's recent petition to determine if it presents substantial scientific and commercial information to suggest that petitioned actions may be warranted. Our Northwest Fisheries Science Center (NWFSC) reviewed the scientific information in the recent petition that was not previously evaluated for the September 2006 petition (Varanasi, 2007) or addressed in our January 2007 petition finding (72 FR 2863; January 23, 2007). Specifically, we considered: (1) whether the petition presents substantial information indicating that these five rockfish species in Puget Sound may warrant delineation as DPSs; and, if delineation of Puget Sound DPSs may be warranted, (2) whether the petition presents substantial information indicating that such DPSs may be ''threatened'' or ''endangered.'' Below, our summary and analysis of the information presented in the recent petition is organized by these two inquiries.

Does the Petition Present Substantial Information Indicating That These Five Rockfish Species in Puget Sound May Warrant Delineation as DPSs?

Under the 1996 joint DPS policy, a population or group of populations is considered a DPS if it is ''discrete'' and ''significant'' to the remainder of the species to which it belongs (51 FR 4722; February 7, 1996). The petitioner contends that the five petitioned species likely warrant delineation as Puget Sound DPSs based on: (1) relatively closed oceanographic circulation patterns in the Puget Sound area (see Stout *et al.*, 2001, at p. 75) that should promote the retention of rockfish larvae originating within Puget Sound, and limit the delivery of larvae from sources external to Puget Sound; and (2) NMFS' finding in 2001 that brown, copper, and quillback rockfishes in Puget Sound respectively warranted delineation as DPSs (Stout *et al.*, 2001; 66 FR 17659, April 3, 2001). Although the five petitioned rockfish species may be

considered to have high dispersal ''potential'' due to their long pelagic larval duration and high fecundity, their realized larval dispersal is determined to a large extent by local oceanographic patterns and larval behavior (Varanasi, 2007). Since the larvae of these rockfish species are generally associated with surface waters during the pelagic dispersal phase, we agree with the petitioner that the relatively closed circulation patterns of surface waters in Puget Sound lends support to the ''discreteness'' of these species in Puget Sound. Although, as the petitioner acknowledges, there are no population genetic studies of the five petitioned species that include samples from Puget Sound, the available studies of West Coast rockfish suggest that it is reasonable to suspect that there are genetically discrete Puget Sound population segments for these species. There are examples of rockfish populations exhibiting genetic differences in relation to circulation patterns and biogeographic barriers, many of which are probably less restrictive to trans-boundary larval dispersal than the entrance to Puget Sound (Sekino *et al.*, 2001; Varanasi, 2007). Even on the open coast where one might expect oceanographic patterns to result in considerable larval exchange and strong genetic similarities among stocks, the available genetic studies indicate that rockfish species exhibit some level of genetic population structure (Buonaccorsi *et al.*, 2002, 2005; Cope, 2004; Rocha-Olivares and Vetter, 1999). One of the petitioned species, bocaccio, also exhibits genetic population structure on the open coast (Matala *et al.*, 2004), and it is reasonable to assume the it would also show some genetic isolation within Puget Sound relative to other areas (Varanasi, 2007). Genetic studies that include samples from Puget Sound have found that rockfish populations in Puget Sound are generally distinct from populations sampled in other geographic areas (Buonaccorsi *et al.*, 2002, 2005). Based on the above information, it is plausible that the five petitioned species in Puget Sound satisfy the ''discreteness'' criterion under the joint-DPS policy (Varanasi, 2007).

In addition to the ''discreteness'' element a population must also be ''significant'' to be delineated as a DPS. As noted above, the petitioner contends that the five petitioned rockfish species are likely DPSs based on our 2001 DPS delineations for brown, copper, and quillback rockfishes in Puget Sound (Stout *et al.*, 2001). These three species were found to be ''significant'' based on unique environmental, geological, biogeographic factors, and likely adaptive life-history differences (e.g., coloration patters, mating behaviors, or timing of reproduction). NWFSC's review of the petition found no biological reason why brown, copper, and quillback rockfishes in Puget Sound would satisfy the ''significance'' criterion and the five petitioned species would not (Varanasi, 2007). Accordingly we find it reasonable that the five petitioned species in Puget Sound may warrant delineation as DPSs.

Does the Petition Present Substantial Information Indicating That the Hypothesized DPSs May Be ''Threatened'' or ''Endangered?''

Information Considered in the September 2006 Petition

The information provided by the petitioner concerning extinction risk is largely similar in substance to the petition submitted in September 2006, except for the inclusion of approximately 12 years of recreational catch data (see discussion of Recreational Fishery Data below). The petitioner repeats criticisms of our 2001 status review from the September 2006 petition. While the 2001 status review did not encompass the five species included in the April 2007 petition, the same methods would likely be used in a future status review for these species, should one be warranted. (The reader is referred to our earlier petition finding (72 FR at 2864; January 23, 2007) for further discussion of the petitioner's criticisms of the 2001 BRT's risk assessment methods). The recent petition again stresses the importance of age structure, longevity, and the maternal-age effect in evaluating the extinction risk of rockfish populations. (The reader is again referred to our earlier petition finding (72 FR at 2865; January 23, 2007) for further discussion of the maternal-age effect and related scientific publications). The petitioner disagrees with our discussion of the maternal-age effect in our earlier petition finding (72 FR 2865; January 23, 2007), feeling that we disregarded its potential importance to evaluating the risks faced by Puget Sound rockfish populations. The petitioner feels that we dismissed these laboratory studies because they focused on rockfish species other than those petitioned. As noted in our previous petition finding, we concluded that the importance of this maternal-age effect in the wild depends upon the age structure and age-at-maturity of the specific populations under consideration (72 FR 2865; January, 23, 2007). We are in agreement with the statement in the recent petition that ''the important parameter is simply the percentage of the spawning population composed of smaller females ...'' As was the case in our finding on the September 2006 petition, the necessary data is not available to evaluate the actual importance of the maternal-age effect for the five recently petitioned rockfish species. The petitioner's statements that we do not fully appreciate the maternal-age effect do not represent substantial scientific or commercial information indicating that the five petitioned species may warrant ESA listing.

Recreational Fishery Data

The April 2007 petition provides recreational catch data for the five petitioned species spanning approximately 12 years in the mid–1970s to mid–1990s. NWFSC's recent review (Varanasi, 2007) notes that although these data might suggest possible declines for three of the species (bocaccio, greenstripe, and red stripe rockfishes) and a lack of decline for the other two species (canary and yelloweye rockfish), the support for making any inferences regarding populations status is weak. Neither the petition nor NMFS' files contain information, for example, regarding the level or distribution of fishery effort, changes in fisheries practices, or changes in regulations governing fisheries in which the petitioned species are taken as bycatch. Because the five petitioned DPSs occur solely within state-managed waters, WDFW may have data relevant to these issues, though we do not know whether or to what extent such information has been collected and evaluated by WDFW. While NMFS does have some recreational fishing data within its agency files, no such information as it relates to the five petitioned rockfish species within Puget Sound waters is available. Without this additional information it is not possible to determine whether the recreational catch data reflect population status. We conclude that the recreational catch and other anecdotal information in the petition do not represent ''substantial scientific or commercial'' information that would lead a reasonable person to believe that the status of the petitioned species may be at risk.

Fishery Management Concerns

The petitioner reiterates concerns presented in the September 2006 petition that WDFW's fishery regulations inadequately protect Puget Sound rockfish stocks. In particular, the petitioner criticizes WDFW's reduction in 2000 of the daily bag limit for

rockfish to one fish, the establishment of voluntary no-take marine reserves, and the 2004 regulation restricting spear and recreational fishing for rockfish to periods when fisheries are open for lingcod and hatchery Chinook salmon. We recognize that the petitioner believes that WDFW could enact regulations to further protect Puget Sound rockfish stocks. However, the fishing regulations the petitioner criticizes represent a reduction from previous fishing levels, and do not portend an increasing threat due to fishing bycatch and mortality.

The petitioner is particularly concerned that the production of hatchery Chinook salmon in Puget Sound negatively affects rockfish stocks through the competition for limited food resources. The petitioner also feels that harvest directed at hatchery Chinook salmon results in significant bycatch of rockfish. However, he has presented no information in the petition to provide support for these contentions.

Petition Finding

After reviewing the information contained in the petition, as well as information readily available to our scientists, we determine that the petition fails to present substantial scientific or commercial information indicating the petitioned actions may be warranted.

References Cited

A complete list of all references is available upon request from the Protected Resources Division of the NMFS Northwest Regional Office (see **ADDRESSES**).

Authority: 16 U.S.C. 1531 *et seq.*

Dated: October 1, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E7–19743 Filed 10–4–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD13

Advisory Committee to the U.S. Section of the International Commission for the Conservation of Atlantic Tunas (ICCAT); Fall Meeting

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

ACTION: Notice of meeting.

SUMMARY: In preparation for the 2007 International Commission for the Conservation of Atlantic Tunas (ICCAT) meeting, the Advisory Committee to the U.S. Section to the ICCAT will meet in October 2007.

DATES: The meeting will be held October 18–19, 2007. There will be an open session the morning of Thursday October 18, 2007, beginning at 8:30 a.m. thru 12 p.m. The remainder of the meeting will be closed to the public. Oral and written comments can be presented during the public comment session on October 18, 2006. Mailed written comments on issues being considered at the meeting should be received no later than October 12, 2007.

ADDRESSES: The meeting will be held at the Crowne Plaza Hotel, 8777 Georgia Avenue, Silver Spring, MD 20910. Written comments should be sent to Kelly Denit at NOAA Fisheries Office of International Affairs, Room 12622, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Kelly Denit, Office of International Affairs, 301–713–2276.

SUPPLEMENTARY INFORMATION: The Advisory Committee to the U.S. Section to ICCAT will meet in open session on October 18. The Advisory Committee will receive management and research related information on the stock status of highly migratory species, including management recommendations of ICCAT's Standing Committee on Research and Statistics. There will be an opportunity for oral public comment during the October 18, 2007, open session. Written comments may also be submitted at the October 18 open session or by mail. If mailed, written comments should be received by October 12, 2007 (see **ADDRESSES**).

During its fall meeting, the Advisory Committee will also hold two executive sessions that are closed to the public. The first executive session will be held on October 18, 2007, and a second executive session will be held on October 19, 2007. The purpose of these sessions is to discuss sensitive information relating to upcoming international negotiations.

Special Accommodations

The meeting locations are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kelly Denit at (301) 713–2276 by at least 5 days prior to the meeting date.

Dated: October 1, 2007.

Rebecca J. Lent

Director, Office of International Affairs, National Marine Fisheries Service.

[FR Doc. E7–19718 Filed 10–4–07; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0138]

Federal Acquisition Regulation; Submission for OMB Review; Contract Financing

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0138).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension to a currently approved information collection requirement concerning contract financing. A request for public comments was published in the **Federal Register** at 72 FR 31815, June 8, 2007. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before November 5, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC

20503, and a copy to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Loeb, Contract Policy Division, GSA, (202) 501–0650.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Federal Acquisition Streamlining Act (FASA) of1994, Pub. L. 103–355, provided authorities that streamlined the acquisition process and minimize burdensome Government-unique requirements. Sections 2001 and 2051 of FASA substantially changed the statutory authorities for Government financing of contracts. Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items, and sections 2001(b) and 2051(b) substantially revised the authority for Government financing of purchases of non-commercial items.

Sections 2001(f) and 2051(e) provide specific authority for Government financing of purchases of commercial items. These paragraphs authorize the Government to provide contract financing with certain limitations.

Sections 2001(b) and 2051(b) also amended the authority for Government financing of non-commercial purchases by authorizing financing on the basis of certain classes of measures of performance.

To implement these changes, DOD, NASA, and GSA amended the FAR by revising Subparts 32.0, 32.1, and 32.5; by adding new Subparts 32.2 and 32.10; and by adding new clauses to 52.232.

The coverage enables the Government to provide financing to assist in the performance of contracts for commercial items and provide financing for non-commercial items based on contractor performance.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average 2 hours per request for commercial financing and 2 hours per request for performance-based financing, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden for commercial financing is estimated as follows:

Respondents: 1,000.
Responses Per Respondent: 5.
Total Responses: 5,000.
Hours Per Response: 2.
Total Burden Hours: 10,000.

The annual reporting burden for performance-based financing is estimated as follows:

Respondents: 500.
Responses Per Respondent: 12.
Total Responses: 6,000.
Hours Per Response: 2.
Total Burden Hours: 12,000.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0138, Contract Financing, in all correspondence.

Dated: September 28, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. 07–4950 Filed 10–4–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0134]

Federal Acquisition Regulation; Information Collection; Environmentally Sound Products

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning environmentally sound products. The clearance curently expires on January 31, 2008.

DATES: Submit comments on or before December 4, 2007.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0134, Environmentallly Sound Products, in all correspondence.

FOR FURTHER INFORMATION CONTACT Mr. William Clark, Contract Policy Division, GSA, (202) 219–1813.

SUPPLEMENTARY INFORMATION:

A. Purpose

This information collection complies with Section 6002 of the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6962). RCRA requires the Environmental Protection Agency (EPA) to designate items which are or can be produced with recovered materials. RCRA further requires agencies to develop affirmative procurement programs to ensure that items composed of recovered materials will be purchased to the maximum extent practicable. Affirmative procurement programs required under RCRA must contain, as a minimum (1) a recovered materials preference program and an agency promotion program for the preference program; (2) a program for requiring estimates of the total percentage of recovered materials used in the performance of a contract, certification of minimum recovered material content actually used, where appropriate, and reasonable verification procedures for estimates and certifications; and (3) annual review and monitoring of the effectiveness of an agency's affirmative procurement program.

The items for which EPA has designated minimum recovered material content standards are grouped into eigt categories: (1) construction products, (2) landscaping products, (3) nonpaper office products, (4) paper and paper products, (5) park and recreation products, (6) transportation products, (7) vehicular products, and (8) miscellaneous products. The FAR rule also permits agencies to obtain pre-award information from offerors regarding the content of items which the agency has designated as requiring minimum percentages of recovered materials. There are presently no known agency designated items.

In accordance with RCRA, the information collection applies to acquisitions requiring minimum percentages of recovered materials, when the price of the item exceeds $10,000 or when the aggregate amount paid for the item or functionally

equivalent items in the preceding fiscal year was $10,000 or more.

Contracting officers use the information to verify offeror/contractor compliance with solicitation and contract requirements regarding the use of recovered materials. Additionally, agencies use the information in the annual review and monitoring of the effectiveness of the affirmative procurement programs required by RCRA.

B. Annual Reporting Burden

Respondents: 64,350.
Responses Per Respondent: 1.
Annual Responses: 64,350.
Hours Per Response: .325.
Total Burden Hours: 20,914.
OBTAINING COPIES OF PROPOSALS: Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (VIR), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB control No. 9000–0134, Environmentally Sound Products, in all correspondence.

Dated: October 1, 2007.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. 07–4951 Filed 10–4–07; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

Department of the Army

Western Hemisphere Institute for Security Cooperation Board of Visitors; Meeting

AGENCY: Department of the Army, DoD.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and summary agenda for the fall meeting of the Board of Visitors (BoV) for the Western Hemisphere Institute for Security Cooperation (WHINSEC). Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). The Board's charter was renewed on February 1, 2006 in compliance with the requirements set forth in Title 10 U.S.C. 2166.

Date: Friday, November 2, 2007.
Time: 8 a.m. to 3 p.m.
Location: WHINSEC, 35 Ridgeway Loop, Room 219, Fort Benning, GA
Proposed Agenda: The WHINSEC BoV will be briefed on activities at the Institute since the last Board meeting on June 14, 2007 as well as receive other information appropriate to its interests. The BoV will be visiting classes from 9:30 a.m. to 1 p.m.

FOR FURTHER INFORMATION CONTACT: WHINSEC Board of Visitors Secretariat at (703) 692–7852 or (703) 692–8221.

SUPPLEMENTARY INFORMATION: At the time specified, the meeting is open to the public. Pursuant to the Federal Advisory Committee Act of 1972 and 41 CFR 102–3.140(c), members of the public or interested groups may submit written statements to the advisory committee for consideration by the committee members. Written statements should be no longer than two type-written pages and sent via fax to (703) 614–8920 by 5 p.m. EST on Tuesday, October 30, 2007 for consideration at this meeting. In addition, public comments by individuals and organizations may be made from 1 p.m. to 1:30 p.m. during the meeting. Public comments will be limited to three minutes each. Anyone desiring to make an oral statement must register by sending a fax to (703) 614–8920 with their name, phone number, e-mail address, and the full text of their comments (no longer than two type-written pages) by 5 p.m. EST on Tuesday, October 30, 2007. The first ten requestors will be notified by 5 p.m. EST on Wednesday, October 31, 2007 of their time to address the Board during the public comment forum. All other comments will be retained for the record. Public seating is limited and will be available on a first come, first serve basis.

Brenda S. Bowen,

Army Federal Register Liaison Officer.

[FR Doc. 07–4947 Filed 10–4–07; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

[Docket No. 2007–OE–01, Mid-Atlantic Area National Interest Electric Transmission Corridor; Docket No. 2007–OE–02, Southwest Area National Interest Electric Transmission Corridor]

National Electric Transmission Congestion Report

AGENCY: Department of Energy.

ACTION: Order.

SUMMARY: The following is a report by the Department of Energy (Department or DOE) on its August 2006 National Electric Transmission Congestion Study under section 216 of the Federal Power Act (FPA). This report and order designates two national interest electric transmission corridors: The Mid-Atlantic Area National Interest Electric Transmission Corridor (Docket No. 2007–OE–01); and the Southwest Area National Interest Electric Transmission Corridor (Docket No. 2007–OE–02). A list of the acronyms used in this report and order, and maps of the two national interest electric transmission corridors are provided at the end of this order.

DATES: The designations are effective October 5, 2007 and will remain in effect until October 7, 2019 unless the Department rescinds or renews the designation after notice and opportunity for comment.

FOR FURTHER INFORMATION CONTACT: For technical information, David Meyer, DOE Office of Electricity Delivery and Energy Reliability, (202) 586–1411, *david.meyer@hq.doe.gov.* For legal information, Warren Belmar, DOE Office of Legal Counsel, (202) 586–6758, *warren.belmar@hq.doe.gov,* or Lot Cooke, DOE Office of the General Counsel, (202) 586–0503, *lot.cooke@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Statutory Framework

Section 1221(a) of the Energy Policy Act of 2005 (Pub. L. 109–58) (EPAct) added a new section 216 to the Federal Power Act (16 U.S.C. 824p) (FPA). New FPA section 216(a) requires the Secretary of Energy (Secretary) [1] to conduct a nationwide study of electric transmission congestion [2] within one year from the date of enactment of EPAct and every three years thereafter. FPA section 216(a)(2) provides ''interested parties'' with an opportunity to offer ''alternatives and recommendations.'' 16 U.S.C. 824p(a)(2). Following consideration of such alternatives and recommendations, the Secretary is required to issue a report on the study ''which may designate any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers as a national interest electric transmission corridor.'' FPA section 216(a)(2), 16 U.S.C. 824p(a)(2). FPA section 216(a)(4) states that in determining whether to designate a national interest electric transmission corridor (National Corridor), the Secretary may consider whether:

(A) the economic vitality and development of the corridor, or the end markets served by the corridor, may be constrained by lack of adequate or reasonably priced electricity;

[1] This report uses the terms ''Secretary,'' ''Department,'' and ''DOE'' interchangeably.

[2] Electric transmission congestion (congestion) is the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously. Congestion results from a transmission capacity constraint (constraint).

(B)(i) economic growth in the corridor, or the end markets served by the corridor, may be jeopardized by reliance on limited sources of energy; and (ii) a diversification of supply is warranted;

(C) the energy independence of the United States would be served by the designation;

(D) the designation would be in the interest of national energy policy; and

(E) the designation would enhance national defense and homeland security.

16 U.S.C. 824p(a)(4).

FPA section 216 imposes several consultation requirements upon the Department. FPA section 216(a)(1) states that the Department shall conduct the congestion study in consultation with affected States. 16 U.S.C. 824p(a)(1). FPA section 216(a)(3) requires the Department to conduct the congestion study and issue the report in consultation with any appropriate Regional Entity. 16 U.S.C. 824p(a)(3).[3] In addition, FPA section 216(h)(9) states:

In exercising the responsibilities under this section, the Secretary shall consult regularly with—

(A) the Federal Energy Regulatory Commission;

(B) electric reliability organizations (including related regional entities); and

(C) Transmission Organizations approved by the Commission.

16 U.S.C. 824p(h)(9).[4]

The effect of a National Corridor designation is to delineate geographic areas within which, under certain circumstances, the Federal Energy Regulatory Commission (FERC) may authorize ''the construction or modification of electric transmission facilities.'' FPA section 216(b), 16 U.S.C. 824p(b). The statute imposes several conditions on the exercise of FERC's permitting authority within a National Corridor.

Under FPA section 216(b)(1), FERC jurisdiction is triggered only when either: the State does not have authority to site the project; the State lacks the authority to consider the interstate benefits of the project; the applicant does not qualify for a State permit because it does not serve end-use customers in the State; the State has withheld approval for more than one year; or the State has conditioned its approval in such a manner that the project will not significantly reduce congestion or is not economically feasible. 16 U.S.C. 824p(b)(1). FERC has issued regulations governing the process it will follow when reviewing any applications under FPA section 216(b), and those regulations incorporate the requirements of FPA section 216(b)(1).[5] Further, FPA section 216(g) states, ''Nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.'' 16 U.S.C. 824p(g).

Under FPA section 216(b)(2)–(6), FERC may issue a permit only if all of the following conditions are met: the facilities will be used for the transmission of electric energy in interstate commerce; the project is consistent with the public interest; the project will significantly reduce congestion in interstate commerce and protect or benefit consumers; the project is consistent with national energy policy and will enhance energy independence; and the project maximizes, to the extent reasonable and economical, the transmission capabilities of existing towers or structures. 16 U.S.C. 824p(b)(2)–(6).[6] With regard to the condition that a project must ''significantly reduce transmission congestion in interstate commerce and protects or benefits consumers,'' FERC has stated that it interprets this to mean that a project must significantly reduce the transmission congestion identified by DOE.[7]

In order to construct a transmission facility, a developer must obtain both a construction permit as well as a right-of-way across each piece of public or private property along the route. If FERC were to issue a permit under FPA section 216(b), it would constitute the construction permit; it would not, in and of itself, grant any rights-of-way. Thus, the holder of a FERC permit would still need to obtain rights-of-way. The first step in obtaining such rights-of-way would be for the developer to initiate negotiations with each affected property owner. If the permit holder could not acquire a necessary right-of-way through negotiation with a private property owner, then the FERC permit would entitle the permit holder to acquire the right-of-way by exercise of the right of eminent domain in either Federal or State court. FPA sec. 216(e)(1), 16 U.S.C. 824p(e)(1). The court would then determine the just compensation owed to the property owner by the permit holder, which would be the fair market value (including applicable severance damages) of the property taken on the date of the exercise of eminent domain authority. FPA sec. 216(f)(2), 16 U.S.C. 824p(f)(2).

The right of eminent domain would not apply to property owned by the United States or a State. *Id.* Thus, if FERC were to issue a permit for a transmission facility across Federal or State property, the permit holder would still need to reach agreement with the Federal or State agency responsible for managing that property in order to obtain a right-of-way across that property. In addition, FPA section 216(j)(1) provides that except as specifically provided, nothing in FPA section 216 affects any requirement of any Federal environmental law. 16 U.S.C. 824p(j)(1). Thus, a FERC permit does not absolve the permittee of compliance with other Federal law, including obtaining authorizations from other agencies implementing applicable Federal environmental laws.

The statute provides a specific mechanism by which States can insulate themselves from the FERC permitting provisions of FPA section 216(b). FPA section 216(i) provides special treatment where three or more contiguous States have entered into an interstate compact, subject to approval by Congress, establishing a regional transmission siting agency to carry out the electric transmission siting responsibilities of the member States. If such a compact were established, FERC would have no authority to issue a transmission permit within any of the member States unless those members were in disagreement and the Secretary, after notice and opportunity for a hearing, made a finding that the conditions of FPA section 216(b)(1)(C) were met. FPA section 216(i)(4); 16 U.S.C. 824p(i)(4).

FPA section 216(a) does not shift to the Department the roles of electric system planners or siting authorities in evaluating solutions to congestion and constraint problems. Transmission expansion is but one possible solution to a congestion or constraint problem. Other potential solutions include increased demand response; improved energy efficiency; deployment of

[3] Regional Entities are regional reliability organizations to which the North American Electric Reliability Corporation (NERC), as the designated Electric Reliability Organization under FPA section 215, has delegated authority to propose and enforce electric reliability standards.

[4] As defined in FPA section 215(a)(6), 16 U.S.C. 824o(a)(6), ''Transmission Organizations'' include Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs). RTOs and ISOs are Federally regulated entities charged with operating a regional transmission system in a manner that is non-discriminatory and ensures safety and reliability. The existing RTOs and ISOs do not own any transmission or generation and are run by independent boards of directors.

[5] Regulations for Filing Applications for Permits to Site Interstate Electric Transmission Facilities, Order No. 689, 71 FR 69,440, 69,468 (Dec. 1, 2006), 117 FERC ¶ 61,202 at pp. 128–29 (2006) (to be codified at 18 CFR pts. 50 and 380) (FERC Order No. 689), *order on reh'g*, 119 FERC ¶ 61,154 (2007) (§ 50.6(e) requires applicants to demonstrate that the conditions of FPA sec. 216(b)(1) are met).

[6] *See also id.* (§ 50.6(f) requires applicants to demonstrate that the conditions of FPA sec. 216(b)(2)–(6) are met).

[7] *See id.*, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 41.

advanced technology; and siting of additional generation, including distributed generation, close to load centers. Nothing in FPA section 216 requires or suggests that the Department should engage in a comparison of the relative merits of these different solutions to easing congestion in a specific geographic area.

For example, the congestion study required by FPA section 216(a)(1) is described as ''a study of electric transmission congestion,'' rather than a study of either the solutions to congestion or the need for transmission. FPA section 216(a)(2) authorizes the Department to designate areas experiencing constraints or congestion that adversely affect consumers, rather than areas where more transmission is needed. None of the considerations identified in FPA section 216(a)(4) necessitate a comparison of transmission and non-transmission solutions. The first two considerations, which look at whether economic vitality is constrained by either lack of adequate or reasonably priced electricity or reliance on limited sources of energy, focus on the effects of congestion and constraints rather than the effects of any potential solutions to such congestion or constraints. The remaining considerations address whether a National Corridor designation, rather than the construction of additional transmission, would promote energy independence, national energy policy, or national defense and homeland security.

Thus, FPA section 216(a) assigns to the Department the role of identifying transmission congestion and constraint problems, and the geographic areas in which these problems exist. A National Corridor designation is not a determination that transmission must, or even should, be built. Whether a particular transmission project, some other transmission project, or a non-transmission project is an appropriate solution to a congestion or constraint problem identified by a National Corridor designation is a matter that market participants, applicable regional planning entities, State authorities, and potentially FERC will consider and decide before any project is built. A National Corridor designation itself does not preempt State authority or any State actions, including action to approve or order the implementation of non-transmission solutions to congestion and constraint problems. If FERC jurisdiction under FPA section 216(b) were triggered, the designation of a National Corridor by the Secretary would not control FERC's substantive decision on the merits as to whether to grant or deny the permit application. Moreover, FERC has committed to considering non-transmission alternatives, as appropriate, during its permit application review process.[8]

Not only would a National Corridor designation not prejudice State or Federal siting processes against non-transmission solutions, it also should not discourage market participants from pursuing such solutions. Implementation of one solution to a congestion or constraint problem can reduce, and in some cases eliminate, the need for, and thus the viability of, competing solutions. For example, if a transmission line enabling the delivery of low-cost power from generation sources outside of a load center were to be put into service, the economic incentive to build a new generator closer to load could be eliminated. Designation of a National Corridor, however, does not constitute, advocate, or guarantee approval of any particular transmission project. Also, FERC, as discussed above, may only issue a permit if the applicant has shown that its project ''will significantly reduce transmission congestion in interstate commerce and protects or benefits consumers.'' If competing projects were to fully resolve the congestion or constraint problem before the issuance of a FERC permit, it would be difficult for the sponsor of a transmission project to make such a showing.[9] Further, developers who diligently pursue meritorious non-transmission solutions may be able to obtain approval for those solutions long before a FERC permit is issued. In many cases it has taken less time to plan, get approval for, and implement non-transmission projects than transmission projects.[10] In fact, FPA section 216, far from disadvantaging certain approaches to addressing congestion or constraint problems, is an attempt by Congress to put transmission projects on more of a level playing field with other congestion solutions.

Nor are the time frames established under FPA section 216 likely to provide any unfair head-start for transmission projects. A transmission developer must first devise a detailed plan for the project. Given the highly interconnected nature of the transmission grid, a developer considering any significant transmission project would need to work with the relevant RTO, ISO, or other regional or sub-regional transmission planning entities to explore the feasibility, likely costs, and likely system effects of alternative project designs. After having done substantial preparatory analyses and settled on a project design, the developer in most cases would file a permit application with a State agency and could not seek FERC review until the State had had one year to evaluate and act upon the application. FPA section 216(h) establishes a mechanism to ensure that requests for Federal authorizations to construct transmission facilities, whether within or outside a National Corridor, are acted upon within one year. 16 U.S.C. 824p(h).

However, a transmission developer must first complete a pre-filing process before filing an application at FERC that would trigger the one-year deadline under FPA section 216(h).[11] FERC has indicated that the pre-filing process for extensive projects may take a year to complete.[12] Thus, designation of a National Corridor should not reduce the incentive or time available to sponsors of non-transmission solutions to pursue such solutions.

A National Corridor designation is not the cause of proposals to construct transmission. A National Corridor designation is not a proposal to build a transmission facility and it does not direct anyone to make a proposal. A National Corridor designation does not create or discover the need to consider solutions to congestion or constraint problems. Developers of electricity projects, be they transmission or non-transmission, react to the state of the grid. It is the presence of congestion and constraints, already well known to most market participants, that causes developers to undertake projects.

Just as a National Corridor designation is not a decision about the

[8] *See id.; see also* 119 FERC ¶ 61,154 at P 61 (''During the pre-filing and application processes, Commission staff will work with the applicant and stakeholders to define issues in each proceeding, including the development of appropriate alternatives * * *. The public will have the opportunity to participate and file comments—which can include suggested alternatives of any kind—throughout this review.'').

[9] If non-transmission projects had not fully resolved the congestion problem, it would seem appropriate to consider the need for new transmission to supplement those non-transmission projects, and non-transmission project sponsors would have no legitimate expectation to the contrary.

[10] *See, e.g.*, S.P. Vajjhala and Paul S. Fischbeck, *Quantifying Siting Difficulty, A Case Study of U.S. Transmission Line Siting*, Resources For the Future Discussion Paper 06–03, at 3 (Feb. 2006) (''Transmission line siting is one of the most extreme examples of siting difficulty today * * *. Siting problems are not unique to the electricity industry; however, siting difficulties associated with transmission lines are especially complex.'').

[11] FERC Order No. 689, 71 FR 69,440, 69,466–67, 117 FERC ¶ 61,202 at pp. 122–27 (§ 50.5 establishes mandatory pre-filing procedures).

[12] *Id.*, 71 FR 69,440, 69,453, 117 FERC ¶ 61,202 at P 112.

best solution to a congestion or constraint problem, it also is not a siting decision. FPA section 216(a) does not shift to the Department the role of designing routes for transmission facilities, and a National Corridor designation does not dictate or endorse the route of any transmission project. If a transmission project is proposed in a National Corridor, it will be the State or local siting authorities, and potentially FERC if certain conditions are met, that will determine the specific route of that project. The designation of a National Corridor by the Secretary does not control FERC's substantive decision on the merits as to where any facilities covered by a permit should be located, or what conditions should be placed on that permit. If FERC jurisdiction were triggered by a proposed transmission project, FERC would conduct an evaluation of the reasonably foreseeable effects of transmission construction, including an analysis of alternative routes and mitigation options. Based on that analysis, FERC has the authority to approve the application, deny the application, or approve the application with modifications.[13]

In sum, by adding section 216 to the FPA, Congress directed that the National Corridor designation process establish a Federal safety net to provide, in a defined set of circumstances, an opportunity for analysis of the need for transmission from a national, rather than a State or local, perspective.

B. Congestion Study

In accordance with the mandate of FPA section 216(a)(1), the Department issued its initial congestion study (the Congestion Study) for comment on August 8, 2006. The Congestion Study gathered historical congestion data obtained from existing studies prepared by the regional reliability councils, RTOs and ISOs, and regional planning groups. The Congestion Study also modeled future congestion: The years 2008 and 2011 for the Eastern Interconnection; and the years 2008 and 2015 for the Western Interconnection. The modeling focused on five metrics: Binding hours (the number of hours per year that a path is loaded to its safe limit and, thus, unable to accommodate all desired power transactions), U90 (the number of hours per year that a path is loaded above 90 percent of its limit), all-hours shadow price (the marginal cost of generation redispatch required to accommodate a given constraint averaged across all hours in the year), binding hours shadow price (average shadow price over only those hours during which the constraint is binding), and congestion rent (shadow price multiplied by flow, summed over all hours the constraint is binding).

Based on the historical data and the modeling results, the Congestion Study identified and classified the most significant congestion areas in the country. Two ''Critical Congestion Areas'' (*i.e.* areas where the current and/or projected effects of congestion are especially broad and severe) were identified: The Atlantic coastal area from metropolitan New York through northern Virginia (the Mid-Atlantic Critical Congestion Area); and southern California (the Southern California Critical Congestion Area). Four ''Congestion Areas of Concern'' (*i.e.* areas where a large-scale congestion problem exists or may be emerging but more information and analysis appear to be needed to determine the magnitude of the problem) were identified: New England; the Phoenix-Tucson area; the San Francisco Bay area; and the Seattle-Portland area. Also, a number of ''Conditional Congestion Areas'' (*i.e.* areas where future congestion would result if large amounts of new generation were to be developed without simultaneous development of associated transmission capacity) were identified, such as: Montana-Wyoming; Dakotas-Minnesota; Kansas-Oklahoma; Illinois, Indiana and upper Appalachia; and the Southeast.

C. May 7 Notice

On May 7, 2007, the Department published a notice in the **Federal Register** that summarized and responded to the comments relevant to National Corridor designation received in response to the Congestion Study. 72 FR 25,838 (May 7, 2007) (May 7 notice). The May 7 notice also issued and solicited comment on draft National Corridor designations for the two Critical Congestion Areas identified in the Congestion Study: The draft Mid-Atlantic Area National Corridor; and the draft Southwest Area National Corridor.

In the May 7 notice, the Department noted that the term ''constraints or congestion that adversely affects consumers'' as used in FPA section 216(a)(2) is ambiguous and stated that while it was not attempting to define the complete scope of the term, the term does include congestion that is persistent. Thus, the Department stated that FPA section 216(a) gives the Secretary the discretion to designate a National Corridor upon a showing of the existence of persistent congestion, as persistent congestion has adverse effects on consumers. The Department also stated that the Secretary would decide whether to exercise the discretion to make National Corridor designations based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate. Further, the Department concluded that it would use a source-and-sink approach [14] to delineate the boundaries of the draft Mid-Atlantic Area National Corridor and the draft Southwest Area National Corridor.

With regard to the Mid-Atlantic Critical Congestion Area, the Department noted that the Congestion Study had identified this area based on evidence of historical, persistent congestion caused by numerous well-known constraints that are projected to continue and worsen unless addressed through remedial measures. The Department provided data documenting how frequently these constraints have been binding, and noted that the modeling for the Congestion Study projected that some of these constraints will continue to be problems in 2008, along with other additional constraints. The Department also documented the existence of persistent congestion through regional differences in generation capacity factors within the footprints of the PJM Interconnection, LLC, (PJM) [15] and the New York Independent System Operator (NYISO).[16] Based on this information, the Department found under FPA section 216(a)(2) that consumers in the Mid-Atlantic Critical Congestion Area are being adversely affected by congestion.

Having concluded that the Department may designate a National Corridor for the Mid-Atlantic Critical Congestion Area, the Department then examined whether it is appropriate to

[13] *See, e.g., id.* 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at PP 41–42 (''The Commission will conduct an independent environmental analysis of the project and determine if there is no significant impact as required by [the National Environmental Policy Act]. It will look at alternatives * * *. It will review the alternatives for their respective impacts on the environment and will determine mitigation measures to lessen the adverse impacts * * *. The Commission will also consider the adverse effects the proposed facilities will have on land owners and local communities.''); and 71 FR 69,440, 69,470, 117 FERC ¶ 61,202 at p. 142–43 (§§ 380.5(b)(14) and 380.6(a)(5) require either an environmental assessment or an environmental impact statement for projects seeking permits under sec. 216(b)).

[14] ''Source'' refers to an area of existing or potential future generation, and ''sink'' refers to the area of consumer demand or ''load.''

[15] PJM is the RTO serving parts or all of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia.

[16] NYISO is the ISO serving New York State.

exercise that discretion. Using historical data on locational marginal prices (LMPs) and capacity prices, the Department documented that congestion results in electricity consumers in the eastern portion of PJM's footprint consistently paying higher electricity prices than consumers in the western portion, and in consumers in southeast New York consistently paying higher electricity prices than consumers in the rest of the State. The Department documented that if action is not taken to address congestion, consumers in the Baltimore-Washington-Northern Virginia area, the northern New Jersey area, and southeast New York face threats to the reliability of their electricity supply. The Department also documented that congestion exacerbates the degree to which consumers in the eastern portion of PJM and in southeast New York rely on generation fueled by natural gas and oil. Finally, the Department described the importance of the Mid-Atlantic Critical Congestion Area to the security and economic health of the Nation as a whole. Thus, the Department stated its belief that economic development, reliability, supply diversity and energy independence, and national defense and homeland security considerations warrant exercise of the Secretary's discretion to designate a National Corridor for the Mid-Atlantic Critical Congestion Area.

With regard to the Southern California Critical Congestion Area, the Department noted that the Congestion Study had identified this area based on evidence of historical, persistent congestion caused by numerous well-known constraints that are projected to continue and worsen unless addressed through remedial measures. The Department provided data documenting how frequently these constraints have been binding, and noted that the modeling for the Congestion Study projected that some of these constraints will continue to be problems in 2008. The Department also documented the existence of persistent congestion using flow data, data on congestion and redispatch costs, and data on transmission service denials. Based on this information, the Department found under FPA section 216(a)(2) that consumers in the Southern California Critical Congestion Area are being adversely affected by congestion.

Having concluded that the discretion exists to designate a National Corridor for the Southern California Critical Congestion Area, the Department then examined whether it is appropriate to exercise that discretion. The Department documented that if action is not taken to address congestion, consumers in the Southern California Critical Congestion Area face threats to the reliability of their electricity supply. The Department also documented that congestion exacerbates the reliance of consumers in Southern California Critical Congestion Area on generation fueled by natural gas. Finally, the Department described the importance of the Southern California Critical Congestion Area to the security and economic health of the Nation as a whole. Thus, the Department stated its belief that reliability, supply diversity, and national defense and homeland security considerations warrant exercise of the Secretary's discretion to designate a National Corridor for the Southern California Critical Congestion Area.

To delineate the boundaries of both the draft Mid-Atlantic Area National Corridor and the draft Southwest Area National Corridor, the Department identified source areas that would enable a range of generation options and then identified the counties linking the identified source areas with the respective sink areas, *i.e.*, the Mid-Atlantic Critical Congestion Area and the Southern California Critical Congestion Area.

The Department stated that it intended to set a 12-year term for both the draft Mid-Atlantic Area National Corridor and the draft Southwest Area National Corridor. The Department further stated that FPA section 216(a)(1) did not require it to conduct an analysis of non-transmission solutions to congestion before designating either the draft Mid-Atlantic Area National Corridor or the draft Southwest Area National Corridor, and that the National Environmental Policy Act of 1969 (NEPA) did not apply to either designation.

On June 7, 2007, the Department published a notice of correction indicating that the May 7 notice had inadvertently omitted six counties from the narrative list of counties comprising the draft Mid-Atlantic Area National Corridor; the six counties had been correctly included, however, in the map of the draft Mid-Atlantic Area National Corridor. 72 FR 31571 (June 7, 2007) (June 7 errata).

The comment period on the May 7 notice closed on July 6, 2007. The Department also held a series of public meetings on the May 7 notice.[17] All timely filed comments, as well as written comments submitted at the public meetings and transcripts of those public meetings were posted on the Department's Web site in order to facilitate public review. In addition, the Department consulted with each of the States within the two draft National Corridors,[18] as well as with the Regional Entities that have authority within the draft National Corridors.[19]

D. Focus of This Report

1. Overview of Report

Section II of this report summarizes and responds to the comments received on the draft Mid-Atlantic Area National Corridor. Section III of this report summarizes and responds to the comments received on the draft

[17] Arlington, VA, May 15, 2007; San Diego, CA, May 17, 2007; New York City, NY, May 23, 2007; Rochester, NY, June 12, 2007; Pittsburgh, PA, June 13, 2007; Las Vegas, NV, June 20, 2007; and Phoenix, AZ, June 21, 2007.

[18] The Department sent a letter to the Governor of each of the States within the draft National Corridors and the Mayor of the District of Columbia on April 26, 2007, requesting an opportunity to consult with them on the draft designations. The Department then held consultation meetings described below with the representatives of the Governors and the Mayor. Delaware: The Department met with Delaware on May 3, 2007, in the Governor's Washington, DC office. By phone, a staff person from the Delaware Public Service Commission and the Department of Natural Resources and Environmental Control participated in the meeting. District of Columbia: The Department met with the District of Columbia on June 27, 2007. This meeting included staff from the DC Department of Environment and the Office of the City Administrator. Maryland: On May 11, 2007, the Department met with staff from the Governor's Washington, DC Office. New Jersey: The Department met with New Jersey on May 9, 2007, in the Governor's Washington, DC office. An aide from the Governor's staff in New Jersey participated by phone. New York: The Department conducted a conference call with staff from the Governor's Office in Albany, NY on May 9, 2007. In addition, DOE met with staff from the Governor's Washington, DC office on May 11, 2007. Ohio: The Department met with Ohio on May 3, 2007, in the Governor's Washington, DC office. By phone, this meeting included the Governor's staff in Ohio and staff from the Public Utilities Commission of Ohio. Pennsylvania: The Department met with staff from the Governor's Office at DOE Headquarters on May 10, 2007. This meeting included staff from the Pennsylvania Department of Environmental Protection. Virginia: The Department conducted a conference call with staff from the Governor's office on May 30, 2007. West Virginia: The Department conducted a conference call with staff from the Governor's office on May 24, 2007. Arizona: The Department met with staff from the Governor's Washington, DC office on May 9, 2007. California: The Department conducted a conference call with staff from the Governor's office on April 26, 2007. In addition, the Department met with staff in the Governor's Washington, DC office on May 3, 2007. Nevada: The Department met with staff in the Governor's Washington, DC office on May 3, 2007.

[19] On May 21, 2007, the Department sent letters to the affected Regional Entities inviting consultation on the draft designations. Northeast Power Coordinating Council, Inc. (NPCC) responded and the Department conducted a conference call on July 6, 2007. ReliabilityFirst Corporation responded and the Department conducted a conference call on July 3, 2007. SERC Reliability Corporation and Western Electricity Coordinating Council (WECC) did not respond, although WECC filed timely written comments in this proceeding.

Southwest Area National Corridor. Section IV summarizes and responds to the comments received on the applicability of NEPA, the National Historic Preservation Act (NHPA), and the Endangered Species Act (ESA) to National Corridor designations. Section V of this report orders the designation of the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor.

This report focuses on the two geographic areas of the Nation experiencing the most acute and urgent electric transmission congestion problems; the report takes no action with regard to the other geographic areas discussed in the Congestion Study. The Department recognizes that it has received many comments and suggestions concerning the issues of: (1) National Corridor designation for areas other than the two Critical Congestion Areas, (2) technical aspects of the Congestion Study that relate to areas outside the two Critical Congestion Areas, and (3) the conduct of future congestion studies. The Department appreciates these comments and will consider these issues at a later date.

2. Other Issues

Numerous commenters addressed issues that the Department considers to be beyond the scope of this report. These issues are described below.

a. Opposition to FPA Section 216

Summary of Comments

Many commenters opposed the very concept of a National Corridor and urged the Department to refrain from designating any National Corridors. Some of these commenters argued that the eminent domain and Federal preemption provisions of FPA section 216 violate the Fifth and Tenth Amendments to the U.S. Constitution [20] and are undemocratic.[21] These commenters argued that a for-profit company should never be granted eminent domain,[22] and expressed skepticism that the Federal government could appropriately balance competing interests when reviewing applications to construct transmission.[23] Some commenters objected to the provision in FPA section 216(b)(1)(C)(i) granting FERC jurisdiction within a National Corridor where a State commission has withheld approval of a transmission application for more than a year. These commenters argued that this one-year deadline will not provide adequate time to assess meaningfully the environmental impacts of a proposed transmission line project.[24]

Other commenters urged the Department to refrain from designating any National Corridors in light of various alleged generic adverse effects of transmission, including: The effects of electromagnetic fields on human health and the health of livestock and wildlife; [25] the effect of herbicides used to maintain transmission rights of way; [26] disruption of farming; [27] reduction of property values; [28] effect on viewsheds; [29] fragmentation of wildlife habitat; [30] and encroachment on open space.[31]

Many commenters argued that instead of implementing FPA section 216(a), the Department should focus on developing and promoting a national energy plan based on conservation, energy efficiency, and distributed generation.[32] These commenters argued that National Corridor designations would encourage utilities to pursue outdated, environmentally destructive transmission solutions and discourage the development of more innovative, sustainable solutions. Michael Arrington, for example, stated, ''[National Corridors] will only give utilities another reason not to innovate or conserve.'' [33]

Numerous individuals suggested specific steps the Department should take in lieu of designating National Corridors, including banning the use of incandescent lights[34] and mandating higher efficiency standards in building codes.[35]

DOE Response

These comments are essentially suggestions that Congress should not have enacted FPA section 216, and requests that the Department ignore FPA section 216(a) based on concerns about the very statutory framework. The Department has an obligation to act consistent with the terms of FPA section 216(a) as written and enacted into law. Objections to the terms of this provision simply do not provide a basis for declining to implement the statute.

The Department has no basis to conclude that the provision is unconstitutional. The Fifth Amendment to the U.S. Constitution bars the taking of private property for a public purpose without just compensation, but as discussed in Section I.A above, FPA section 216(f)(2) explicitly provides for payment of just compensation in the event that a FERC permit holder were to exercise the right of eminent domain. While the Tenth Amendment reserves to States those powers not delegated to the Federal government by the Constitution, the Interstate Commerce Clause of Article I explicitly authorizes the Federal government ''to regulate commerce with foreign nations, and among the several states, and with Indian tribes.'' [36] As discussed in Section I.A above, FERC's permit authority is limited to facilities that will be used for the transmission of electric energy in interstate commerce. FPA section 216(b)(2), 16 U.S.C. 824p(b)(2).[37]

[20] *See, e.g.*, comments of Tommy and Kathy Hildebrand, Cindy Carter, and Gary Manoni.

[21] *See, e.g.*, comments of Faith Bjalobok and statement of Christopher Zimmerman at May 15, 2007, Arlington, VA public meeting.

[22] *See, e.g.*, comments of Joseph Zappulla and New York Public Interest Research Group (NYPIRG). *See also* comments of the Pennsylvania Senate.

[23] *See, e.g.*, comments of Howard Armfield (''The State Corporation Commission of Virginia is in a better position than at the Federal level to know the historical importance of areas under consideration for a utility line.''), Donald Law (''The federal government should not interfere with this process.''), Julie Keller (''A state has better knowledge of the impact of transmission lines etc. and bases it's decisions on the best interest of its local citizens rather than private companies or federal agencies.''), Jackie Grant (''I feel the public, local municipalities, and the states should be able to address their energy needs locally. Local and state efforts to resolve energy demands should not be undermined by the federal government.''), and Chenango County Farm Bureau.

[24] See, *e.g.*, comments of the New Jersey Department of Environmental Protection (NJDEP) and the Pennsylvania Department of Environmental Protection (PaDEP).

[25] *See, e.g.*, comments of Lew McDaniel, David Katch, Alison Hanham, and William Hopkins.

[26] *See, e.g.*, comments of Travis Turnley and Lee Scherer.

[27] *See, e.g.*, comments of Pennsylvania Farm Bureau.

[28] *See, e.g.*, comments of Sean Dobich, Jane Eickhoff, and Henry Woolman III.

[29] *See, e.g.*, comments of Louise Peterson and Thomas Hoffman, Jr.

[30] *See, e.g.*, comments of Murray Lantner and Ross Cooper.

[31] *See, e.g.*, comments of Michael McPoland and Aurore Giguet.

[32] *See, e.g.*, comments of Upen Patel, John Sprieser, Raman Jassal, Robert Hanham, Nora Palmatier, and Karen Kampfer, and statement of Paul Miller at June 12, 2007, Rochester, NY public meeting.

[33] *See also* comments of Russell McKelway (''I believe that cessation of land condemnation for power lines would force the kind of conservation of energy that our country desperately needs to reduce dependence on foreign sources of energy and to reduce global warming.''), Nora Marsh (''Yes, we have energy issues but the solution is not with old technology.''), and Sheila Paige (''Conservation and anti-congestion planning are vitally important—not to be swept under the rug by temporary and ill-researched band-aids. These 'corridors'—actually vast regions—represent nothing but permission for power companies to continue doing what they do badly.'').

[34] *See, e.g.*, comments of Joel Silverthorn and Karee Miller.

[35] *See, e.g.*, comments of Ben Pisarcik and A. Pellechia.

[36] U.S. CONST. art. I, § 8, cl. 3.

[37] *See also Pub. Util. Comm'n of R.I.* v. *Attleboro Steam & Elec. Co.*, 273 U.S. 83, 86 (1927)

Continued

Further, there is nothing novel about either the concept of granting eminent domain authority to for-profit utilities providing services deemed to be in the public interest, or the concept of Federal preemption with regard to the siting of interstate energy facilities. In most States, for-profit utilities that obtain permits to construct transmission facilities are granted the right of eminent domain.[38] Also, FERC and its predecessor, the Federal Power Commission, have been issuing permits for the construction of non-Federal hydropower facilities and associated primary transmission lines since 1920 and for the construction of interstate natural gas pipelines since 1938, all of which permits granted the right of eminent domain. *See* FPA sec. 4(e) and 21, 16 U.S.C. 797(e) and 814; and Natural Gas Act, sec. 7(a) and (h), 15 U.S.C. 717f(a) and (h). In fact, given the inherently interstate nature of transmission, Congress could have completely preempted State siting of interstate transmission facilities, as it did almost 70 years ago with regard to siting of interstate natural gas pipelines.[39]

As for those comments suggesting that a National Corridor designation is never appropriate because of the risks posed by transmission facilities, we note that all forms of energy infrastructure pose risks and benefits. The nature and magnitude of the risks and benefits posed by a particular infrastructure project (be it transmission or non-transmission), the feasibility and cost of mitigating those risks, and the comparison of the relative risks and benefits of competing projects are all issues with which electric system planners and siting authorities must grapple. However, as discussed in Section I.A above, FPA section 216(a) does not shift to the Department the roles of electric system planners or siting authorities in evaluating solutions to congestion and constraint problems. Moreover, the Department has no basis to conclude that the effects of transmission are so adverse that National Corridor designations are never warranted or are warranted only as a last resort. In fact, FPA section 216 evinces Congress' concern that transmission was not always being approved where and when needed.

With regard to comments that the Department should abandon designation of National Corridors and pursue other energy policies, the Department notes that it is already actively engaged in efforts to promote conservation, energy efficiency, and distributed generation. For example, the Department funds a broad range of research and development in technologies that can be used as alternatives and supplements to transmission lines, including: Advanced methods of central generation such as nuclear energy, central solar, clean coal and sequestration of its carbon emissions, wind, geothermal, hydroelectric, and gas-fired combustion turbines; distributed generation such as solar photovoltaics; energy efficiency; demand response; better transmission conductors, such as those using high temperature superconductivity, that greatly reduce transmission losses; electricity storage; and ''smart grid'' technologies and related methods. In addition, the Department provides best-practice-based expert technical assistance to States that wish to enact electricity-related laws, policies, or programs to encourage, allow, or otherwise enable their electric utilities to make greater use of alternatives to transmission lines. Upon the request of State utility regulators, the Department also has facilitated efforts to build regional consensus on means to improve energy efficiency, demand response, and distributed generation in retail and wholesale electricity markets, such as through the Mid-Atlantic Distributed Resources Initiative, the Midwest Distributed Resources Initiative, the Pacific Northwest Distributed Resources Project, the New England Demand Response Initiative, and the 2006 National Action Plan for Energy Efficiency.

Regardless, FPA section 216(a) requires the Department to conduct a congestion study every three years, and upon completion of such a study, to issue a report or reports in which it determines whether or not to designate one or more National Corridors. FPA section 216(a) does not grant the Department any other authorities or options. Therefore, requests that the Department initiate other regulatory activities are beyond the scope of these proceedings.

Further, the Department disagrees that designation of a National Corridor limits or discourages non-transmission solutions (including conservation, energy efficiency, and distributed generation) to congestion or constraint problems. As discussed in Section I.A above, the Department sees no reason to conclude that a National Corridor designation would either prejudice State or Federal decision processes against non-transmission solutions or discourage market participants from pursuing such solutions.

The only ''benefit'' that a National Corridor designation confers upon sponsors of proposed transmission projects is the provision of a potential Federal forum for review. The existence of this procedural option could well result in outcomes that differ from those that would result in its absence. Thus, the end result could be the additional or earlier construction of transmission. However, the fact that one process may produce a different result than another is not proof that the process is skewed in favor of a particular substantive result. For example, allowing applicants to appeal agency decisions in court can produce different outcomes than a system without a judicial right of appeal, but the existence of such a right does not constitute a bias. The Department has no reason to believe that designation of National Corridors will result in transmission projects supplanting superior non-transmission solutions.

As many commenters have noted, FPA section 216(a) does not mandate the designation of any National Corridors; the statute states that the Department ''may'' designate a National Corridor. As explained further in Sections II and III below, the Department has concluded that in the case of the Mid-Atlantic Critical Congestion Area, the reliability of the supply of electricity to the political capital and to a key financial center of this Nation is at some risk; in the case of the Southern California Critical Congestion Area, a large and populous portion of one State faces threats to reliability while an adjacent State says that its generation resources should be reserved for the benefit of its residents. While the statute does grant the Department discretion, the Department believes that withholding the opportunity for a Federal safety net in the circumstances presented would be inconsistent with the intent of FPA section 216(a).

(*Attleboro*) (transmission of electricity from one State to another is interstate commerce); and *Fed. Power Comm'n* v. *Florida Power & Light,* 404 U.S. 453, 462 (1972) (*FPL*) (transmission of electricity within one State held to be interstate commerce because the electricity commingled with electricity that was being transmitted out of State).

[38] *See, e.g.*, ARIZ. REV. STAT. ANN. § 12–1111 (2007); VA. CODE ANN. § 1–219.1 (2007); N.Y. TRANSP. CORP. LAW § 11 (2006); W. VA. CODE ANN. § 54–1–2 (2006); 66 PA. CONS. STAT. ANN. § 1104 (1978); CAL. PUB. UTIL. CODE § 612 (1975). Moreover, while FPA section 216(e)(1) provides holders of FERC permits with the option of going to either Federal or State court to exercise eminent domain, the statute also specifies that ''[t]he practice and procedure'' in any Federal eminent domain proceeding ''shall conform as nearly as practicable to the practice and procedure in a similar action or proceeding in the courts of the State in which the property is located.'' FPA sec. 216(e)(3), 16 U.S.C. 824p(e)(3).

[39] *See, e.g., Attleboro,* 273 U.S. at 86.

b. Comments on the Merits of Specific Transmission Projects

Summary of Comments

Most of the written comments as well as most of the oral statements made at the Department's public meetings came from individuals who indicated that they live or own property near the routes of particular proposed transmission projects that would be within the draft National Corridors. Many of these individuals commented on the adverse effects that approval of these particular transmission projects would have on them.[40] Some of these individuals acknowledged that designation of a National Corridor is not the same as approving a specific transmission project. Nonetheless, they argued that designation of the draft National Corridors would increase the chances that these particular transmission projects would be approved, and, thus, consideration of the merits of those particular lines in this proceeding is warranted. For example, Cynthia Ridout commented:

My home is directly in the path of a proposed 500 kV transmission line in Southwest PA. I speak today to defend that home. The PA PUC is currently examining the proposal for the line, and may yet deny permission for it to be built. This careful investigation is the protection offered me as a citizen of PA. The looming danger for me, though, is the threat of NIETC designation. My fear is that private for-profit companies view the NIETC as a carte blanche to quickly gain approval for and build transmission lines to reap enormous profits.[41]

Numerous elected officials, environmental organizations, and other groups raised similar objections to specific proposed transmission projects.[42]

A number of other commenters described the alleged benefits of specific proposed transmission projects that would be within the draft National Corridors.[43]

DOE response

As the Department stated in the May 7 Notice and as explained further in Section I.A above, designation of a National Corridor is not a siting decision, nor does such designation constitute approval or disapproval, or endorsement or rejection of any transmission project. The Department neither supports nor opposes any of the particular transmission projects that have been proposed within the draft National Corridors; indeed, the Department has not evaluated the merits of the design or route of any specific proposed transmission project, including whether any specific transmission project would meet the FPA section 216(b)(2)–(6) criteria for issuance of a FERC permit. The boundaries of the National Corridors being designated today are not based on any proposed transmission projects.

The existence of a National Corridor designation does not mean that any transmission project within that National Corridor will ultimately be approved, let alone approved exactly as proposed by the project sponsor. As discussed in Section I.A above, if FERC jurisdiction were triggered, FERC could issue a permit only if all of the following conditions are met: The facilities will be used for the transmission of electric energy in interstate commerce; the project is consistent with the public interest; the project will significantly reduce congestion in interstate commerce and protect or benefit consumers; the project is consistent with national energy policy and will enhance energy independence; and the project maximizes, to the extent reasonable and economical, the transmission capabilities of existing towers or structures. FPA sec. 216(b)(2)–(6); 16 U.S.C. 824p(b)(2)–(6). FERC has issued regulations governing the process it will follow under FPA section 216(b). These regulations provide that if FERC jurisdiction under FPA section 216(b) were triggered, FERC would conduct an evaluation of the reasonably foreseeable effects of transmission construction, including an analysis of alternative routes and mitigation options. Based on that analysis, FERC has the authority to approve the application, deny the application, or approve the application with modifications.[44]

Determination of whether and where to site transmission facilities raises important and difficult issues, the resolution of which is of especially critical importance to the people who live and work near those facilities. However, the pros and cons of any particular proposed transmission project are not germane to the Department's determination under FPA section 216(a) of whether consumers are being adversely affected by constraints or congestion such that National Corridor designation is appropriate.

c. Designation in the Absence of Current Congestion

Summary of Comments

A few commenters, including the Organization of MISO States (OMS), the National Association of Regulatory Utility Commissioners (NARUC), the Ohio Power Siting Board (OH Siting Board), the Michigan Public Service Commission (MiPSC), and Communities Against Regional Interconnect (CARI), expressed concern about the Department's statement in the May 7 notice that the Secretary has discretion to designate a National Corridor in the case of a constraint that is hindering the development of generation that would be beneficial to consumers without demonstrating present congestion.

[40] *See, e.g.*, comments of Kathleen Yasas (''I live along the route that has been proposed by New York Regional Interconnect, Inc. (NYRI) for a 400,000-volt direct current power line. This foreign-owned project would bisect numerous communities, undermine our already fragile economy, wreak havoc on our environment and raise electric rates while delivering no benefits.''), Charles Elmes (''If this [NYRI] line were to go through my property, it would take a line through my farm about 6,000 feet long right through the middle of my polo fields, essentially putting me out of business and rendering the rest of my farm practically useless.''), Fred and Debra Burnside (''I protest Allegheny Energy's Trans-Allegheny Interstate Line. The line would run through my property and we only own 1 acre. I fear it would reduce the value of my property. * * *''), Janie Ricciuti (''We live within 600 ft of the proposed APTrail. My husband served his country in Vietnam, he has CTCL from Agent Orange Exposure. These towers are a death sentence for him.''), Vanessa Mueller (''I would like to go on record as saying I am opposed to Dominion's proposal to place power lines through this area.''), Linda Rose (''We are opposed to Dominion VA Power's attempted desecration of our local countryside. * * *''), Teresa Barker (''I would like to express my opposition to the Sunrise Powerlink * * *. The visual impacts will create a scar on our landscape that will endure for generations.''), and Alison Law-Mathisen (''The City of Los Angeles, under the guise of the 'Green Path Project,' is targeting many communities with blight * * *''); *see also* statement of Jay Biba at June 12, 2007, Rochester, NY public meeting, and statement of Terry Simmons at June 13, 2007, Pittsburgh, PA public meeting.

[41] *See also* comments of Eugene and Kristin Gulland, (''By granting the designation, DOE would make a de facto endorsement of the [Dominion's/Allegheny's] preferred pathway * * *'') and Kate Severinsen (''Corridor designation allows NYRI to complete the state Public Service Commission's review process knowing the federal government can and will say 'yes' even if the State of New York says 'no' to it.'').

[42] *See, e.g.*, comments of U.S. Rep. Hall, Chenango County Farm Bureau, City of Paris, New York, and Communities United for Sensible Power.

[43] *See, e.g.*, comments of San Diego Gas and Electric (SDG&E), New York Regional Interconnect Inc. (NYRI), Allegheny Energy, Inc. (Allegheny), American Electric Power (AEP), and the California Chamber of Commerce.

[44] FERC's experience in siting interstate natural gas pipelines demonstrates the latitude that FERC possesses to modify applications for energy infrastructure construction. FERC has processed many applications to construct natural gas pipelines and, where such applications have been approved, the final route has almost always been different from that proposed by the project sponsor. *See, e.g., Millenium Pipeline Co., L.P.,* 97 FERC ¶ 61,292 (2001) (ordering developer to negotiate with elected officials and interested parties and citizens to work toward an agreement on an alternate route through Mount Vernon, NY); and *Greenbrier Pipeline Co., LLC*, 103 FERC ¶ 61,024 (2003) (authorizing construction subject to 47 different environmental conditions, including a major route alternative and four route variations).

These commenters argued that the Department's position appears inconsistent with the plain language and legislative intent of FPA section 216(a)(2). NARUC asked that the Department clarify how constraints or congestion that adversely affects consumers can be ''experienced,'' as required by the statute, if there is not yet generation that constrains or congests the system. OMS requests that the DOE reconsider its position or refrain from making these and similar findings in its final order on the two draft National Corridors. OH Siting Board states that DOE should reserve the issue regarding its authority to designate National Corridors for Conditional Congestion Areas for a future time.

DOE Response

The May 7 notice addressed the question of designating a National Corridor in the absence of current congestion in response to conflicting comments we received on the Congestion Study. Some commenters on the Congestion Study asked the Department to clarify that it was not foreclosing the possibility of designating National Corridors for Conditional Congestion Areas before the expected generation was developed; others argued that no such designations were permissible because the statute requires a showing that an area is currently experiencing congestion adversely affecting consumers. In the May 7 notice, we observed that there is no generally accepted understanding of what constitutes a ''geographic area experiencing electric energy transmission constraints or congestion that adversely affects consumers,'' and the phrase, as used in the statute, is ambiguous. We noted that one way in which constraints can adversely affect consumers is by causing congestion that in turn adversely affects consumers. However, we also noted that if Congress had intended to limit the Secretary's designation authority over constraints to cases where constraints are currently causing congestion, then there would have been no need for the statutory language to refer to congestion or constraints. Further, we agreed with those commenters who argued that the total absence of a line connecting two nodes can be just as, if not more, limiting to consumers than the presence of a line that is operating at capacity and, therefore, that ''constraint'' includes the absence of transmission facilities between two or more nodes. Thus, we stated that the statute does not appear to foreclose the possibility of National Corridor designation in the absence of current congestion, so long as a constraint, including the absence of a transmission line, is demonstrably hindering the development of desirable generation. We noted that this interpretation would not only give meaning to all terms in the statutory phrase ''constraints or congestion that adversely affects consumers,'' it would also be consistent with the statutory reference to ''experiencing'' a constraint. Under this interpretation, any National Corridor designation would necessitate a showing that a current lack of capacity exists and that such lack of capacity is having a current, tangible effect—generation that would be of benefit to the general public including consumers, is actually being hindered by the lack of capacity to bring it to market. Finally, we noted that we were leaving open the question of the type of information that would be required to demonstrate that a constraint actually is hindering the development or delivery of a generation source and that development or delivery of such generation source would be beneficial to consumers.

The Department is not relying on this interpretation of its statutory authority for either of the two designations being made in this report. Despite the characterizations of some commenters, in the case of both the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor, the Department's assertion of authority is based on the conclusion that congestion adversely affecting consumers is currently being experienced. Neither of these two designations relies on any interpretation of the scope of the Department's authority in the absence of current congestion. If and when the Department considers making a National Corridor designation in the absence of current congestion, it intends to provide such designation in draft form for public comment and to consult with all affected States prior to making any final decision. At that time, interested parties will have a full opportunity to raise any concerns they have about the adequacy of the Department's demonstration of authority. Further clarification is beyond the scope of these proceedings.

d. FERC's Process

Summary of Comments

Some commenters raise objections to FERC's process for reviewing permit applications under FPA section 216(b). These commenters dispute FERC's interpretation of FPA section 216(b)(1)(C)(i) allowing it to exercise jurisdiction where a State has denied, as opposed to simply delayed action on, an application.[45] NJDEP expresses concern about how FERC will interpret the one-year timeframe for State action under FPA section 216(b)(1)(C)(i). PaDEP expresses concern that FERC's review will be narrowly restricted to the merits of a proposed line rather than examining whether generation or demand resources can better satisfy the underlying needs. PaDEP also expressed concern that approval by one State of a portion of a multi-state project may prejudice FERC's review.

On the other hand, National Grid USA (National Grid) states that FERC's siting rules include a substantial measure of deference to existing regional, State, and local planning and siting processes.

DOE Response

Congress specifically granted to FERC, rather than to DOE, the responsibility of reviewing any permit applications under FPA section 216(b). As required by FPA section 216(c)(2), FERC has issued regulations governing the process it will follow when reviewing any such applications. These regulations are being challenged in court.[46] Any allegations of inadequacy or inconsistency with statutory intent must be addressed there and are beyond the scope of these proceedings.

II. Mid-Atlantic Area National Corridor (Docket No. 2007–OE–01)

A. Procedural Matters

1. Parties to This Proceeding

The May 7 notice provided instructions on how to provide comments and how to become a party to the proceeding in this docket. Consistent with those instructions, the Department is granting party status in this docket to all persons who either: (1) Filed comments electronically at *http://nietc.anl.gov* on or before July 6, 2007; (2) mailed written comments marked ''Attn: Docket No. 2007–OE–01'' to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, that were received on or before July 6, 2007; or (3) hand-delivered written comments marked ''Attn: Docket No. 2007–OE–01'' at one of the public meetings.

[45] *See, e.g.*, comments of the Delaware Department of Natural Resources and Environmental Control (DeDNR) and the Public Utilities Commission of Nevada and the Nevada State Office of Energy (Nevada Agencies).

[46] *See Piedmont Environmental Council, et al.* v. *FERC,* 4th Cir., Nos. 07–1651, *et al.*

2. Fairness of the Designation Process

Summary of Comments

Many commenters, including numerous individuals, argued that the Department had failed to provide adequate opportunity for the public to review and comment on the draft National Corridors. For example, John Balasko argued that the Department should have done more to inform and involve the general public because, ''If this corridor is adopted, no longer will landowners within the corridor be free to make sound land management decisions because the hammer of the Federal Energy Regulatory Commission and perhaps federal eminent domain is looming in the background.'' CARI contends that designation of the draft Mid-Atlantic Area National Corridor would be a ''rule'' subject to the notice and comment rulemaking requirements of the Administrative Procedure Act, 5 U.S.C. 553 (APA). Many commenters argued that more public meetings should have been held and that they should have been held along the routes of various proposed transmission projects within the draft National Corridors.[47] Numerous commenters requested an extension of the comment period. In particular, commenters argued that the June 7 errata published by the Department warranted an extension of the comment period. Numerous individuals and organizations asserted that the Department had failed to reveal the data underlying the draft designations.[48]

Many commenters, including a number of individuals, alleged that the draft National Corridor designations were the result of improper influence by transmission companies.[49] Some commenters complained that instead of conducting an independent study of congestion, the Department improperly relied on data and analyses from utilities or others with a vested interest in transmission expansion.[50]

DOE Response

The Department concludes that its process has been fair, open, and transparent, and that it has provided ample opportunity for public comment. DOE does not agree that the designation of National Corridors is subject to the APA's informal rulemaking provisions. FPA section 216(a) does not expressly require rulemaking, and, in DOE's view, the designation of National Corridors constitutes informal adjudication under the APA. Absent a statutory or other legal requirement providing otherwise, the choice whether to use rulemaking or adjudication in a particular matter is the administrative agency's to make. The APA defines ''adjudication'' as ''an agency process for the formulation of an order.'' 5 U.S.C. 551(7). An order is ''the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rule making but including licensing.'' 5 U.S.C. 551(6). A report designating a National Corridor is the final disposition in declaratory form of how DOE chooses to address the results of the study it must conduct under FPA section 216(a), and, therefore, is an informal adjudication for APA purposes.

Regardless of the label one applies to the designation of National Corridors, DOE has employed procedures that satisfy all applicable procedural requirements. DOE complied with FPA section 216(a)(2) by soliciting comments on the Congestion Study through a notice of availability and request for comments published on August 8, 2006 (71 FR 45047). DOE allowed 60 days for submission of public comments on the Congestion Study. After considering the comments received pursuant to that solicitation, DOE published the May 7 notice and provided a 60-day public comment opportunity on draft National Corridor designations. The May 7 notice stated that public comments would be considered prior to DOE issuing a report as required by FPA section 216(a)(2). DOE provided this comment opportunity even though FPA section 216(a) does not require DOE to solicit comments on either the report or on any proposed or draft National Corridor designations. FPA section 216(a) only requires that DOE solicit comments on the study, upon which the report and any designation of National Corridors are based.

In addition, the Department held a series of public meetings on the draft National Corridors. Although the Department was not required to hold any public meetings, it announced in the May 7 notice that it would hold three public meetings. In response to numerous requests for additional meetings, the Department held four more meetings. With regard to complaints about the Department's failure to schedule meetings along the routes of various proposed transmission projects, the Department notes that, as discussed in Section I.A above, designation of a National Corridor is not a siting decision, nor does such designation constitute approval or endorsement of any transmission project.

While some commenters argue that the June 7 errata warranted extension of the comment period, the Department notes that the counties inadvertently omitted from the narrative list were included in the previously available map of the draft Mid-Atlantic Area National Corridor. Further, given that the designations were issued in draft and the Department was soliciting comment on those drafts, including comment on its delineation of the boundaries of the draft National Corridors, persons concerned about counties in the general vicinity of the draft National Corridors were on notice on May 7, 2007, of the need to provide comments by July 6, 2007.

The Department believes it has provided adequate disclosure of information. The May 7 notice identified the specific data the Department relied on to: Establish the existence of congestion adversely affecting consumers, determine whether the Secretary should exercise his discretion to designate a National Corridor, and delineate the specific boundaries of the draft National Corridors. Those data included memoranda that the Department has made available on its Web site. In addition, as noted in the May 7 notice, the non-proprietary data relied on in the Congestion Study has been available on the Department's Web site since September 27, 2006.

The Department did not rely solely on data and information from any single source or category of sources. While conducting the Congestion Study, the Department contacted a wide range of stakeholders for publicly available and current data, and then, through the notice of inquiry and technical conference, opened the call for data to all entities. The Department then performed its own review of the information provided. All interested persons had an opportunity to comment on the May 7 notice, and the Department has considered all timely filed comments.

3. Adequacy of State Consultation

Summary of Comments

Some commenters asserted that the Department has failed to adequately consult with affected States. For example, Virginia Governor Kaine states

[47] *See, e.g.*, comments of Karen Smolar, Rand Carter, Dale Roberts, U.S. Sen. Clinton, and NY Rep. Destito.

[48] *See, e.g.*, comments of Greene County, Rick Layton, and Barbara Kessinger.

[49] *See, e.g.*, comments of Diane Eisenberg (''The proposals smack of cronyism, a lack of transparency, and improper attempts by secretive private interests to influence national energy policy not for the public benefit but for their own profit.'').

[50] *See, e.g.*, comments of Toll Brothers, Inc. (Toll Bros.) and Jeffrey Brown.

that the Congestion Study was performed without consultation with Virginia, contrary to FPA section 216(a)(1). Pennsylvania Senator Casey asserts that States were not adequately consulted. The Pennsylvania Land Trust Association argued that various expressions of opposition to the draft Mid-Atlantic Area National Corridor from elected officials from Pennsylvania prove that the Department has failed to consult.[51] CARI states that DOE has failed to consult adequately with New York.

DOE Response

The Department is cognizant of its responsibility to consult with affected States and believes that it has fulfilled this responsibility. As described in the May 7 notice, there are practical difficulties in conducting the level of consultation that some may prefer in the context of a study with the magnitude of the Congestion Study within the statutorily mandated deadlines. However, the Department believes that its consultation with States, as documented in the May 7 notice, satisfied the requirements of FPA section 216(a)(1). Moreover, in recognition of the importance of National Corridor designation to States, upon issuance of the May 7 notice, the Department engaged in additional consultation with each of the States within the draft National Corridors and the District of Columbia, as documented in Section I.C above.

The Department recognizes the value and importance of State consultation. The Department has sought to ensure that it understands the concerns of the States within the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor; that it has accommodated those concerns where possible consistent with its obligations under FPA section 216(a); and that it has fully explained its position where it concludes it cannot accommodate those concerns.

B. Overall Comments on the Draft Mid-Atlantic Area National Corridor

The Department received comments from numerous State officials and agencies generally opposed to the Department's designation of a Mid-Atlantic Area National Corridor. Governor Kaine opposes designation of a National Corridor that includes the Commonwealth of Virginia.[52] The PaDEP, filing comments on behalf of Governor Rendell, opposes designation of the draft Mid-Atlantic Area National Corridor as premature; the Pennsylvania Public Utilities Commission (PaPUC) also filed comments opposing designation.[53] Maryland Governor O'Malley states that the Department should set aside the draft Mid-Atlantic Area National Corridor and focus on other ways to address the region's energy problems. DeDNR, filing comments on behalf of Governor Miner, opposed designation of the draft Mid-Atlantic Area National Corridor. In addition, the Department received comments opposing designation from: The New York Public Service Commission (NYPSC) and the New York Department of Environmental Conservation (NYDEC); the New Jersey Board of Public Utilities, NJDEP, and the New Jersey Department of the Public Advocate (NJ Public Advocate); and OH Siting Board.

Numerous counties and cities within the draft Mid-Atlantic Area National Corridor filed comments opposing designation. The Department also received comments opposing designation from hundreds of individuals residing within the draft Mid-Atlantic Area National Corridor but outside of the Mid-Atlantic Critical Congestion Area. Numerous non-profit organizations also filed comments opposing designation.[54]

The New York City Economic Development Corporation, filing comments on behalf of the City of New York (City of New York), supports designation of a National Corridor for New York City. PJM supports designation of the portion of the draft Mid-Atlantic Area National Corridor within the PJM footprint. NYISO supports designation of the draft Mid-Atlantic Area National Corridor based on the Department's clarifications in the May 7 notice that the designation does not represent either an endorsement of any individual project, a determination that new transmission construction is necessarily required, or a repudiation of regional planning mechanisms. Numerous utilities also filed comments supporting designation of a Mid-Atlantic Area National Corridor.[55]

NERC filed comments stating that the ultimate designation of National Corridors will further bolster the reliability of the grid. NPCC expressed concern about designation of an overly narrow National Corridor.

DOE Response

These comments in general opposition to the designation of a Mid-Atlantic Area National Corridor are essentially opposition to the regimen established by FPA section 216(a). As stated in Section I.D.2(a) above, the Department has an obligation to act consistent with the terms of FPA section 216(a) as written and enacted into law. Objections to the terms of this provision simply do not provide a basis for declining to implement the statute.

C. Adequacy of Showing of Congestion That Adversely Affects Consumers

Summary of Comments

Numerous commenters argued that the Department had failed to make the showing of congestion adversely affecting consumers required in order to designate a Mid-Atlantic Area National Corridor. Some of these commenters took issue with the Department's position that it has the discretion to designate the Mid-Atlantic Area National Corridor upon a showing of the existence of persistent congestion, without further demonstration of adverse effects on consumers. For example, NYPSC states that DOE's interpretation is contrary to the express language of the statute, which recognizes that transmission congestion and constraints do not, *per se*, adversely affect consumers. NYPSC states that DOE's approach renders the statutory phrase ''that adversely affects consumers'' entirely superfluous, contrary to a fundamental canon of statutory construction. PaPUC states that DOE has misread the statute to give itself unlimited power to designate National Corridors almost anywhere in the United States, since every transmission pathway may become congested at some point in time. PaPUC states that it is not enough for the DOE to identify the existence of chronic congestion. OMS states that although it may be relatively easy to demonstrate that persistent congestion is adversely affecting consumers, OMS believes that DOE still needs to explicitly demonstrate such adverse effects before it can designate any National Corridor.[56]

NYPSC argues that in regions such as New York State where competitive markets have been established, higher prices for transmission do not always

[51] *See also* comments of Energy Conservation Council of Pennsylvania (ECCP) and statement of Robert Lazaro at May 15, 2007, Arlington, VA public meeting.

[52] *See also* comments of Virginia Department of Historic Resources.

[53] *See also* comments of the Pennsylvania House of Representatives and the Pennsylvania Senate.

[54] *See, e.g.*, comments of Piedmont Environmental Council, CARI, NYPIRG, and Sierra Club (National).

[55] *See, e.g.*, comments of AEP, National Grid, Allegheny, NYRI, and Old Dominion Electric Cooperative (ODEC); *see also* comments of Edison Electric Institute (EEI).

[56] *See also* comments of MiPSC, ECCP, Consolidated Edison Company of New York, Inc. (Con Ed), CARI, Toll Bros., and City of Paris, NY.

adversely affect consumers. NYPSC further states where the costs of relieving congestion exceed the costs of the congestion itself, consumers are not adversely affected by such congestion because such congestion reflects the most economically efficient operation of the grid.[57] Erica Wiley states that areas of congestion or higher pricing are a result of natural market forces, thus, one would expect New York City's cost of energy to be higher than that in the Ohio River Valley, much like real estate prices. Higher prices, this commenter argued, do not adversely affect consumers, but rather have led to innovation and conservation.

Some commenters argued that the Department's analysis relies on inflated estimates of future congestion. A few commenters argued that the Department had failed to consider that greenhouse gas regulation will increase the price of coal-fired generation, and thereby reduce congestion between areas of coal generation and load centers.[58] Con Ed argues that the Department should model new generation capacity in the eastern portion of the PJM footprint resulting from the new Reliability Pricing Model capacity market or other generation now expected to be in service after 2011. Con Ed states that using average losses instead of marginal losses also can serve to artificially inflate projections of congestion. Con Ed further states that the three cost curves for Upstate East, Upstate West, and Downstate New York used in the Congestion Study modeling should have been combined into one curve and the resulting energy prices compared to energy prices with constraints. PaPUC states that rather than relying solely upon a static direct current flow analysis, DOE should have performed dynamic analysis of alternating current flows, as is used in actual transmission grid planning models. CARI argues that the Department has not adequately considered data from NYISO's most recent Reliability Needs Assessment that suggests that future constraints and congestion will not be as severe as the Congestion Study modeling predicts. Some commenters argue that the Department failed to adequately consider the effects of ongoing demand reduction efforts on congestion, including New York Governor Spitzer's recent plan to decrease energy demand in the State by 15 percent below forecasted load by 2015.[59]

[57] *See also* comments of Con Ed.

[58] *See, e.g.*, comments of Sierra Club (National) and Con Ed.

[59] *See, e.g.*, comments of CARI, NYPRIG, and American Council for an Energy-Efficient Economy.

Other commenters supported the Department's showing of congestion adversely affecting consumers in the Mid-Atlantic Critical Congestion Area. For example, PJM states that persistent and growing transmission congestion such as that experienced in the Mid-Atlantic Critical Congestion Area is a precursor to threats to reliability of service in the near- and mid-term future.[60] NYISO states that as a general rule, the Department correctly identified those areas of New York State lying along its major transmission pathways that historically have experienced significant congestion.[61]

DOE Response

The Department concludes that it has sufficiently demonstrated and found the existence of congestion that adversely affects consumers in the Mid-Atlantic Critical Congestion Area. FPA section 216(a)(2) does not define the term ''congestion that adversely affects consumers,'' nor is there any dictionary definition or common usage of that phrase within the realm of electric system operations to clarify its meaning. The considerations listed in FPA section 216(a)(4), which authorize the Department to consider factors such as diversification of supply and energy independence when determining whether to designate a National Corridor, indicate that Congress intended the Department to consider adverse effects on consumers beyond increases in the delivered price of power. However, the statute provides no further clarification of the type or magnitude of adverse effect intended. The statute also does not dictate any particular method of determining the existence of congestion adversely affecting consumers, except that such determination is to be based on the study conducted pursuant to FPA section 216(a)(1). In sum, the statute is ambiguous, and leaves to agency discretion, as to when congestion can be said to adversely affect consumers.

Nothing in the statute requires that the Department conduct a separate explicit empirical analysis of the specific adverse effects of an instance of congestion before designating a National Corridor. FPA section 216(a)(1) describes the congestion study on which any designation of a National Corridor must be based only as a ''study of electric transmission congestion.'' Similarly the term ''congestion that adversely affects consumers'' in FPA section 216(a)(2) does not dictate a two-step analysis—first to determine the level of congestion and second to determine the specific resulting adverse effects—before a National Corridor designation may be made.

[60] *See also* comments of WIRES.

[61] *See also* comments of National Grid.

In the Congestion Study, the Department defined ''congestion'' as the condition that occurs when transmission capacity is not sufficient to enable safe delivery of all scheduled or desired wholesale electricity transfers simultaneously. This definition was based on common usage within electric system operations[62] and spurred little dissent among commenters on the Congestion Study. Under this definition, determining and documenting the specific adverse effects caused by specific instances of congestion could necessitate identification of all the scheduled or desired power transactions that were denied transmission service, all the alternative power transactions that occurred as a result of the congestion, all the parties to both sets of transactions, all the terms of both sets of transactions, and all the sources of power for both sets of transactions. Obtaining and analyzing such information for each area under evaluation for potential National Corridor designation, assuming all such information were accessible, would be a daunting task, particularly in the context of a triennial study that must already identify and analyze the existence of congestion itself throughout 47 States and the District of Columbia. Thus, given the practical complications of conducting in each case a specific analysis of the specific adverse effects caused by the specific instances of congestion, the Department considered whether it was possible to identify a class of congestion that necessarily adversely affects consumers.

Given the definition of ''congestion,'' any congestion prevents some users of the transmission grid from completing their preferred power transactions. These users include wholesale industrial consumers of power as well as load-serving entities buying power on behalf of retail consumers, all of whom are prevented by congestion from obtaining delivery of desired quantities of electricity from desired sources.

[62] *See, e.g.*, California Independent System Operator, Conformed Simplified and Reorganized Tariff, App. A, Master Definitions Supplement (April 6, 2007) (''Congestion—A condition that occurs when there is insufficient Available Transfer Capacity to implement all Preferred Schedules simultaneously or, in real time, to serve all Generation and Demand.''); and Southwest Power Pool, Glossary and Acronyms, *http://www.spp.org/glossary.asp?letter=C* (''Congestion is a condition that occurs when insufficient transfer capacity is available to implement all of the preferred schedules for electricity transmission simultaneously.'').

Thus, any congestion on a line necessarily interferes with the choices of those who wish to use that line on their own or their customers' behalf. Whenever there is congestion on a transmission path, there simply is not enough transmission capacity to accommodate all the desired power transactions, and some sort of rationing of available capacity is needed. In areas with organized electricity markets, this rationing generally occurs through a pre-established economic mechanism, such as an LMP-based system designed to allocate the limited capacity to the users who value it the most. In areas of the country without organized markets, the rationing may involve the transmission provider denying requests for transmission service, adjusting schedules, or in some cases making pro rata curtailments in real time. Regardless of how the rationing is resolved, however, one thing remains true: Congestion results in some users of the transmission system being denied the benefit of their preferred transactions.

Interference with customers' preferred power transactions poses numerous potential adverse effects on consumers. One reason for choosing a particular power seller is commodity price. Electricity buyers frequently seek power from sellers who offer the lowest power price. When congestion prevents those transactions from being consummated, more expensive power must be purchased, which adversely affects consumers. However, congestion can result in the loss of benefits to consumers other than just low commodity prices. A seller may offer contract terms other than lower commodity price that benefit consumers, including better credit terms, greater long-term pricing certainty, or greater flexibility in terminating contracts. A seller may offer consumer benefits in terms of fuel source. For example, a seller may offer power from a fuel source that would increase diversity or energy independence, both of which protect consumers from unforeseen events and market volatility related to fuel availability. Or a seller may offer consumers the ability to buy renewable power, which offers environmental benefits to consumers. A seller may offer consumer benefits simply by being unaffiliated with a load-serving entity's primary electricity supplier, which protects consumers from being completely dependent on a single supplier. While analysis of why the transactions thwarted by a particular instance of congestion were in fact preferred by customers would reveal which of these specific consumer benefits had been forgone, no such analysis is needed to conclude that congestion thwarts customer choice resulting in the loss of one or more of these benefits. Finally, congestion results in parts of the transmission system being so heavily loaded that grid operators have fewer options for dealing with adverse circumstances or unanticipated events. Therefore, as congestion increases consumers are exposed to increased risk of blackouts, forced interruptions of service, or other grid-related disruptions.

Some commenters suggest that congestion only adversely affects consumers if the costs of relieving the congestion are less than the costs of the congestion itself. As discussed above, we conclude that Congress intended the Department to consider adverse effects on consumers beyond increases in the delivered price of power, some of which effects may not be easily monetized. Further, designation of a National Corridor does not dictate how or even whether to address a particular instance of congestion. Therefore, the Department believes that restricting the term ''congestion that adversely affects consumers'' to congestion that can be cost-effectively relieved is an overly narrow reading of the statute. Some commenters suggest that congestion can actually benefit consumers by spurring energy efficiency or the adoption of innovative technologies. The Department believes, however, that their comments speak not to any true benefits of congestion itself, but rather to the benefits of congestion management systems that put a price on congestion, thus making it easier for market participants to evaluate how best to address that congestion.

While the Department concludes that, in theory, any congestion adversely affects at least some consumers, it is not adopting that interpretation of the term ''congestion that adversely affects consumers.'' Instead, the Department recognizes that isolated instances of congestion can arise on any transmission path, and such events are more in the nature of occasional inconveniences than a significant adverse effect on consumers. However, as congestion becomes more frequent on a particular path, the occasional inconveniences start to accumulate until, at the point where congestion becomes persistent, customers find that they must recurrently resort to less desirable power sources. In fact, as customers lose the ability to access preferred suppliers on a firm basis, they may need to make permanent arrangements with less desirable suppliers, all to the detriment of consumers.

Further, the Department recognizes that congestion remedies are not free. As discussed above, the identification of congestion adversely affecting consumers is not a determination of whether or how a particular instance of congestion should be addressed. It is, however, the first step in the process of determining whether to provide a potential Federal forum that would examine whether addressing congestion through transmission expansion is in the public interest. Just as isolated or infrequent instances of congestion do not usually cause significant adverse effects to consumers, they also do not usually warrant consideration of structural changes, such as transmission expansion, increased demand response, or siting of additional generation. The ''solution'' to such transient instances of congestion is short-term, temporary adjustments, such as redispatch. Thus, when electric system planners consider whether structural changes are needed in the system, they typically start by looking for recurrent patterns of congestion and calculating the number of hours per year that a given transmission line or path is congested.

The Department emphasizes that while a finding of congestion that adversely affects consumers provides the Department with the discretion to designate a National Corridor, it does not mean that the Department will choose to exercise that discretion in all instances. Before making any designation of a National Corridor, the Department will consider whether such designation is in the national interest, based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate.

The Department concludes, based on its technical expertise and policy judgment, that it is reasonable to interpret the phrase ''congestion that adversely affects consumers'' to include congestion that is persistent. Thus, the Department believes that FPA section 216(a) gives the Secretary sufficient authority and discretion to designate the Mid-Atlantic Area National Corridor upon a showing of the existence of persistent congestion.

The Department further concludes that persistent congestion exists into and within the Mid-Atlantic Critical Congestion Area. Some commenters question assumptions made in the modeling performed in the Congestion Study, and others suggest that the modeling be performed again to

incorporate additional analysis or more recent data. All of these comments concern the accuracy of projections of future levels of congestion; however, the analysis in the Congestion Study and the May 7 notice was not limited to estimating future levels of congestion. The Mid-Atlantic Area National Corridor is based on well-documented existing constraints causing patterns of congestion that have persisted over a number of years.

For example, Tables VIII–4 and VIII–5 in the May 7 notice identified 25 different transmission elements in the PJM and NYISO footprints that have been constrained more than five percent of the time from 2004 through 2006.[63] Some of these elements were constrained much more than five percent of the time: Bedington-Black Oak was constrained 52 percent and 45 percent of the time in the Day-Ahead market in 2005 and 2006 respectively; the Kammer 765/500 transformer was constrained 39 percent and 23 percent of the time in the Day-Ahead market in 2005 and 2006 respectively; Rainey to Vernon 345 kV was constrained 36 percent and 32 percent of the time in the Day-Ahead market in 2005 and 2006 respectively; and Dun-Shore Road was constrained 71 percent and 89 percent of the time in the Day-Ahead market in 2005 and 2006 respectively. While some commenters question how much and how quickly congestion in the Mid-Atlantic Critical Congestion Area will increase or decrease, and how much and how quickly various efforts will reduce the congestion, no one seriously questions that this congestion exists now and that it will continue for some period of time.[64]

Moreover, while the Department concludes that the statute authorizes the designation of the Mid-Atlantic Area National Corridor upon the Department's finding of the existence of persistent congestion, the Department nevertheless has provided additional documentation. In the context of explaining the considerations that led to the draft designation of the Mid-Atlantic Area National Corridor, the Department documented that congestion is causing consumers in the Mid-Atlantic Critical Congestion Area to face consistently higher electricity prices; that congestion poses threats to the reliability of electricity supply to consumers in the Mid-Atlantic Critical Congestion Area; and that congestion limits supply diversity and energy independence for Mid-Atlantic Critical Congestion Area consumers.[65] For example, the May 7 notice explained that PJM has determined that unless constraints into the Baltimore-Washington-Northern Virginia area are mitigated, existing 500 kV transmission facilities serving that area will become overloaded by 2011 in violation of NERC and PJM reliability and planning criteria, and unless constraints into northern New Jersey are mitigated, that area faces violations of NERC and PJM reliability and planning criteria by 2014. The May 7 notice further explained that NYISO has determined that constraints limiting delivery of electricity to southeast New York pose a threat to reliability by 2011.

Far from simply assuming the presence of congestion that adversely affects consumers, as some commenters allege, the Department has made a reasoned determination that the statutory conditions triggering discretion to designate a National Corridor for the Mid-Atlantic Critical Congestion Area have been met.

D. Boundaries of the Mid-Atlantic Area National Corridor

Summary of Comments

Numerous commenters argued that the draft Mid-Atlantic Area National Corridor is impermissibly broad. For example, ECCP states that designation of an area spanning much of the Mid-Atlantic region exceeds the Secretary's authority and the Department's expansive definition of ''corridor'' does not comport with Congress'' definition of ''corridor'' or Congress' intent in enacting FPA section 216. Upper Delaware Preservation Coalition states that DOE exceeded its statutory authority by disregarding the common usage of the word ''corridor'' under EPAct and drawing the boundaries of the draft Mid-Atlantic Area National Corridor arbitrarily.[66] Southern Environmental Law Center (SELC) states that the definition employed by DOE in establishing corridors under EPAct section 368 should also apply to National Corridors designated under FPA section 216(a). Appalachian Trail Conservancy states that the draft Mid-Atlantic Area National Corridor is so broad as to be virtually meaningless.

ODEC states that a National Corridor designation that would provide Federal backstop siting authority for any project in eastern portion of the PJM footprint likely would be counter-productive to getting transmission built in that region. PaPUC states that the draft Mid-Atlantic Area National Corridor is both overly broad and overly narrow. The draft Mid-Atlantic Area National Corridor is overly broad, according to PaPUC, because it includes many areas that for a variety of economic, environmental, or technical engineering reasons would be excluded from any major transmission infrastructure project study; it is overly narrow because the simplistic ''box'' methodology ignores the actual topology of the existing transmission grid and excludes regions outside the ''box'' that might be equally suitable or superior for siting National Interest transmission infrastructure. PaPUC also objects to the use of political boundaries that have no clear relevance to electric infrastructure as a physical system. PaPUC suggests defining one or more smaller National Corridors in the Mid-Atlantic region, each with an entry point at the source, an exit point at the load, and a congestion interface in the middle.

Numerous commenters argued that the statute requires any Mid-Atlantic Area National Corridor to be limited to

[63] Given the large daily and seasonal swings in the level of demand and the associated changes in the patterns of generation dispatch, congestion on a line is significant even if the line is not congested most of the hours in the year. For example, although Path 15 in California was congested in only 11.9 percent of the total hours in the Day-Ahead market and 4.7 percent in the Hour-Ahead market in 2004 (*see* CAISO, 2004 Annual Report on Market Issues and Performance, table 5.2 (April 2005)), upgrades implemented in December 2004 are estimated to save consumers hundreds of millions of dollars (*see* CAISO, Potential Economic Benefits to California Load from Expanding Path 15-Year 2005 Prospect (Sept. 24, 2001)). Congestion does not occur until a line is already loaded to its safety limit; this means that in general congestion tends to occur when demand is relatively strong, which happens only during a portion of the day or year.

[64] Further, as discussed in Section I.A above, FERC may only issue a permit if the applicant has shown that its project will significantly reduce congestion, and FERC has interpreted this to mean that an applicant must make a showing that its project will significantly reduce the congestion identified by DOE. Thus, if congestion into or within the Mid-Atlantic Critical Congestion Area were to be resolved before the issuance of a FERC permit, it would be difficult for the sponsor of a transmission project to make such a showing.

[65] *See* May 7 notice, Section VIII.C.1–3. NJ Public Advocate argues that the congestion rents calculated in the Congestion Study exaggerate the adverse economic impacts on consumers because they ignore the availability of transmission cost hedging instruments. However, as explained in the May 7 notice, the Department believes that while congestion rents are a useful indicator of the persistence and pervasiveness of congestion, the Department is not suggesting that such rents represent the actual monetary cost that consumers pay specifically as a result of congestion. The May 7 notice's discussion of increased costs to consumers focused on differences in actual power and capacity prices paid as a result of the documented congestion, rather than projections of congestion rents.

[66] *See also* comments of U.S. Sen. Casey, Pennsylvania Farm Bureau, Piedmont Environmental Council, and numerous individuals.

the confines of the urban areas experiencing the congestion.[67] CARI states that if any area is to be designated in New York State, it should be those limited portions of the existing New York transmission system actually functioning as a transmission constraint or causing persistent congestion that adversely affects consumers. CARI also argues that a broad reading of the term ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' violates the principle of statutory construction known as the ''presumption against preemption.''

Some commenters suggested redrawing the Mid-Atlantic Area National Corridor boundaries so as to follow existing transmission lines or highways.[68]

Other commenters supported the Department's approach. For example, PJM and NYISO support the Department's source-and-sink approach. Pepco Holdings, Inc. (PHI) states that the draft Mid-Atlantic Area National Corridor is appropriately broad so as to encompass all necessary RTO-approved system enhancements associated with major new transmission solutions and to complement existing and foreseeable transmission plans. National Grid states that the Department's approach to establishing boundaries for the draft Mid-Atlantic Area National Corridor is precisely the approach that accords deference to existing regional, State, and local planning and siting authorities by preserving the flexibility those authorities need to consider multiple alternative solutions. EEI states that DOE has properly delineated the draft Mid-Atlantic Area National Corridor as a general, inclusive geographic area, and adds that if utility, State, or regional agency staff indicate that the margins of the draft Mid-Atlantic Area National Corridor need to be modified to encompass potential solutions, DOE should make such modifications so that a full array of solutions can be considered.

NPCC expressed concern that the Department's source-and-sink approach may lead to the designation of overly narrow National Corridors. NPCC cautions against making transmission improvements in narrow corridors without giving sufficient attention to the possible need for coordinated improvements in distant but related parts of the Eastern Interconnection. NPCC points out, for example, that increasing the west-to-east electricity flows in PJM without regard to broader effects could exacerbate loop flows around Lake Erie. Accordingly, NPCC recommends that DOE maintain an Interconnection-wide perspective in making National Corridor designations and emphasize to all stakeholders that adding more transmission capacity within a National Corridor could exacerbate reliability problems outside the Corridor unless appropriate and coordinated countermeasures are implemented.

DOE Response

The Department concludes that its approach to defining the boundaries of the draft Mid-Atlantic Area National Corridor is consistent with the statute. FPA section 216 does not explicitly define the term ''national interest electric transmission corridor.'' FPA section 216(a)(2) does, however, authorize the Department to designate ''any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' as a National Corridor. 16 U.S.C. 824p(a)(2). ''Any geographic area'' connotes no particular shape, proportion, or size. Thus, the language of FPA section 216(a) does not appear to limit the shape, proportion, or size for a National Corridor.

A few commenters point to the approach being used by DOE and the Federal land managing agencies to delineate energy right-of-way corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities under EPAct section 368 as evidence that the draft Mid-Atlantic Area National Corridor is too broad to be consistent with the statute. We believe, to the contrary, that the differences in the language and intent of FPA section 216(a) and EPAct section 368 underscore the appropriateness of the Department's overall approach to establishing the boundaries of the draft Mid-Atlantic Area National Corridor.

In contrast to FPA section 216(a)(2)'s reference to ''any geographic area,'' EPAct section 368(e) explicitly requires that ''[a] corridor designated under this section shall, at a minimum, specify the centerline, width, and compatible uses of the corridor.'' Congress could have included similar language in FPA section 216(a) had it intended the Department to use the same approach to delineating National Corridors, but it did not. The plain language of EPAct section 368(e) limits its applicability to corridors ''designated under this section.'' Further, despite the assertions of some commenters, the Department sees no reason to conclude that the language of EPAct section 368(e) implicitly governs FPA section 216(a)(2). Nothing in EPAct section 368 suggests that the language of EPAct section 368(e) was intended to establish a general definition of ''corridor'' for all EPAct purposes. In fact, the heading of EPAct section 368(e) characterizes that subsection not as a definition, but rather as ''Specifications of Corridor.'' Further, while FPA section 216 was added to the FPA by EPAct section 1221(a), it was part of a stand-alone title called the ''Electricity Modernization Act of 2005.''[69]

Moreover, National Corridors designated under FPA section 216(a) serve a fundamentally different purpose than energy right-of-way corridors for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities, designated under EPAct section 368; therefore, use of different approaches to delineating the respective corridors is not only appropriate, it is necessary. The corridors called for by EPAct section 368 are specifically characterized as ''right-of-way corridors.'' Congress required that the Federal land-managing agencies designate these right-of-way corridors through amendments to their land use resource management plans or equivalent land use plans. Thus, designation of right-of-way corridors under EPAct section 368 is in the nature of land use planning.

In contrast, when the Department designates National Corridors under FPA section 216(a) it is not engaging in land use planning. FPA section 216(a) established a profoundly different task for the Department, a task that is novel in the realm of electric system planning and development. As discussed in Section I.A above, the Department's role under FPA section 216(a) is limited to the identification of congestion and constraint problems and the geographic areas in which these problems exist, and does not extend to the functions performed by siting authorities in evaluating routes for transmission facilities. None of the considerations listed in FPA section 216(a)(4) speak to land use issues. Thus, unlike an EPAct section 368 energy right-of-way corridor, an FPA section 216(a) National Corridor is not intended to identify a potential transmission siting route. As the Supreme Court recently held, ''A given term in the same statute may take on distinct characters from association with distinct statutory objects calling for different implementation strategies.''[70]

[67] *See, e.g.*, comments of Karl Cehonski, Susan Morgan, and City of Paris, New York.

[68] *See, e.g.*, comments of Karen Gonzales and Laura Krauza.

[69] *See* EPAct sec. 1201.

[70] *Environmental Def.* v. *Duke Energy Corp.*, 127 S. Ct. 1423, 1432 (2007).

Numerous commenters argue that the draft Mid-Atlantic Area National Corridor is inconsistent with common meanings of the term ''corridor.'' Given the statutory reference to ''any geographic area'' as well as the novel nature of FPA section 216(a), it is not clear that common meanings or past uses of the term ''corridor'' have much relevance for the delineation of National Corridor boundaries. Nonetheless, the Department does not believe that the draft Mid-Atlantic Area National Corridor is inconsistent with such commonly accepted meanings. There was broad consensus among the commenters on the Congestion Study that if a project-based approach were not used to set National Corridor boundaries, then a source-and-sink approach should be. The Department used a source-and-sink approach to develop the boundaries of the draft Mid-Atlantic Area National Corridor. Such an approach comports with the common usage of ''corridor'' as an area linking two other areas. This approach is also consistent with the physical properties of the electric grid, because a transmission line into a congested or constrained load area will not benefit that load unless the line connects with a source of power that could help to serve the load.

In addition to dictionary definitions of ''corridor,'' commenters offer examples of usage of the term to argue that the draft Mid-Atlantic Area National Corridor is overly broad. Again, the Department questions the relevance of such examples, even the examples of electricity industry usage, given the novel nature of a National Corridor under FPA section 216(a). However, the Department notes that there are examples of the term ''corridor'' being used in other contexts to refer to geographic areas not dissimilar in size and shape to the draft Mid-Atlantic Area National Corridor.[71]

The Department does not think it is reasonable, as some commenters have suggested, to interpret the term ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' as restricting a National Corridor designation to the specific confines of the load being adversely affected by congestion or the constrained transmission lines causing such congestion. FPA section 216(a)(4)(A) and (B) both refer to the Department considering economic factors in ''the corridor, or the end markets served by the corridor.'' Since the end markets served by a National Corridor are the load centers where consumers are being adversely affected by congestion, this language indicates that Congress envisioned designation of National Corridors that extend beyond the location of the adversely affected consumers. FPA section 216(b)(6) requires that before FERC issues a permit for a project in a National Corridor, it must make a finding that the project ''will maximize, to the extent reasonable and economical, the transmission capabilities of existing towers or structures.'' Thus, FERC is authorized to issue a permit for projects that do not use existing towers, provided that it concludes that use of existing towers is not reasonable or economical. Since FERC can only issue permits within the bounds of a National Corridor, this language indicates that Congress envisioned designation of National Corridors that extend beyond existing constrained transmission lines.

The term ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' envisions an area that encompasses the load being adversely affected by congestion and the constrained transmission lines causing such congestion, but the statute is ambiguous with regard to the precise scope of the area. The Department believes its source-and-sink approach to delineating the boundaries of the draft Mid-Atlantic Area National Corridor represents a reasonable interpretation of this ambiguous statutory term.

As discussed in Section I.A above, FPA section 216(a) does not shift to the Department the roles of electric system planners or siting authorities in evaluating or selecting solutions to congestion and constraint problems. Thus, in implementing its source-and-sink approach, the Department has attempted to identify source areas that would enable a range of generation options. Theoretically, a sink area could be served by generation sources from across the entire interconnection. Also, given the long lead time involved in planning, obtaining regulatory approvals for, and constructing transmission projects, areas without a current surplus of generation could well develop additional power sources by the time a transmission project is completed. Therefore, not only could areas with existing surplus generation function as source areas, but also areas with projected surplus generation, or areas with available fuel supply for additional generation. The Department was faced, therefore, with a considerable range of potential source areas from which to choose when delineating the draft Mid-Atlantic Area National Corridor.

In exercising its judgment as to which source areas to use for purposes of delineating the boundaries of the draft Mid-Atlantic Area National Corridor, the Department was guided by several factors. The Department has tried to balance the objective of accommodating a range of options against the practical limitations on delivery of power over increasingly longer distances.[72] The Department has also taken into consideration State concerns about the size of any Mid-Atlantic Area National Corridor, as well as the fact that Congress opted for a limited approach to Federal preemption of transmission siting. The Department has been further guided by the considerations identified in FPA section 216(a)(4). Finally, consistent with the language of FPA section 216(a)(2) referring to designation of a geographic area experiencing constraints or congestion that adversely affects consumers, the Department has restricted its selection of source areas to those separated from the identified sink area, *i.e.* the Mid-Atlantic Critical Congestion Area, by one or more of the constraints identified in Section VIII.B of the May 7 notice as causing congestion adversely affecting consumers.

The result of this analysis was the identification of two categories of source areas: (1) The closest locations with substantial amounts of existing, under-used economic generation capacity separated from the identified sink area by one or more of the constraints identified as causing congestion adversely affecting consumers; and (2) the closest locations with the potential for substantial development of wind generation capacity separated from the identified sink area by one or more of the constraints identified as causing congestion adversely affecting consumers. Identification of the first category is consistent with FPA section

[71] For example, in the trade context, ''corridors'' are often very broad. The North American Free Trade Agreement led to the establishment of various trade corridors in North America. Not unlike National Corridors, these trade corridors are areas where there is a need to develop transportation and communications infrastructure to facilitate trade. These trade corridors include the ''Pacific Corridor,'' which ''includes the entire geographic band formed by the Rocky Mountain range and the Pacific Coast.'' See North American Forum on Integration Web site at *http://www.fina-nafi.org/eng/integ/corridors.asp?langue=eng&menu=integ.*

[72] The Department recognizes, as some commenters have pointed out, that the longer the transmission line, the greater the associated line losses, and that generation that is remote from a load center is less effective in providing some of the ancillary services required to maintain reliability than generation that is closer to the load center.

216(a)(4)(A), which emphasizes the importance of ensuring adequate supplies of reasonably priced power. Identification of the second category is consistent with FPA section 216(a)(4)(B), which emphasizes diversification of supply, and FPA section 216(a)(4)(C), which emphasizes promotion of energy independence. Much of the generation in the first category happens to be coal-fired, thus identification of that category is also consistent with FPA section 216(a)(4)(B) and (C).[73]

The Department then delineated the draft Mid-Atlantic Area National Corridor by identifying the counties linking the identified source areas with the Mid-Atlantic Critical Congestion Area. While the Department recognizes that political boundaries have nothing to do with the characteristics of the electric system, we continue to believe that it is important to establish precise, easily identified boundaries for the Mid-Atlantic Area National Corridor. We conclude that use of county boundaries is a reasonable means of providing such certainty.

Thus, the Department delineated the draft Mid-Atlantic Area National Corridor by connecting the sink area containing consumers adversely affected by congestion with a range of source areas separated from the identified sink area by the constraints causing such congestion.[74] While many commenters complain that the identified source areas are too far from the sink area or that the draft Mid-Atlantic Area National Corridor is too broad, we note that these commenters have not identified specific alternative source areas or specific alternative Corridors.[75] Further, we acknowledge NPCC's concerns that the draft Mid-Atlantic Area National Corridor may be too narrow; the grid is highly interconnected and modifications to one portion of the transmission system can have significant effects on power flows over other distant portions. However, the desire to ensure that all potentially required reliability upgrades are encompassed must be balanced against other statutory considerations. Thus, given the overall framework of FPA section 216 and the physical properties of the electric grid, the Department concludes that its approach to delineating the draft Mid-Atlantic Area National Corridor is consistent with the statutory call for the designation of a ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.'' [76]

Some commenters complain that the draft Mid-Atlantic Area National Corridor fails to provide adequate guidance on appropriate transmission solutions and, thus, the Department should go back to the drawing board to determine specific routes linking specific sources and sinks. However, the Department is deliberately not attempting to identify preferred transmission solutions. As discussed in Section I.A above, the Department has concluded that FPA section 216(a) was not intended to shift to the Department the roles of electric system planners or siting authorities. [77]

The Department recognizes that some States are concerned about unintended expansion of Federal siting authority to include proposed transmission projects that happen to be located within the Mid-Atlantic Area National Corridor but are unrelated to the problem that prompted its designation. The Department recognizes that while Congress could have completely preempted State siting of interstate transmission facilities, it instead chose a more limited approach. However, the Department does not believe that designation of the Mid-Atlantic Area National Corridor will result in the exercise of Federal permitting authority beyond that envisioned by Congress. FPA section 216(b)(4) specifies that FERC jurisdiction is limited to projects that will ''significantly reduce transmission congestion in interstate commerce and protects or benefits consumers.'' As discussed in Section I.A above, FERC has stated that it interprets this to mean that a project must significantly reduce the transmission congestion identified by DOE. Therefore, only those transmission projects within the Mid-Atlantic Area National Corridor that would significantly reduce congestion into or within the Mid-Atlantic Critical Congestion Area would be eligible for a FERC permit.

In the May 7 notice, the Department stated that determining the exact boundaries of a National Corridor under a source-and-sink approach is more an art than a science, and there will rarely be a dispositive reason to draw a boundary in one place as opposed to some number of miles to the left or right. This statement was not, as some commenters allege, an admission that the boundaries of the draft Mid-Atlantic Area National Corridor are arbitrary and capricious. Rather, the statement was a recognition that no single boundary line can be determined based solely upon analysis of the data and, thus, the drawing of the boundary necessarily involves the exercise of judgment. The Department believes that it has exercised that judgment in a reasonable manner.

Finally, numerous commenters have requested that particular counties be added or removed from the Mid-Atlantic Area National Corridor. [78] The Department has carefully considered these requests. However, it concludes that its approach to delineating the draft Mid-Atlantic Area National Corridor, as described above, does not warrant further adjustment.

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[73] As discussed in Section VIII.C.3 of the May 7 notice, much of the existing generation fleet in the eastern portion of PJM's footprint and in the downstate portion of New York is fueled by oil or natural gas. While NJBPU argues that increasing access to coal-fired generation would reduce fuel diversity within the PJM footprint as a whole, the Department notes that this does not alter the desirability of reducing where possible the reliance on oil and natural gas. Further, given this source area's consistency with the other considerations in FPA section 216(a)(4), we conclude that its use in setting an outer bound for the draft Mid-Atlantic Area National Corridor was appropriate.

[74] The Department notes that in this instance the sink area is large and diverse, and there are many possible sources, meaning that DOE could have drawn a large number of narrower but crossing or overlapping source-and-sink corridors. The result, however, would have been confusing, and could have given the impression that DOE was prescribing or advocating which source should be linked with which sub-part of the sink area. Designating one National Corridor encompassing the sink area and the source areas is a more practical approach that is consistent with the source-and-sink concept while preserving the latitude of others to make their decisions on the basis of more specific analyses.

[75] While commenters have failed to identify specific alternative source areas, some commenters have offered examples of significant potentials for increased efficiency and distributed generation. As discussed in Section I.A above, designation of the draft Mid-Atlantic Area National Corridor will neither prejudice State or Federal siting processes against such non-transmission solutions, nor discourage market participants from pursuing such solutions. Thus the existence of such non-transmission alternatives does not provide a basis for adjusting the boundaries of the draft Mid-Atlantic Area National Corridor or declining to designate the Corridor.

[76] With regard to comments about the ''presumption against preemption,'' this doctrine arises when there is a controversy whether a given State authority conflicts with, and thus has been displaced by, the existence of a Federal authority. *New York* v. *FERC*, 535 U.S. 1, 17–18 (2002). We are not concerned here with the validity of any State law or regulation, nor are we invalidating any such law or regulation. Thus, the doctrine is not applicable.

[77] With regard to PaPUC's comment that the draft Mid-Atlantic Area National Corridor includes areas that for a variety of economic, environmental, or technical engineering reasons would be excluded from any major transmission infrastructure project study, the Department notes that if PaPUC's assessment is correct, then no transmission project will be proposed in such areas. Thus, the objection is more academic than of real consequence.

[78] *See, e.g.*, comments of Fauquier County, VA, Philip Morin, Jayne Baran, AEP, ODEC, Allegheny, and FirstEnergy Service Company.

E. Inclusion of Environmentally, Historically, or Culturally Significant Lands

Summary of Comments

Many commenters, including numerous individuals, argued that the Department should exclude National Parks, State parks, and other environmentally, historically, or culturally significant lands from any Mid-Atlantic Area National Corridor. For example, National Parks Conservation Association (NPCA) opposes inclusion of any units of the National Park System in the Mid-Atlantic Area National Corridor. NPCA states that the draft Mid-Atlantic Area National Corridor conflicts with the National Park Service Organic Act and the provisions of the Land and Water Conservation Fund program. Many commenters objected to the inclusion of the Upper Delaware River Valley in the draft Mid-Atlantic Area National Corridor. For example, the Upper Delaware Preservation Coalition noted that the Upper Delaware River is a Federally designated Wild and Scenic River, whose management plan declares ''major electric lines'' as incompatible uses. Other commenters urged exclusion of various historic sites in the Piedmont and Shenandoah Valley regions of Virginia. The Pennsylvania Land Trust Association states that public lands, including lands subject to conservation easements, having been protected through public and private resources, must be exempted from conversion to the private use of the energy industry. [79]

DOE Response

The Department concludes that exclusion of environmentally, historically, or culturally sensitive lands from the Mid-Atlantic Area National Corridor is neither required nor necessary. First, with regard to public lands such as parks and wildlife refuges, nothing in the statute suggests that the Department should exclude such lands from a national interest electric transmission corridor. In fact, FPA section 216(f)(2), as discussed in Section I.A above, expressly excludes property owned by the United States or a State from a FERC permit holder's exercise of eminent domain authority. Given that FERC can only issue permits that cover geographic areas within a National Corridor, the presence of explicit statutory language clarifying that a FERC permit does not provide the right of eminent domain over Federal or State property indicates that Congress envisioned that such property could be included within National Corridors. [80]

The Department sees no need to exclude Federal or State property from the Mid-Atlantic Area National Corridor. As discussed in Section I.A above, if FERC were to issue a permit for a transmission facility slated to cross any Federal or State property, the permit holder would still need to obtain a right-of-way across that property. Inclusion of Federal or State property in a National Corridor does nothing to change the process for obtaining such a right-of-way. In the absence of a National Corridor designation, a developer seeking to build a transmission facility on Federal or State property would need to obtain the permission of the Federal or State agency responsible for managing that property. If Federal or State property were included in a National Corridor, a developer seeking to build a transmission facility on such property would still need to obtain the permission of the Federal or State agency responsible for managing that property. Further, neither a National Corridor designation nor the issuance of a FERC permit controls a Federal or State land management agency's decision whether to grant or deny a right-of-way. Thus, contrary to the assertions of various commenters, inclusion of Federal and State property within the Mid-Atlantic Area National Corridor creates no additional risk that such property might become the site of a transmission facility.

Exclusion of Federal or State property from the Mid-Atlantic Area National Corridor is not only unnecessary, it could also unduly restrict existing flexibility in siting transmission facilities. In the absence of a National Corridor designation, a transmission project could be built on Federal or State property if the developer obtained a construction permit from a State siting agency and a right-of-way from the Federal or State land managing agency. FERC's authority to issue a permit is limited to the geographic extent of the designated National Corridor. If Federal and State property were excluded from the Mid-Atlantic Area National Corridor, then FERC would not be able to issue a permit for any portion of a transmission project that crossed such property, even if the Federal or State agency responsible for managing that property were willing to grant a right-of-way. There is no reason to believe that Congress intended such a result.

Some commenters recommended that the Mid-Atlantic Area National Corridor exclude certain environmentally, historically, or culturally significant lands not owned by the United States or a State. Nothing in the statute suggests that the Department should exclude such lands from the Mid-Atlantic Area National Corridor. None of the considerations listed in FPA section 216(a)(4) address any specific environmental, historical, or cultural factors or even land use issues in general. While FPA section 216(a)(4) is not an exclusive list of the factors that the Department may consider when designating a National Corridor, the Department does not believe that analysis of the effect of transmission construction on environmentally, historically, or culturally significant lands is warranted at the National Corridor designation stage. If FERC jurisdiction were triggered under FPA section 216(b), FERC would conduct an evaluation of the reasonably foreseeable effects of transmission construction on any environmentally, historically, or culturally significant lands, including an analysis of alternative routes and mitigation options.[81] Based on that analysis, FERC has the authority to approve the application, deny the application, or approve the application with modifications. The Department has delineated the Mid-Atlantic Area National Corridor broadly enough to enable FERC to consider a wide range of alternative routes. Thus, the Department sees no need to exclude environmentally, historically, or culturally significant lands from the Mid-Atlantic Area National Corridor. Further, as with Federal and State property, exclusion of such lands could unduly restrict existing flexibility in siting transmission facilities, and there is nothing in FPA section 216 that indicates Congress intended such a result.

Some commenters have argued that certain Federal laws bar the construction of transmission facilities in certain areas, and thus the Department should exclude those areas from the Mid-Atlantic Area National Corridor. To the extent that any Federal laws do limit or prohibit construction of transmission facilities in certain areas, FERC as well as the States and other siting authorities

[79] *See also* statement of Arthur Gray Coyner at May 15, 2007, Arlington, VA public meeting.

[80] The significance of the absence of any express exclusion of Federal or State property from the reach of FPA section 216(a) is further underscored by Congress' explicit exemption of National Parks and certain other Federal lands from the Presidential appeal process established by FPA section 216(h)(6). *See* FPA section 216(j)(2), 16 U.S.C. 824p(j)(2).

[81] *See* FERC Order No. 689, 71 FR 69,440, 69,459, 117 FERC ¶ 61,202 at P 177 (avoidance of special land use areas will be explored through the course of the NEPA review).

already are bound by those limitations or prohibitions.[82] Therefore, no exclusion of such areas from the Mid-Atlantic Area National Corridor is needed.

F. Consideration of Alternatives Under FPA Section 216(a)(2)

Summary of Comments

Several commenters, including Governor O'Malley and Governor Kaine, argue that the Department should evaluate non-transmission solutions to congestion before designating the Mid-Atlantic Area National Corridor. Many of these commenters argued that FPA section 216(a)(2) requires such an evaluation. SELC states that designation of a Mid-Atlantic Area National Corridor would put in place a process that allows for fast-tracking the approval of high-voltage transmission lines, whereas the designation would do nothing to fast-track investments in energy efficiency, conservation, or other alternative solutions to congestion. NYPSC states that efficient price signals allow market participants to make informed choices when determining whether investment in new or improved transmission is economically justified. Therefore, NYPSC states, the Mid-Atlantic Area National Corridor should only be designated if a cost/benefit analysis shows a transmission solution will clearly yield a net positive benefit to the system. Otherwise, NYPSC asserts, project developers may abandon already planned facilities, such as additional generation facilities downstream of constrained or congested transmission facilities, and States' ability to pursue non-transmission solutions will be compromised.

OMS states that while the Department asserted in the May 7 notice that it was not making findings on the optimal remedy for congestion, the May 7 notice nonetheless contains statements that suggest the contrary, for example, statements that efforts to increase demand response in PJM do not appear capable of forestalling the need for additional transmission.

Other commenters, such as the National Rural Electric Cooperative Association and the American Public Power Association, stated that DOE's proposed designations do not and should not be interpreted to prejudge any particular solution. NYISO argues that the Department should not take on the function of comparing the merits of alternative solutions to congestion. Duke Energy Corporation argues that developers will make project proposals and decisions based upon business-case economic analyses and the availability of appropriate cost-recovery mechanisms, and designation of a Mid-Atlantic Area National Corridor does not bias this process in favor of any particular solution.[83]

DOE Response

The Department concludes that consideration of non-transmission solutions to the congestion problems facing the Mid-Atlantic Critical Congestion Area is neither required nor necessary as a precondition to designating the Mid-Atlantic Area National Corridor. FPA section 216(a)(2) calls for the Secretary to consider ''alternatives and recommendations from interested parties'' before making a National Corridor designation. The statute, however, does not specify what the term ''alternatives'' refers to. Numerous commenters would have us interpret the phrase to mean alternative solutions to congestion or constraint problems, which would then necessitate a comparison of non-transmission solutions against transmission solutions. Nothing in the language of FPA section 216 requires or suggests such an interpretation.

As discussed in Section I.A above, the very structure of FPA section 216 indicates that the Department's role is limited to the identification of congestion and constraint problems and the geographic areas in which these problems exist, and does not extend to the functions of electric system planners or siting authorities in evaluating solutions to congestion and constraint problems. Even the statutory requirement to consider alternatives is not couched in terms of an independent analysis of a reasonable range of alternatives, as one would expect if Congress had intended the Department to analyze and select a solution, but rather refers merely to the Department considering those alternatives and recommendations offered by interested parties. The Department believes that expanding its role to include analyzing and making findings on competing remedies for congestion could supplant, duplicate, or conflict with the traditional roles of States and other entities.

Not only does the statute not require the Department to analyze non-transmission alternatives, such analysis is also not warranted as a matter of discretion. The primary concern of those arguing for analysis of non-transmission solutions to congestion or constraints is that National Corridor designation disadvantages those solutions, and thus, according to these comments, the Department should only make such a designation where it has determined that transmission is the best solution. As discussed in Section I.A above, the Department sees no basis to conclude that designation of the Mid-Atlantic Area National Corridor would either prejudice State or Federal siting processes against non-transmission solutions or discourage market participants from pursuing such solutions.

The Department concludes that the phrase ''alternatives and recommendations from interested parties'' as used in FPA section 216(a)(2) is ambiguous. For the reasons given above, the Department declines to interpret the phrase to mean non-transmission solutions to congestion or constraint problems. The Department believes it is more appropriate to interpret this phrase in a manner that recognizes the statutory limits on DOE's authority. Upon completion of a congestion study, the statute gives the Department two options: Designate one or more National Corridors or do not designate any National Corridors. In light of this statutory framework, the Department concludes that the term ''alternatives and recommendations from interested parties'' was intended to refer to comments suggesting National Corridor designations for different congestion or constraint problems, comments suggesting alternative boundaries for specific National Corridors, and comments suggesting that the Department refrain from designating a National Corridor.

With regard to OMS' concerns about certain statements in the May 7 notice, the Department reiterates that its designation of the Mid-Atlantic Area National Corridor is an identification of congestion problems and the geographic areas in which these problems exist. The designation does not constitute a determination of the best solution to those problems. The Department is expressing no opinion about how the identified congestion problems should or will be addressed. To the extent that any statements in the May 7 notice suggested the contrary, that was not the Department's intent.

G. Whether DOE Should Exercise Its Discretion To Designate the Draft Mid-Atlantic Area National Corridor

Summary of Comments

Several commenters agreed with the May 7 notice's analysis that economic

[82] *See* FPA sec. 216(j), 16 U.S.C. 824p(j) (except as specifically provided, nothing in FPA section 216 affects any requirement of any Federal environmental law).

[83] *See also* comments of PHI.

development, reliability, supply diversity, energy independence, and national defense and homeland security considerations warrant the exercise of the Secretary's discretion to designate the draft Mid-Atlantic Area National Corridor. For example, PJM argued that all of the considerations identified by the Department demonstrate the critical importance of designating at least the portion of the draft Mid-Atlantic Area National Corridor within the PJM footprint. PJM further notes that its most recent 2007 Regional Transmission Expansion Plan reveals additional looming violations of NERC's and PJM's own reliability criteria beyond those already identified in the May 7 notice. The City of New York argues that designation of a National Corridor would increase reliability; heighten national security; allow for increased economic transfers from the PJM and upstate New York markets into the New York City load pocket; reduce reliance on antiquated and inefficient generating plants that raise air quality issues in the densely populated New York City urban environment; and increase diversity of fuel sources for New York City, which is overly reliant on an increasingly constrained natural gas supply system.

Other commenters argued that the considerations identified by the Department do not support designation of the draft Mid-Atlantic Area National Corridor. Numerous commenters argued that economic development considerations do not warrant designation of the draft Mid-Atlantic Area National Corridor. A few commenters argued that improving access to coal-fired generation in the Midwest would not in fact result in lower power prices for consumers in the sink area. For example, OH Siting Board states that the generation fleet in the Midwest is old, due for several retirements, and uncontrolled in emissions. Therefore, OH Siting Board states, the additional environmental and operational costs associated with increased generation from these plants, in conjunction with bidding into a different wholesale market, may eliminate the expected economic benefit of improving the sink area's access to such plants. NJBPU argues that with the likely advent of greenhouse gas regulation, the cost of power from these plants will increase, making their output less competitive in eastern load centers.[84]

Many commenters argued that even if economic development in the sink area would benefit from designation of the draft Mid-Atlantic Area National Corridor, such benefit must be weighed against the negative economic effect that construction of transmission would have on other areas within the Mid-Atlantic Area National Corridor. For example, New York Farm Bureau (NYFB) states that construction of transmission lines within the upstate New York portions of the draft Mid-Atlantic Area National Corridor would increase upstate wholesale electric costs, thus reducing the ability of the region to recruit new upstate employment opportunities and negatively affecting farm businesses. Pike County, Pennsylvania states that its recreation and tourism industries will suffer if the draft Mid-Atlantic Area National Corridor is designated.

Many commenters argued that some areas within the draft Mid-Atlantic Area National Corridor away from the sink area are already in a worse economic position than the sink area that the draft Corridor is designed to serve. Chenango County Farm Bureau states that upstate New York, as a region, has had one of the lowest job growth rates in the Nation over the past ten years. Pennsylvania House of Representatives Majority Leader DeWeese states that if the draft Mid-Atlantic Area National Corridor were designated, Pennsylvania would become an energy hub for the urban centers of the Mid-Atlantic region, while residents of western Pennsylvania would face increased electric rates and receive no economic or quality-of-life benefit from the resulting transmission lines.[85]

Many individuals residing within the draft Mid-Atlantic Area National Corridor but away from the sink area argued that designation would require them to bear an unfair burden. For example, Jameson O'Donnell stated:

> I believe this is really an effort to take away local control of our region to our detriment and for the benefit of other areas which have not planned accordingly * * *. Especially in today's electronic world, the tremendous economic development occurring in MD and VA could occur in other places (e.g. southwestern PA) however, that opportunity is being taken away from us as those states try to make us the armpit of the region by dumping all of their trash here, using all the coal without adequate compensation for the damage caused, and now through the destruction of our land and economic development potential by scarring us with generation plants and transmission lines they don't want in their own states.[86]

With regard to reliability considerations, Con Ed states that the Department has failed to account for the adverse reliability impacts of favoring long-haul transmission.

Numerous commenters argued that instead of promoting national defense and homeland security, the draft Mid-Atlantic Area National Corridor would actually create security problems by promoting the construction of long above-ground transmission lines that would become prime targets for terrorist attacks.[87] NYFB states that before designating a Mid-Atlantic Area National Corridor, the Department should examine all areas surrounding New York City and Long Island from which power could be supplied.

Environmental Defense states that although it is not categorically opposed to construction of new interstate transmission facilities, the draft Mid-Atlantic Area National Corridor demonstrates a bias toward large interstate transmission projects serving coal and nuclear generating stations to the detriment of demand response programs, energy efficiency, and distributed generation, all of which would do more to enhance national defense, homeland security, and energy independence, and to provide an adequate and reasonably priced supply of electricity.

Other commenters argued that additional considerations beyond those identified in the May 7 notice warrant the Department exercising its discretion not to designate the draft Mid-Atlantic Area National Corridor. Many commenters argued that the Department should have factored in environmental considerations, and that had it done so, it would have concluded that designation is not justified. Some of these commenters raised concerns about the effects of long transmission lines on viewsheds and wildlife habitat. Numerous commenters, including many individuals, argued that the draft Mid-Atlantic Area National Corridor would worsen greenhouse gas emissions and air quality, because, they claim, the PJM portion of the Corridor is designed to increase coal-based generation.[88] For example, NJDEP is concerned that the designation would undermine any reductions in greenhouse gas emissions

[84] *See also* comments of Sierra Club (National).

[85] *See also* comments of OH Siting Board, Pennsylvania Farm Bureau, and Fauquier County, VA.

[86] *See also* comments of Debra Bohunicky (''[I]t is unconscionable that these intentions to increase power availability should only serve the interests of a few in a specifically overusing region (such as NY city) to the grave disadvantage of those displaced by or put under the deleterious effects of the entire line.''), and William Loftus (''This idea of source/sink areas is repugnant, and will cause rural properties to be impacted so that urban dwellers may continue to have access to cheaper power.'').

[87] *See, e.g.*, comments of York County, PA Planning Commission, Frances Cooley, and Ralph Neal.

[88] *See, e.g.*, comments of NPCA, Wickliffe Walker, Mitzi Price, and Kevin Brogley.

New Jersey may achieve through its legislative and regulatory programs, including the State's recently enacted Global Warming Response Act. Other commenters stated that some of the coal-based plants in the source areas identified in the May 7 notice are already among the most polluting in the country and construction of additional transmission capacity to enable these plants to operate at higher levels will result in additional risk to human health and the environment.

Other commenters argued that the Department should accord more deference to existing State and regional planning and siting processes and hold off on any designation of a Mid-Atlantic Area National Corridor until and unless it is clear that a Federal siting forum is needed. These commenters offered descriptions of existing State siting and PJM and NYISO planning processes. For example, PaDEP states that designation of the draft Mid-Atlantic Area National Corridor would be a premature usurpation of State authority given that there is no evidence that the PaPUC has either refused to site proposed transmission projects, obstructed the siting of such projects, or modified such projects in a way that renders them uneconomic. Governor Kaine states that Virginia enacted an energy plan in 2006 that expressly recognizes the importance of regional considerations, as well as new energy efficiency and conservation measures. NYPSC states that because the transmission siting process in New York works well, there has been no demonstrated need to designate any National Corridor within New York State.[89]

Those commenters who suggested that the Department defer designation of any Mid-Atlantic Area National Corridor argued that such deferral would be consistent with FPA section 216's recognition that States retain primary authority over transmission siting. These commenters also argue that designation of a Mid-Atlantic Area National Corridor would have an extremely disruptive effect on energy planning efforts currently ongoing in the States. For example, Governor Kaine states that designation of a Mid-Atlantic Area National Corridor along with ensuing FERC siting proceedings could have the effect of delaying construction of transmission in Virginia, contrary to the purpose of FPA section 216. Governor O'Malley states that designation would significantly reduce incentives for utilities to continue to work cooperatively with Maryland agencies.

On the other hand, some commenters urged the Department not to defer designation of a Mid-Atlantic Area National Corridor. For example, AEP argued that Federal backstop authority would provide the impetus needed to bring parties together and resolve any impasse in a timely fashion. AEP states that the obstacles and excessive delays it encountered during the 15-year process of siting and building its Jacksons Ferry—Wyoming line demonstrate the dire need for National Corridors to be designated. National Grid argues that as a practical matter, no prudent transmission developer would rely on a National Corridor designation to circumvent regional, State, or local planning and siting rules and processes, because the developer will need the support of key stakeholders such as customers, States, and local authorities for other reasons.[90]

DOE Response

The Department recognizes that FPA section 216 adopted a novel approach to addressing congestion problems, and that many commenters have grave concerns about the effects of this new approach. However, after careful consideration of these concerns, the Department concludes that designation of the draft Mid-Atlantic Area National Corridor is consistent with the intent of FPA section 216(a).

As an initial matter, the Department notes that a number of the comments seem premised on the assumption that designation of the draft Mid-Atlantic Area National Corridor would create a bias in favor of long transmission lines running the full length of the Corridor, and in particular long transmission lines connecting to coal-fired generation. The Department regards such an assumption as unfounded. As discussed in Section I.A above, a National Corridor designation does not constitute a finding that transmission must or even should be built; it does not prejudice State or Federal siting processes against non-transmission solutions; and it should not discourage market participants from pursuing such solutions. Further, even within the realm of potential transmission solutions, designation of the draft Mid-Atlantic Area National Corridor would not favor any particular transmission project within the Corridor. While the Department did identify regions with coal-fired generation as source areas when it delineated the draft Mid-Atlantic Area National Corridor, such delineation was not a determination that transmission lines connecting those particular source areas to the sink area must or should be built, or that such projects are preferable to other transmission projects. The Department's identification of source areas was a means of setting an outer bound on the geographic range of potential transmission projects that could become subject to FERC jurisdiction. Designation of the draft Mid-Atlantic Area National Corridor no more dictates or endorses the construction of transmission lines to access coal-fired generation than it does the construction of transmission lines to access the wind-rich identified source areas. If a transmission project were proposed within the draft Mid-Atlantic Area National Corridor to deliver generation to the Mid-Atlantic Critical Congestion Area from somewhere other than the identified source areas, the developer of the project would be eligible to seek a FERC permit, provided it met the standards of FPA section 216(b). The Department sees no reason to conclude that designation of the draft Mid-Atlantic Area National Corridor would discourage any such projects.[91]

Given that designation of the draft Mid-Atlantic Area National Corridor does not determine whether or which transmission projects will be built, concerns about the reliability, national security, and environmental effects of long transmission lines and transmission lines accessing coal-fired generation are not germane at this stage. If FERC jurisdiction under FPA section 216(b) were triggered, FERC would analyze and take into consideration the reasonably foreseeable effects of that project, including the reliability impacts of the project,[92] implications for

[89] *See also* comments of NJ Public Advocate, CARI, and ODEC.

[90] *See also* comments of WIRES and statement of Bill May at May 23, 2007, New York, NY public meeting.

[91] For example, when explaining its rationale for the eastern boundary of the draft Mid-Atlantic Area National Corridor in the May 7 notice, the Department explicitly recognized that if additional generating capacity were developed at the Calvert Cliffs nuclear plant, additional transmission capacity would likely be needed to enable the electricity output to be moved from the Calvert Cliffs substation to the load centers in the sink area. Since the issuance of the May 7 notice, UniStar Nuclear has filed a partial application with the Nuclear Regulatory Commission to construct an additional unit at Calvert Cliffs. *See* UniStar Nuclear, NRC Project No. 746, Submittal of a Partial Combined License Application, Acc. No. ML071980292 (filed July 13, 2007).

[92] *See* FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 41 (''[The Commission] will investigate and determine the impact the proposed facility will have on the existing transmission grid and the reliability of the system.'').

national security,[93] and air quality and greenhouse gas impacts, as required by NEPA and other environmental laws.[94]

Commenters have disputed the Department's reliance on economic growth considerations. Some have argued that improving access to coal-fired generation in the Midwest will not reduce power prices in the Mid-Atlantic Critical Congestion Area because of likely increases in the cost of generation from such sources. The Department has documented that consumers in the Mid-Atlantic Critical Congestion Area are currently paying higher power prices because of persistent congestion that thwarts access to cheaper power sources.[95] As discussed above, designation of the Mid-Atlantic Area National Corridor is not a determination that transmission must, or even should, be built, let alone that transmission to a particular generation source must be built. If potential future events, such as the adoption of greenhouse gas regulation, were to occur and increase the operating costs of generation sources that are currently relatively cheap, such developments would be taken into consideration by market participants evaluating their economic incentives to build a transmission project to those sources. Such developments would likely also be relevant in any FERC permit proceeding, given FPA section 216(b)(4)'s requirement that any project authorized by FERC must benefit or protect consumers. Moreover, we note that our designation of the draft Mid-Atlantic Area National Corridor is not motivated solely by a concern over price differentials. Consumers in the Mid-Atlantic Critical Congestion Area are facing near-term threats to the adequacy of their electricity supply.[96] Even if coal-fired power from some of the identified source areas becomes more expensive, it may still be needed in substantial amounts to serve demand in the Mid-Atlantic Critical Congestion Area.

With regard to the other comments concerning economic development considerations, the Department recognizes that it is critically important to consider the relative effect that proposed transmission facilities will have on the economic development of the communities through which they are routed versus the communities those facilities will serve. However, how a transmission line actually affects a community through which it is routed is chiefly a function of how the line is sited and how its costs are allocated, neither of which is determined by a National Corridor designation.[97] Further, FPA section 216(a)(4)(A) provides for consideration of the effect that congestion and constraints are having on economic development; it does not speak to the economic impacts of adding transmission capacity to address such congestion and constraints. While FPA section 216(a)(4) is not an exclusive list of the factors that the Department may consider when deciding whether to designate a National Corridor, the Department does not believe that consideration of the effect of adding transmission capacity on economic development is warranted at the National Corridor designation stage. If FERC jurisdiction under FPA section 216(b) were triggered, FERC would consider the reasonably foreseeable economic effects of the proposed project on the communities through which it is proposed to be routed.[98]

Some commenters urge us to defer any designation of a Mid-Atlantic Area National Corridor until States and regional planning efforts have had more time to address the congestion problems. These commenters provide details on the effectiveness of various State and RTO or ISO planning processes. As the Department stated in the May 7 notice, we do not believe that Congress envisioned the adoption of a wait-and-see approach to National Corridor designation. Nothing in the comments we have received on the May 7 notice has changed our view of this subject.

Congress could have instructed the Department to study the adequacy of State siting processes and consider that information when making National Corridor designations, but Congress did not do so. Nothing in FPA section 216(a) even mentions the issue of the State siting processes. Instead, Congress itself, in FPA section 216(b)(1), specified the conditions related to State siting processes that would trigger potential Federal siting authority after designation of a National Corridor.[99] Thus, the Department believes that evidence of the adequacy of State siting processes is not relevant to the Department's decision-making under FPA section 216(a).

Some commenters appear to regard National Corridor designation as tantamount to punishing the States within the Corridor and, thus, suggest that States who have ''good'' energy policies should be spared such punishment. However, National Corridor designation is not an indictment of State siting processes. The Department strongly supports State and regional efforts to collectively address the congestion problems confronting the region, whether those efforts are focused on transmission solutions, non-transmission solutions, or a combination of both. Despite the assertions of some commenters, the Department does not believe that designation of the draft Mid-Atlantic Area National Corridor necessarily will disrupt ongoing State or regional planning processes. As discussed in Section I.A above, a National Corridor designation itself does not preempt State authority or any State actions. Thus, States retain the authority to work together to address aggressively the congestion problems confronting the region. Further, we expect utilities within the Mid-Atlantic Area National Corridor to continue to work cooperatively with State and local authorities and to participate in the regional planning processes of PJM and NYISO. We note that FERC has indicated that it will consider any allegations that an applicant has acted in bad faith in State proceedings when it reviews permit applications under FPA section 216(b)(1)(C)(i).[100]

[93] *See id.*, 71 FR 69,440, 69,459, 117 FERC ¶ 61,202 at P 180 (''Homeland security related issues will be addressed on a case-by-case basis.'').

[94] *See id.*, 71 FR 69,440, 69,456, 117 FERC ¶ 61,202 at P 141.

[95] *See* May 7 notice, Sections VIII.B and VIII.C.1.

[96] *See id.*, Section VIII.C.2; *see also* comments of PJM.

[97] As discussed in the May 7 notice, cost allocation for transmission facilities is a long-standing FERC function.

[98] *See, e.g.*, FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 42 (''The Commission will also consider the adverse effects the proposed facilities will have on land owners and local communities.''); *see also id.*, 71 FR 69,440, 69,456–57, 117 FERC ¶ 61,202 at P 150 (applicant required to provide information concerning the impact of the proposed project on the towns and counties in the vicinity of the project).

[99] Specifically, as discussed in Section I.A above, FERC jurisdiction is triggered only when either: The State does not have authority to site the project; the State lacks the authority to consider the interstate benefits of the project; the applicant does not qualify for a State permit because it does not serve end-use customers in the State; the State has withheld approval for more than one year; or the State has conditioned its approval in such a manner that the project will not significantly reduce congestion or is not economically feasible. 16 U.S.C. 824p(b)(1).

[100] *See* FERC Order No. 689, 71 FR 69,440, 69,443–44, 117 FERC 61,202 at P22 (''The Commission expects all potential applicants under FPA section 216 to act in good faith as it relates to State jurisdiction. Although the Commission may exercise jurisdiction in all instances where a State has withheld approval for more than one year, the Commission, in determining whether to do so, will weigh heavily clear evidence that an applicant has abused the State process.''); *see also* 119 FERC ¶ 61,154 at P 35 (* * * if questions arise during pre-filing concerning the adequacy of the applicant's efforts to site the facility at the state level and Commission staff determines that more

Continued

State and regional efforts may well resolve the congestion problems afflicting the Mid-Atlantic Critical Congestion Area without any invocation of FERC authority. However, as the May 7 notice documented, economic development, reliability, supply diversity, energy independence, and national defense and homeland security considerations all warrant designation of the draft Mid-Atlantic Area National Corridor.[101] Given the increasingly interconnected nature of the transmission grid and wholesale power markets, siting of electricity infrastructure poses increasingly complex questions about how to balance equitably all competing interests. Tensions can exist between what is perceived to be best for a region as a whole versus what is perceived to be best for an individual State or a portion of one State.[102] National Corridor designation provides, in a defined set of circumstances, a potential mechanism for analyzing the need for transmission from a national, rather than State or local, perspective. The comments the Department has received on the draft Mid-Atlantic Area National Corridor reveal the presence of the kinds of tensions that prompted Congress to create such a mechanism. The Department acknowledges that designation of the draft Mid-Atlantic Area National Corridor introduces a significant new possibility into the process of siting transmission, and that the existence of this possibility may pose challenges for States and may ultimately prove unnecessary. However, given the totality of circumstances, including the expanse of the congestion problem, the presence of looming reliability violations, and the significance of the Mid-Atlantic Critical Congestion Area to the security and economic health of the Nation as a whole, the Department concludes that it would be inconsistent with the intent of FPA section 216(a) to withhold the Federal safety net of National Corridor designation.[103]

In sum, having found the presence of congestion that adversely affects consumers in the Mid-Atlantic Critical Congestion Area, the Secretary has the discretion to designate a National Corridor. The Secretary concludes, based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate, that exercise of his discretion to designate the draft Mid-Atlantic Area National Corridor is warranted.

H. Duration of the Mid-Atlantic Area National Corridor Designation

Summary of Comments

Several commenters objected to setting a twelve-year term for the Mid-Atlantic Area National Corridor. For example, NARUC opposes the use of a twelve-year term as inconsistent with the statute. NARUC argues that the requirement that the Department conduct a congestion study every three years indicates that the factual basis for National Corridors must be reexamined and updated every three years, and, thus, only a three-year term, subject to three-year extensions, is permissible. NARUC states that use of a twelve-year term could easily result in a designation remaining in place long after congestion issues have been resolved.[104] NYFB advocates a nine-year term rather than a twelve-year term.

Other commenters, including National Grid and PJM, support a twelve-year term for the Mid-Atlantic Area National Corridor designation as consistent with planning needs.

RDOE Response

FPA section 216(a) does not itself impose any time limit on a National Corridor designation, nor does the statute require the Department to impose any such limit. While the statute requires the Department to conduct a congestion study every three years, nothing in the statute suggests that a National Corridor designation based on one congestion study should sunset unless re-justified in the next congestion study.

Some commenters express concern about FERC retaining jurisdiction to issue permits within a National Corridor after the congestion problem that motivated the Corridor has been resolved. However, as discussed in Section I.A above, FERC has clarified that only those transmission projects within a designated National Corridor that would significantly reduce the congestion identified by DOE would be eligible for a FERC permit. Therefore, even without an expiration date, a National Corridor designation would not result in any exercise of Federal permitting authority beyond that envisioned by Congress.

Nevertheless, in recognition of State concerns about open-ended National Corridor designations, the Secretary has decided to condition the Mid-Atlantic Area National Corridor designation by imposing a time limit on it. Any such time limit, however, must balance State concerns against the disruptive effect that regulatory uncertainty can have on transmission investment. Given the time frames involved in planning and developing a transmission project, the Secretary concludes that it is appropriate to set a twelve-year term for the Mid-Atlantic Area National Corridor designation, subject to the Department's right to rescind, renew or extend the designation after notice and opportunity for comment. Further, the Department does not intend to allow the termination of the Mid-Atlantic Area National Corridor designation as it may apply to an accepted permit application pending at FERC, or, once FERC has granted a permit, during the period in which the approved facilities are being constructed.

III. Southwest Area National Corridor (Docket No. 2007-OE–02)

A. Procedural Matters

The May 7 notice provided instructions on how to provide comments and how to become a party to the proceeding in this docket. Consistent with those instructions, the Department is granting party status in this docket to all persons who either: (1) Filed comments electronically at *http://nietc.anl.gov* on or before July 6, 2007; (2) mailed written comments marked ''Attn: Docket No. 2007–OE–02'' to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, that were received on or before July 6, 2007; or (3) hand-delivered written comments marked ''Attn: Docket No. 2007–OE–02'' at one of the public meetings.

processing at the state level is appropriate, it will not hesitate to suspend the pre-filing process while the state process continues'').

[101] *See* May 7 notice, Section VIII.C.

[102] While some commenters have questioned the Department's authority to designate a National Corridor in reaction to the presence of congestion problems within a single State, courts have long recognized the inherently interstate nature of transmission, even transmission within one State. *See FPL*, 404 U.S. at 462. Congestion problems within one State may well raise issues of national concern. Nothing in FPA section 216(a) suggests that the Department is limited to addressing congestion that crosses State lines, provided that the Department determines that constraints or congestion are adversely affecting consumers and that designation is warranted, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate.

[103] Further, whereas Congress could have completely preempted State siting of interstate transmission facilities, allowing for the potential exercise of limited Federal preemption in accordance with FPA section 216(a) does not intrude on any State rights or prerogatives.

[104] *See also* comments of OH Sitting Board and The Wilderness Society.

B. Overall Comments on the Draft Southwest Area National Corridor

The Department received comments from State agencies and officials expressing a range of views about the draft Southwest Area National Corridor. Arizona Governor Napolitano and the Arizona Corporation Commission (ACC) both filed comments opposing designation of the draft Southwest Area National Corridor. Nevada Agencies, filing comments on behalf of the State of Nevada, oppose inclusion of Clark County in the draft Southwest Area National Corridor.

The California Energy Commission (CEC) supported designation of the draft Southwest Area National Corridor but recommended that the Department develop a process to identify and protect environmentally sensitive areas that are unsuitable for transmission. The California Public Utilities Commission (CPUC) opposes designation of a Southwest Area National Corridor that would include all of southern California. However, CPUC notes that since the issuance of the May 7 notice, ACC has rejected an application by Southern California Edison Company (SCE) to construct the Devers-Palo Verde 2 project (DPV2),[105] which, according to CPUC, would increase transfer capability between the desert Southwest and southern California and had already been approved by the CPUC, the California Independent System Operator (CAISO),[106] and the Arizona Power Plant and Transmission Line Siting Committee. Thus, CPUC supports designation of a National Corridor that is more narrowly targeted than the draft Southwest Area National Corridor, such as a National Corridor along the Arizona section of the proposed DPV2 route.

The Wyoming Infrastructure Authority (WIA) supports designation of the draft Southwest Area National Corridor.

The Department received dozens of comments from individuals opposing designation of the draft Southwest Area National Corridor. Numerous non-profit organizations also filed comments opposing designation.[107] The Imperial Irrigation District (IID) opposed designation of the draft Southwest Area National Corridor.

The California Chamber of Commerce supported designation of the draft Southwest Area National Corridor. A number of utilities also filed comments supporting designation of the draft Southwest Area National Corridor.[108]

NERC filed comments stating that the ultimate designation of National Corridors will further bolster the reliability of the grid. The Transmission Expansion Policy Planning Committee of the Western Electricity Coordinating Council (TEPPC) filed comments raising a number of questions, but stated that it was not advocating for or against the draft Southwest Area National Corridor.

C. Adequacy of Showing of Congestion That Adversely Affects Consumers

Summary of Comments

Numerous commenters argued that the Department had failed to make the showing of congestion adversely affecting consumers required in order to designate a Southwest Area National Corridor. Some of these commenters took issue with the Department's position that it has the discretion to designate the draft Southwest Area National Corridor upon a showing of the existence of persistent congestion, without a further demonstration of adverse effects on consumers. For example, ACC states that DOE has not demonstrated adverse effects on consumers as required by FPA section 216(a)(2). ACC argues that DOE has inappropriately assumed that all persistent congestion harms the public interest and that no evidence or analysis supports this broad, unfounded conclusion. CPUC states that congestion and constraints do not, in and of themselves, adversely affect consumers, and DOE must develop valid criteria for measuring congestion and transmission constraints and show how they impact consumers.[109] TEPPC notes that the Congestion Study did not provide an analysis of the economic benefits of relieving this congestion. CPUC states that congestion costs over major transmission inter-ties between southern California and Arizona/Nevada amounted to about $30 million per year in 2006, a small fraction of the annualized cost of a major transmission project.

TEPPC questions whether the Western Area Power Administration (WAPA) data on denial of transmission service requests cited in the May 7 notice reveal an actual lack of physical capacity as contrasted to a contractual issue.

Some commenters argue that the Department has exaggerated the significance of congestion into and within southern California. CPUC states that the Congestion Study itself indicates that the major transmission paths into southern California have recently been less fully loaded than other Western transmission paths. TEPPC states that the data in the Congestion Study do not support an unequivocal finding of congestion on paths within the draft Southwest Area National Corridor as compared to other paths within the Western Interconnection and that CAISO data do not appear to show a clear pattern of congestion over a number of years.

Other commenters supported the Department's showing of congestion adversely affecting consumers in the Southern California Critical Congestion Area. For example, SDG&E states that persistent congestion adversely affects consumers because buyers must rely on power from less-preferred generating sources, a smaller range of generators is available, and the grid operators have fewer options for dealing with unanticipated events.

DOE Response

The Department concludes that it has sufficiently demonstrated and found the existence of congestion that adversely affects consumers in the Southern California Critical Congestion Area. As discussed in Section II.C above with regard to the Mid-Atlantic Area National Corridor, congestion prevents users of the transmission grid from completing their preferred power transactions, which in turn can deny those users the benefit of lower prices, diversity of supply, and increased grid operator flexibility, all to the detriment of consumers. Loss of these benefits increases as congestion on a particular path becomes more frequent. Thus, the Department believes that FPA section 216(a) gives the Secretary the discretion to designate a Southwest Area National Corridor upon a showing of the existence of persistent congestion.

Some commenters suggest that congestion into and within the Southern California Critical Congestion Area does not adversely affect consumers unless the costs of relieving the congestion are less than the costs of the congestion itself. As discussed in Section II.C above, the Department concludes that Congress intended the Department to consider adverse effects on consumers beyond increases in the delivered price of power, some of which effects may not be easily monetized. Further, designation of a National Corridor does not dictate how or even whether to address a particular instance of congestion. Therefore, the Department

[105] *See* Order Denying a Certificate of Environmental Compatibility, ACC Dec. No. 69638 (June 6, 2007).

[106] CAISO is the ISO serving most of California.

[107] *See, e.g.*, comments of San Diego Renewable Energy Society (SDRES) and the Sierra Club (Grand Canyon Chapter).

[108] *See, e.g.*, comments of SCE, SDG&E, and Coral Power, LLC (Coral); *see also* comments of EEI.

[109] *See also* comments of Colorado Public Utilities Commission and OMS.

believes that restricting the term ''congestion that adversely affects consumers'' to congestion that can be cost-effectively relieved is an overly narrow reading of the statute.

The Department further concludes that it has adequately demonstrated the existence of persistent congestion into and within the Southern California Critical Congestion Area. The May 7 notice identified data establishing the presence of existing constraints causing patterns of congestion that have persisted over a number of years. The data included line flow data revealing the presence of congestion from 1999 through 2005 on a number of lines into and within southern California, as well as CAISO data from 2004 through 2006 showing binding hours on paths into and within southern California. The Department also noted that the modeling performed for the Congestion Study projected that several historical constraints into and within southern California would continue to cause congestion in 2008.

The WAPA data questioned by TEPCC are but one category of data used in the May 7 notice to establish the presence of persistent congestion. Further, for the same reasons that the Department does not see a need to analyze the potential solutions to congestion at the National Corridor designation stage, the Department does not believe it is necessary at the National Corridor designation stage to analyze the causes of persistent congestion. Regardless of whether congestion is the function of power flows reaching operational limits or of capacity being contractually committed yet unused, users of the transmission system are denied the benefit of their preferred transactions. If FERC jurisdiction under FPA section 216(b) were triggered, parties to the FERC proceeding could raise any concerns they had about the contractual nature of the congestion and whether market operation alternatives would be preferable to the construction of additional capacity.

Moreover, while the Department concludes that the statute authorizes the designation of a Southwest Area National Corridor upon a finding of the existence of persistent congestion, the Department nevertheless has provided additional documentation. In the context of explaining the considerations that led to the draft designation of the Southwest Area National Corridor, the Department documented that congestion poses threats to the reliability of electricity supply to consumers in the Southern California Critical Congestion Area, and that congestion limits supply diversity for Southern California Critical Congestion Area consumers. For example, the May 7 notice explained that CAISO has determined that the San Diego area is projected to be deficient in overall generation capacity by the year 2010 due to severe import limits, and that there are looming reliability problems on the South of Lugo path, a major CAISO internal path that serves the Los Angeles Basin.

Some commenters complain that pathways into and within southern California are less congested than other paths in Western Interconnection and that the Department has failed to develop specific criteria and metrics for evaluating the significance of congestion. However, the relative level of congestion into and within southern California as compared to other paths in the Western Interconnection is not dispositive of whether consumers are adversely affected by congestion. FPA section 216(a) does not require the Department to rank different levels of congestion, nor does it restrict the Department to considering National Corridor designation only in those areas experiencing the highest levels of congestion. FPA section 216(a)(2) authorizes the Department to designate as a National Corridor ''any geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.'' While some of the metrics used in the Congestion Study do suggest that the level of congestion on paths into and within southern California is lower than on other paths in the Western Interconnection, congestion into and within southern California is a precursor of a serious reliability problem. This serious threat to the reliability of electricity supply to the Southern California Critical Congestion Area constitutes an adverse effect on consumers that, in conjunction with other factors discussed here, warrants consideration of a National Corridor designation.

In conclusion, far from simply assuming the presence of congestion that adversely affects consumers, as some commenters allege, the Department has made a reasoned determination that the statutory conditions triggering discretion to designate a National Corridor for the Southern California Critical Congestion Area have been met.

D. Boundaries of the Draft Southwest Area National Corridor

Summary of Comments

Numerous commenters argued that the draft Southwest Area National Corridor is impermissibly broad. ACC argues that DOE's source-and-sink approach to delineating the draft Southwest Area National Corridor is insufficient under the statute. Governor Napolitano states that DOE should revisit its broad-brush approach and consider adopting a more targeted method for defining a National Corridor. CPUC states that designation of a National Corridor as broad as the draft Southwest Area National Corridor would provide a basis for second-guessing, forum-shopping, and re-litigation of decisions regarding complex issues. CPUC also states that while the focus of FPA section 216(a) is on interstate transmission, more than 48,000 square miles of the draft Southwest Area National Corridor falls within California alone. CPUC states that the prospect of Federal transmission siting over this in-State area effectively trumps California's ability to establish and pursue its own energy goals. CPUC states that any National Corridor to address congestion in the Southern California Critical Congestion Area should be more narrowly focused on connecting specific sink nodes with specific supply nodes, such as along the proposed DPV2 route.

IID states that DOE cannot reasonably assert that designation of an area as large as the draft Southwest Area National Corridor complies with FPA section 216(a), which limits designation of National Corridors to constrained areas. IID states that DOE should tailor its designation to locations where congestion problems truly exist, such as along Path 42 between IID's system and SCE's system. Citizens Campaign for the Environment supports limiting the Southwest Area National Corridor to only those lines and substations that are critically congested and constrained.

The Colorado Public Utilities Commission suggests DOE reclassify the draft Southwest Area National Corridor as a ''Zone'' and then designate narrower paths of specific widths and lengths within this Zone as National Corridors.

Some commenters suggested redrawing National Corridor boundaries so as to follow existing transmission lines or highways.[110]

Nevada Agencies believes that the Department has failed to adequately support the inclusion of Clark County, Nevada in the draft Southwest Area National Corridor. Nevada Agencies states that the Congestion Study did not identify any portion of Clark County as part of either a Critical Congestion Area or a Congestion Area of Concern, and the May 7 notice identified Arizona, not

[110] *See, e.g.*, comments of William Haven.

Nevada, as a source area. Nevada Agencies argues that the Department's only rationale for including Clark County is the statement that it would be useful to think of the transmission facilities around Mead as closely related to those around Palo Verde; however, according to Nevada Agencies, Palo Verde and Mead are considered two separate and distinct trading hubs. Thus, Nevada Agencies argues that the Department has bootstrapped Clark County into the draft Southwest Area National Corridor in violation of the statute.

Some commenters objected to the Department's use of county boundaries to delineate the outer bounds of the draft Southwest Area National Corridor. For example, Governor Napolitano states that Arizona counties are some of the largest in the country.[111]

Other commenters supported the Department's approach to delineating the boundaries of the draft Southwest Area National Corridor. For example, EEI states that DOE has properly delineated the draft Southwest Area National Corridor as a general, inclusive geographic area, and adds that if utility, State, or regional agency staff indicate that the margins of the draft Southwest Area National Corridor need to be modified to encompass potential solutions, DOE should make such modifications so that a full array of solutions is considered.

DOE Response

The Department concludes that its general approach to defining the boundaries of the draft Southwest Area National Corridor is consistent with the statute. As discussed in Section II.D above, the language of FPA section 216(a), which refers to designation of a ''geographic area,'' does not dictate any particular shape, proportion, or size for a National Corridor, and the Department's approach to delineating right-of-way corridors under EPAct section 368 does not inform the delineation of National Corridors under FPA section 216(a). Further, to the extent that common meanings and usage of the term ''corridor'' are relevant to the determination of a National Corridor under FPA section 216(a), the overall size and shape of the draft Southwest Area National Corridor are not inconsistent with such meanings and usage.

Some commenters have suggested that the statute should be interpreted as restricting any National Corridor designation to the specific confines of the load being adversely affected by congestion or the constrained transmission lines causing such congestion. For the reasons detailed in Section II.D above, the Department disagrees with this interpretation. The term ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers'' envisions an area that encompasses the load being adversely affected by congestion and the constrained transmission lines causing such congestion, but the statute is ambiguous with regard to the precise scope of the area. The Department believes its source-and-sink approach to delineating the boundaries of the draft Southwest Area National Corridor represents a reasonable interpretation of this ambiguous statutory term.

As with the Mid-Atlantic Area National Corridor, in implementing its source-and-sink approach to delineating the draft Southwest Area National Corridor, the Department has attempted to identify source areas that would enable a range of generation options. In exercising its judgment as to which source areas to use for purposes of delineating the draft Southwest Area National Corridor, the Department was guided by several factors. The Department has tried to balance the objective of accommodating a range of options against the practical limitations on delivery of power over increasingly longer distances. The Department has also taken into consideration State concerns about the size of any Southwest Area National Corridor as well as the fact that Congress opted for a limited approach to Federal preemption of transmission siting. The Department has been further guided by the considerations identified in FPA section 216(a)(4). Finally, consistent with the language of FPA section 216(a)(2) referring to designation of a geographic area experiencing constraints or congestion that adversely affects consumers, the Department has restricted its selection of source areas to those separated from the identified sink area, *i.e.* the Southern California Critical Congestion Area, by one or more of the constraints identified in Section IX.B of the May 7 notice as causing congestion adversely affecting consumers.

The result of this analysis was the identification of two categories of source areas: (1) The closest locations with substantial amounts of existing, under-used generation capacity separated from the identified sink area by one or more of the constraints identified as causing congestion adversely affecting consumers; and (2) the closest locations with the potential for substantial development of wind, geothermal, or solar generation capacity separated from the identified sink area by one or more of the constraints identified as causing congestion adversely affecting consumers. Identification of the first category is consistent with FPA section 216(a)(4)(A), which emphasizes the importance of ensuring adequate supplies of power. Identification of the second category is consistent with FPA section 216(a)(4)(B), which emphasizes diversification of supply, and FPA section 216(a)(4)(C), which emphasizes promotion of energy independence.

Having identified source areas, the Department then delineated the draft Southwest Area National Corridor by identifying the counties linking the identified source areas with the sink area.[112] While the Department recognizes that counties are generally larger in the West than in the East, we continue to believe in the importance of establishing precise, easily identified boundaries for the Southwest Area National Corridor. Thus, we conclude that use of county boundaries is a reasonable means of providing such certainty.

The Department's approach to delineating the draft Southwest Area National Corridor was designed to connect the sink area containing consumers adversely affected by congestion with a range of source areas separated from the identified sink area by the constraints causing such congestion. Given the overall framework of FPA section 216 and the physical properties of the electric grid, the Department concludes that this approach is consistent with the statutory call for the designation of a ''geographic area experiencing electric energy transmission capacity constraints or congestion that adversely affects consumers.'' However, upon further consideration, the Department concludes that inclusion of Clark County, Nevada in the Southwest Area National Corridor is not consistent with this approach. Nevada Agencies correctly note that the May 7 notice did not identify Clark County as either a sink area, a source area, or an area containing a constraint separating an

[111] *See also* comments of Nevada Agencies.

[112] ACC and CPUC note that certain plants identified as potential sources in Table IX–4 of the May 7 notice were not actually included within the draft Southwest Area National Corridor. In recognition of concerns about the size of National Corridors, DOE chose not to include each entire identified source area in the draft Southwest Area National Corridor. Instead, for source areas located where the transmission grid is already relatively strong, the Department extended the draft Southwest Area National Corridor only so far into those source areas as needed to encompass one or more possible strong points on the transmission network that serves those areas.

identified sink area from an identified source area. Rather, the May 7 notice stated that the Hoover Dam area southeast of Las Vegas, Nevada and the area around Palo Verde, Arizona are the two principal portals for transferring bulk power from the east into southern California, and that from a transmission planning and operational perspective, it is useful to think of these two pathways as closely related. As Nevada Agencies point out, the area around Las Vegas is experiencing tremendous growth. This growth could result in congestion that may at some future date warrant expansion of the Southwest Area National Corridor or designation of additional National Corridors in the Southwest. For now, though, the Department has decided to exclude Clark County, Nevada from today's Southwest Area National Corridor designation.

Some commenters complain that the draft Southwest Area National Corridor fails to provide adequate specificity on appropriate transmission solutions and suggest that the Department should go back to the drawing board to determine narrower routes linking specific sources and sinks. However, the Department is deliberately not attempting to identify preferred transmission solutions. As discussed in Section I.A above, FPA section 216(a) was not intended to shift to the Department the roles of electric system planners or siting authorities.

The Department recognizes the concerns about unintended expansion of Federal siting authority to include proposed transmission projects that happen to be located within the Southwest Area National Corridor but are unrelated to the problem that prompted the National Corridor designation. However, as discussed in Section II.D above, only those transmission projects within the Southwest Area National Corridor that would significantly reduce congestion into the Southern California Critical Congestion Area would be eligible for a FERC permit. Therefore, the Department does not believe that designation of the draft Southwest Area National Corridor, modified to exclude Clark County, Nevada, will result in the exercise of Federal permitting authority beyond that envisioned by Congress. Finally, while CPUC questions the Department's authority to designate a National Corridor when a large portion of that Corridor lies within a single State, the Department notes that courts have long recognized the inherently interstate nature of transmission, even transmission within one State.[113]

[113] *See FPL*, 404 U.S. at 462.

E. Inclusion of Environmentally, Historically, and Culturally Significant Lands

Summary of Comments

Many commenters argued that the Department should exclude National Parks, State parks, and other environmentally, historically, or culturally significant lands from any Southwest Area National Corridor. For example, CEC argues that certain ''no-touch zones'' should be established so that environmental impacts and controversies can be avoided. Governor Napolitano expresses concern about the sensitive wildlife areas included in the draft Southwest Area National Corridor. NPCA opposes inclusion of any unit of the National Park System in the Southwest Area National Corridor. Numerous commenters urged the removal of Death Valley National Park, Joshua Tree National Park, and Anza Borrego State Park from the draft Southwest Area National Corridor.[114]

DOE Response

For the reasons detailed in Section II.E above, the Department concludes that exclusion of environmentally, historically, or culturally sensitive lands from the Southwest Area National Corridor is neither required nor necessary. Nothing in the statute suggests that the Department must or should exclude such lands. With regard to Federal- and State-owned land, inclusion of such lands within the Southwest Area National Corridor does nothing to change the process for obtaining a right-of-way across such property. With regard to environmentally, historically, or culturally sensitive lands that are not owned by the U.S. or a State, the Department notes that designation of the Southwest Area National Corridor is not a determination that transmission will or should be built; it does not constitute, advocate, or guarantee approval of any transmission project; and it is not a determination of the route of any transmission project. If FERC jurisdiction under FPA section 216(b) were triggered, FERC would conduct an evaluation of the reasonably foreseeable effects of transmission construction on any environmentally, historically, or culturally significant lands, including an analysis of alternative routes and mitigation options. To the extent that any Federal laws do limit or prohibit construction of transmission facilities in certain areas, FERC is bound by those limitations or prohibitions. Further, exclusion of environmentally, historically, or culturally sensitive lands, whether public or private, could unduly restrict existing flexibility in siting transmission facilities, and the Department sees no reason to conclude that Congress intended such a result.

[114] *See, e.g.*, comments of Polly Pistker, Steven Ellsworth, Claudia Sall, and Vivian Hopkins, and statement of Peter Frigeri at June 20, 2007, Las Vegas, NV public meeting.

F. Consideration of Alternatives Under FPA Section 216(a)(2)

Summary of Comments

Several commenters argue that the Department should evaluate non-transmission solutions to congestion before designating the Southwest Area National Corridor. Many of these commenters argued that FPA section 216(a)(2) requires such an evaluation. For example, ACC states that designation of a Southwest Area National Corridor would tip the market toward transmission solutions by dampening or extinguishing market signals for other solutions, such as constructing generation close to load centers, that may better serve the public interest.

DOE Response

For the reasons set forth in Section II.F above, the Department concludes that no analysis of alternative solutions to congestion is required or warranted under FPA section 216(a) before designation of the Southwest Area National Corridor. While FPA section 216(a)(2) calls for the Secretary to consider ''alternatives and recommendations from interested parties'' before making a National Corridor designation, the Department concludes that, given the overall statutory framework, this term was intended to refer to comments suggesting National Corridor designations for different congestion or constraint problems, comments suggesting alternative boundaries for specific National Corridors, and comments suggesting that the Department refrain from designating a National Corridor. Moreover, as discussed in Section I.A above, designation of the Southwest Area National Corridor does not prejudice State or Federal siting processes against non-transmission solutions or discourage market participants from pursuing such solutions.

G. Whether DOE Should Exercise Its Discretion To Designate the Draft Southwest Area National Corridor

Summary of Comments

Several commenters agreed with the May 7 notice's analysis that reliability,

supply diversity, and national defense and homeland security considerations warrant the exercise of the Secretary's discretion to designate a Southwest Area National Corridor. For example, CEC supports the Department's conclusion that one of the consequences of congestion in southern California is heightened dependence on natural gas for the generation of electricity. The California Chamber of Commerce argued that designation of the draft Southwest Area National Corridor would help ensure reliability, noting that power failures that occur in California may affect neighboring States. SDG&E states that southern California has been subject to severe reliability impacts in recent years, and these impacts are likely to continue if congestion is not addressed. SDG&E adds that reliable power supplies for the Navy and Marine Corps bases in San Diego County are critical from a national security standpoint, and that the need for increased transmission access to meet California's portfolio diversity targets is self-evident. SCE states that resolving congestion into and within the Southern California Critical Congestion Area is not only vital for California and its residents, it is important for the region and the Nation as a whole. WIA urges the Department to consider broader National Corridor designations in the Western Interconnection, but supports designation of the draft Southwest Area National Corridor as a first step, given that it addresses a relatively discrete area that, according to WIA, is beyond any reasonable doubt experiencing congestion adversely affecting consumers.

Other commenters argued that designation of the draft Southwest Area National Corridor is not warranted. ACC argues that reliability considerations do not necessarily warrant designation of the draft Southwest Area National Corridor, because adding generation close to load centers can be preferable from a reliability perspective to adding new transmission accessing remote generation. ACC further states that differences in LMPs between California and Arizona may not reflect an ''apples to apples'' comparison of costs, in light of the different market structures in place in those two States. Therefore, according to ACC, the presence of higher LMPs in California than in Arizona does not necessarily indicate that California consumers are being harmed, and efforts to reduce such price differences could result in subsidies to California consumers at the expense of Arizona consumers.

Some commenters raised equity concerns. Governor Napolitano states that the draft Southwest Area National Corridor improperly focuses solely on the energy needs of California. ACC states that Arizona's economy is as important to the Nation as that of California, and that designation of the draft Southwest Area National Corridor would unfairly require Arizona to provide resource adequacy for California. ACC states that Arizona has no resource advantages for siting gas-fired generation compared to California, yet California has failed to site sufficient generation to meet its needs. ACC argues that California should not be allowed to rely on Arizona generation when the cost of externalities would be borne by Arizona consumers. ACC notes that Arizona's population has grown 20.2 percent since 2000, with Maricopa County being the fastest growing county in the Nation. As a result, ACC argues, any current excess generation in Arizona will actually be needed within the State by 2010.

IID states that designation of the draft Southwest Area National Corridor could have a significant adverse impact upon Imperial County's agricultural businesses and desert ecosystem. Individuals residing within the draft Southwest Area National Corridor but away from the sink area argued that designation of the draft Southwest Area National Corridor would require them to bear an unfair burden.[115]

Some commenters argued that the Department should accord more deference to existing State and regional planning and siting processes and hold off on any designation of a Southwest Area National Corridor until and unless it is clear that a Federal siting forum is needed. ACC argues that Federal intervention is unnecessary unless State and regional processes are not addressing the problem in a timely manner. ACC states that if State siting processes are efficient, transparent, and responsive to the market, as ACC asserts its process is, the Secretary should not designate a National Corridor. Governor Napolitano states that Arizona agencies and utilities have a strong record of line siting and infrastructure planning, in contrast to California, and that designation of the draft Southwest Area National Corridor would create great uncertainty in State and local efforts to plan for growth, infrastructure, and protection of natural resources.[116]

On the other hand, some commenters urged the Department against deferring designation of the draft Southwest Area National Corridor. For example, Coral states that provision of a Federal backstop is necessary to solve the congestion problems into and within the Southern California Critical Congestion Area and to assist California in meeting demand within the State. Coral argues that the mere possibility that FERC could step in and approve or reject siting proposals in the draft Southwest Area National Corridor may itself provide the necessary incentive for the States to find a common solution. But, according to Coral, if the States fail to do so, FERC, removed from local pressures, will be able to make the hard decisions that the States have been unable to make. SCE states that designation of the draft Southwest Area National Corridor will focus both State and local efforts on the resolution of key congestion issues.

DOE Response

The Department recognizes that FPA section 216 adopted a novel approach to addressing congestion problems, and that some commenters have grave concerns about the effects of this new approach. However, after careful consideration of these concerns, the Department concludes that designation of the draft Southwest Area National Corridor, modified to exclude Clark County, Nevada, is consistent with the intent of FPA section 216(a).

A number of the comments seem premised on the assumption that designation of a Southwest Area National Corridor would create a bias in favor of long transmission lines running the full length of the Corridor, and in particular long transmission lines connecting to generation located in Arizona. The Department regards such an assumption as unfounded. As discussed in Section I.A above, a National Corridor designation does not constitute a finding that transmission must or even should be built; it does not prejudice State or Federal siting processes against non-transmission solutions; and it should not discourage market participants from pursuing such solutions. Further, even within the realm of potential transmission solutions, designation of a Southwest Area National Corridor would not favor any particular transmission project within the Corridor. While the Department did identify source areas in Arizona when it delineated the draft

[115] *See, e.g.*, comments of Albert Coonrod, Jr. (''[P]ush CA to solve their own needs in their own state and stay out of AZ.'') and John Batka (''Perhaps California should start building power plants again. Don't string a lifeline electric grid from the Palo Verde Nuclear Generating Station to support their growing population.''); *see also* statement of Tom Wray at June 21, 2007, Phoenix, AZ public meeting.

[116] *See also* comments of IID and SDRES.

Southwest Area National Corridor, such delineation was not a determination that transmission lines connecting those particular source areas to the sink area must or should be built, or that such projects are preferable to other transmission projects. The Department's identification of source areas was a means of setting an outer bound on the geographic range of potential transmission projects that could become subject to FERC jurisdiction. Designation of a Southwest Area National Corridor no more dictates or endorses the construction of transmission lines to access generation in the identified source areas in Arizona than it does the construction of transmission lines to access the identified source areas in California. If a transmission project were proposed within the Southwest Area National Corridor to deliver generation to the Southern California Critical Congestion Area from somewhere other than the identified source areas, the developer of the project would be eligible to seek a FERC permit, provided it met the standards of FPA section 216(b). The Department sees no reason to conclude that designation of a Southwest Area National Corridor would discourage any such projects.

Given that designation of a Southwest Area National Corridor does not determine whether or which transmission projects will be built, ACC's concerns about the reliability effects of constructing transmission accessing remote generation are not germane at this stage. If FERC jurisdiction under FPA section 216(b) were triggered, FERC would analyze and take into consideration the reasonably foreseeable effects of a proposed project, including the reliability impacts.[117]

With regard to comments about the equities of building transmission to access generation in one area to serve the needs of another area, the Department recognizes that consideration of the relative effects that a proposed project will have on the areas where the facilities are located versus the areas served by those facilities is critically important. However, how a transmission line actually affects a community through which it is routed is a function of how the line is sited and how the costs of the transmission line are allocated, neither of which is determined by a National Corridor designation.[118] If FERC jurisdiction under FPA section 216(b) were triggered, FERC would consider the reasonably foreseeable effects of the proposed project on the communities through which it is proposed to be routed.[119]

Although ACC argues that efforts to reduce power price differences between California and Arizona could result in subsidies to California consumers at the expense of Arizona consumers, the Department's designation of a Southwest Area National Corridor is not motivated by price differentials between California and Arizona. In the May 7 notice, the Department specifically identified the considerations that it believed warranted designation of the draft Southwest Area National Corridor. The Department documented that if action is not taken to address congestion, consumers in the Southern California Critical Congestion Area face threats to the reliability of their electricity supply. The Department also documented that congestion exacerbates the reliance of consumers in the Southern California Critical Congestion Area on generation fueled by natural gas. Finally, the Department described the importance of the Southern California Critical Congestion Area to the security and economic health of the Nation as a whole. Thus, the Department stated its belief that reliability, supply diversity, and national defense and homeland security considerations warrant designation of a National Corridor for the Southern California Critical Congestion Area; the Department did not identify higher prices in southern California as a consideration justifying designation of a Southwest Area National Corridor.[120]

ACC also argues that the rate of load growth in Arizona warrants elimination of Arizona from the draft Southwest Area National Corridor. However, as discussed above, designation of a Southwest Area National Corridor does not dictate or guarantee that transmission lines will be built to export power from Arizona to California. The Department included three counties in Arizona within the draft Southwest Area National Corridor because those counties have access to currently available excess generation capacity.[121] If load growth in Arizona were to result in all existing generation capacity in the State, as well as all additional capacity coming on line in Arizona, being unavailable for export to California, that development would be taken into consideration by market participants evaluating their economic incentives to build a transmission project to facilitate such exports. Such a development would likely also be relevant in any FERC permit proceeding, given FPA section 216(b)(4)'s requirement that any project authorized by FERC must benefit or protect consumers. The Department recognizes the growing needs of Arizona consumers, and, in fact, identified the Tucson-Phoenix area as a Congestion Area of Concern in the Congestion Study. The growing demand in Arizona and the resulting growing congestion may at some future date warrant expansion of the Southwest Area National Corridor or designation of additional National Corridors in the Southwest. However, given the urgency of addressing the reliability threats facing consumers in the Southern California Critical Congestion Area and State concerns over the designation of broad National Corridors, the Department believes that designation of the draft Southwest Area National Corridor, modified to exclude Clark

[117] *See* FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 41 (''[The Commission] will investigate and determine the impact the proposed facility will have on the existing transmission grid and the reliability of the system.'').

[118] As discussed in the May 7 notice, cost allocation for transmission facilities is a long-standing FERC function.

[119] *See, e.g.*, FERC Order No. 689, 71 FR 69,440, 69,446, 117 FERC ¶ 61,202 at P 42 (''The Commission will also consider the adverse effects the proposed facilities will have on land owners and local communities.''); *see also id.*, 71 FR 69,440, 69,456–57, 117 FERC ¶ 61,202 at P 150 (applicant required to provide information concerning the impact of the proposed project on the towns and counties in the vicinity of the project).

[120] Similarly, the Department's showing of the existence of congestion adversely affecting consumers in the Southern California Critical Congestion Area does not rely on the presence of price differentials between southern California and Arizona. The May 7 notice detailed the data on which the Department is relying to establish the presence of congestion that adversely affects consumers. Those data included line flow data revealing the presence of congestion from 1999 through 2005 on a number of lines into and within southern California, as well as CAISO data from 2004 through 2006 showing binding hours on paths into and within southern California. The Department did note that the modeling performed for the Congestion Study projected that several historical constraints into and within southern California would continue to cause congestion in 2008, and the Congestion Study modeling did quantify projected congestion rents derived from estimated LMP differences. However, congestion rents were only one of the metrics used in the Congestion Study modeling; in the May 7 notice, the Department emphasized the modeling's projection of U75 and U90 for pathways into and within southern California.

[121] We further note that as market participants consider development of new coal/wind generation and transmission capacity in Wyoming and other areas beyond Arizona, the Phoenix area has the potential to become even more important than it is now as a trans-shipment point for electricity headed for urban centers in southern California. *See, e.g.*, ''High Plains Express Transmission Study Joined by the Wyoming and New Mexico Transmission Authorities,'' Denver Business News, Aug. 15, 2007, at *http://denver.dbusinessnews.com/shownews.php?newsid=129768&type&__news=latest*.

County, Nevada, is an appropriate first step.

Some commenters urge us to defer any designation of a Southwest Area National Corridor until State and regional planning efforts have had more time to address the congestion problems. These commenters provide details on the purported effectiveness of State and regional planning processes. As discussed in Section II.G above, we do not believe that Congress envisioned the adoption of a wait-and-see approach to National Corridor designation.

The Department strongly supports State and regional efforts to collectively address the congestion problems confronting the region, whether those efforts are focused on transmission solutions, non-transmission solutions, or a combination of both. Despite the assertions of some commenters, the Department does not believe that designation of the Southwest Area National Corridor necessarily will disrupt ongoing State or regional planning processes. As discussed in Section I.A above, a National Corridor designation itself does not preempt State authority or any State actions. Thus, States retain the authority to work together to address aggressively the congestion problems confronting the region. Further, we expect utilities within the Southwest Area National Corridor to continue to work cooperatively with State and local authorities. We note that FERC has indicated that it will consider any allegations that an applicant has acted in bad faith in State proceedings when it reviews permit applications under FPA section 216(b)(1)(C)(i).

State and regional efforts may well resolve the congestion problems afflicting the Southern California Critical Congestion Area without any invocation of Federal review. However, as the May 7 notice documented, reliability, supply diversity, and national defense and homeland security considerations all warrant designation of a Southwest Area National Corridor.[122] Given the increasingly interconnected nature of the transmission grid and wholesale power markets, siting of electricity infrastructure poses increasingly complex questions about how to balance equitably all competing interests. Tensions can exist between what is perceived to be best for a region as a whole versus what is perceived to be best for an individual State or an individual portion of one State. National Corridor designation provides, in a defined set of circumstances, a potential mechanism for analyzing the need for transmission from a national, rather than State or local, perspective. The comments the Department has received on the draft Southwest Area National Corridor reveal the presence of the kind of tensions that prompted Congress to create such a mechanism. The Department acknowledges that designation of a Southwest Area National Corridor introduces a significant new possibility into the process of siting transmission, and that the existence of this possibility may pose challenges for States and may ultimately prove unnecessary. However, given the totality of the circumstances, including the presence of looming reliability violations and the significance of the Southern California Critical Congestion Area to the security and economic health of the Nation as a whole, the Department concludes that it would be inconsistent with the intent of FPA section 216(a) to withhold the Federal safety net of National Corridor designation.[123]

In sum, having found the presence of congestion that adversely affects consumers in the Southern California Critical Congestion Area, the Secretary has the discretion to designate a National Corridor. The Secretary concludes, based on the totality of the information developed, taking into account relevant considerations, including the considerations identified in FPA section 216(a)(4), as appropriate, that exercise of his discretion to designate the draft Southwest Area National Corridor, modified to exclude Clark County, Nevada, is warranted.

H. Duration of the Southwest Area National Corridor Designation

Summary of Comments

Several commenters, including CPUC and Nevada Agencies, objected to setting a twelve-year term for the Southwest Area National Corridor. For example, NARUC opposes the use of a twelve-year term as inconsistent with the statute. NARUC argues that the requirement that the Department conduct a congestion study every three years indicates that the factual basis for National Corridors must be reexamined and updated every three years, and, thus, only a three-year term, subject to three-year extensions, is permissible. NARUC states that use of a twelve-year term could easily result in a designation remaining in place long after congestion issues have been resolved.[124]

DOE Response

For the reasons discussed in Section II.H above, the Department concludes that imposition of a time limit on the Southwest Area National Corridor designation is not required by law. Nevertheless, in recognition of State concerns about open-ended National Corridor designations, as balanced against the disruptive effect that regulatory uncertainty can have on transmission investment, the Department has decided to set a twelve-year term for the Southwest Area National Corridor designation, subject to the Department's right to rescind, renew or extend the designation after notice and opportunity for comment. Further, the Department does not intend to allow the termination of the Southwest Area National Corridor designation as it may apply to an accepted permit application pending at FERC, or, once FERC has granted a permit, during the period in which the approved facilities are being constructed.

IV. NEPA, NHPA, and ESA

A. Overview of Comments on NEPA

Summary of Comments

Several commenters, including PHI, PJM, WIRES, EEI and National Grid, asserted that the Department is not required to prepare an Environmental Impact Statement (EIS) or conduct other NEPA review for the designation of National Corridors. Many other commenters asserted that the Department should conduct a Programmatic EIS (PEIS) before designating any National Corridors because designation itself requires NEPA review.[125]

DOE response

Section 102(2)(C) of NEPA requires that all Federal agencies include an EIS for ''every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment.'' 42 U.S.C. 4332(2)(C). NEPA section 102(2)(C) ensures that Federal agencies provide full and fair discussion of significant environmental impacts and

[122] *See* May 7 notice, Section IX.C.

[123] Further, whereas Congress could have completely preempted State siting of interstate transmission facilities, allowing for the potential exercise of limited Federal preemption in accordance with FPA section 216(a) does not intrude on any State rights or prerogatives.

[124] *See also* comments of Citizens Campaign for the Environment and The Wilderness Society.

[125] *See, e.g.*, comments of ECCP, Environmental Defense, National Trust for Historic Preservation, Columbia Environmental Law Clinic, SELC, Sierra Club (Pennsylvania Chapter), Western Pennsylvania Conservancy, Toll Bros., CARI, Appalachian Trail Conservancy, NCPA, Wilderness Society, NYDEC, and Piedmont Environmental Council; *see also* statement of Tom Darin at May 17, 2007, San Diego, CA public meeting.

informs decision makers and the public of reasonable alternatives that would avoid or minimize adverse impacts or enhance the quality of the human environment. NEPA review is designed to examine the foreseeable, measurable, and predictable consequences of a proposed Federal action; it is not intended to forecast hypothetical or unknowable proposals or results. National Corridor designations have no environmental impact. They are only designations of geographic areas in which DOE has identified electric congestion or constraint problems.

B. Federal Plan/Program

Summary of Comments

Several commenters asserted that NEPA review is required because the designation of National Corridors is part of a continuing agency action constituting a new Federal scheme, program, or policy to site transmission projects. They argue that the Council on Environmental Quality regulations implementing NEPA require that EISs be prepared for broad Federal actions such as the adoption of new agency programs or for a group of concerted actions to implement a specific policy or plan. They also suggest that DOE and FERC are acting jointly to effect the single goal of establishing transmission projects.

DOE Response

The designation of the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor is not part of a group of concerted agency actions to implement a Federal scheme or program of siting transmission projects. These two National Corridors, and any potential future National Corridors, have been designated for reasons unrelated to each other. Not only is each of the National Corridors being designated today manifestly separate and distinct in size and location, but also different considerations led to the designation of each of them. For example, economic development and energy independence considerations played a role in the Department's decision to designate the Mid-Atlantic Area National Corridor but were not factors in the decision to designate the Southwestern Area National Corridor.

These National Corridor designations are not part of a unitary agency action taken jointly by DOE and FERC. As specified by statute, and described in Section I.A., the factors that FERC will consider when reviewing any application to construct transmission facilities are different from the factors that DOE has considered in designating National Corridors. Although DOE's designations allow FERC to assert jurisdiction in specified circumstances to permit transmission projects, DOE and FERC have separate and distinct statutory obligations and objectives. Congress expressly authorized DOE to identify congestion, and authorized FERC to review permit applications under FPA section 216(b).

C. Authorization for Future Action

Summary of Comments

Several commenters stated that NEPA review is required whenever an agency makes a decision that permits some other party, whether private or governmental, to take action affecting the environment. Commenters claimed that NEPA review is required here because DOE's decision to designate National Corridors provides FERC with jurisdiction to site transmission projects and gives applicants who receive construction permits for transmission projects the authority to exercise the right of eminent domain, without DOE approval, within the National Corridors.

DOE Response

The designation of National Corridors is not a precondition to siting transmission projects. In particular, designation is not a prerequisite for anyone taking actions with environmental consequences within National Corridors. Designation gives no permission nor establishes any entitlement to construct a transmission project. States can still permit transmission facilities, just as they have always done. As described in Section I.A., FPA section 216(g) contemplates continued State action: ''Nothing in this section precludes any person from constructing or modifying any transmission facility in accordance with State law.'' Although FPA section 216(b) establishes a new and additional potential procedural forum for transmission applicants, designation of National Corridors does not in itself authorize development of transmission projects that could not otherwise be built.

D. Ability To Preclude Surface-Disturbing Activity

Summary of Comments

Commenters asserted that an agency cannot delay NEPA review unless the agency reserves the ability to prevent surface-disturbing activities at a later stage. These commenters claimed that after designation of a National Corridor, DOE loses the ability to preclude surface-disturbing activity because permitting authority is in the exclusive control of FERC after designation.

DOE Response

As provided in the Ordering Paragraphs in Section V below, the Department is explicitly reserving the right to rescind, renew or extend the designations or modify the scope of the designations, should circumstances so require.[126]

E. Bias in Favor of Transmission Solutions

Summary of Comments

Certain commenters, including the Sierra Club (National), Sierra Club (Grand Canyon Chapter), and West Virginia Environmental Council stated that the May 7 notice understated the likelihood that National Corridor designation will lead to widespread FERC permitting of transmission projects and growth in associated generation, specifically coal-fired power plants. They commented that National Corridor designation favors a transmission-based solution to congestion and is tantamount to permitting transmission projects.

DOE Response

The Department's designation of National Corridors itself has no environmental impact: It neither permits nor precludes the construction of any transmission projects or any other ground-disturbing activity. One of the primary themes voiced by commenters is that DOE's designation of National Corridors will somehow inexorably lead to the construction of transmission projects and that DOE should, in an EIS, predict their range, extent, and impact on the environment. However, DOE has no authority to site transmission. Moreover, FERC's discretion to approve transmission projects located within National Corridors is circumscribed. As discussed in Section I.A above, FERC may only issue a permit if the applicant has shown that its project will significantly reduce congestion. If competing projects, including non-transmission projects, were to resolve the congestion or constraint problem before the issuance of a FERC permit, the sponsor of a transmission project would be hard pressed to make such a showing. FERC, at the siting stage, will determine whether a transmission-based solution to particular instances of congestion is warranted.

[126] Any such change in a National Corridor designation would be made only after notice and opportunity for public comment.

Any commitment to groundbreaking activities with environmental impacts is made only after FERC authorizes construction. Before that point, FERC will have conducted a full NEPA review of the proposed project.

F. Pending Transmission Proposals

Summary of Comments

Several commenters, including the National Trust for Historic Preservation, NPCA, the Wilderness Society, and the Sierra Club (Grand Canyon chapter), have argued that DOE should prepare a PEIS now based upon transmission projects that are currently under review by State permitting agencies or are currently being planned within the Mid-Atlantic Area National Corridor or the Southwest Area National Corridor.

DOE Response

The Department concludes that conducting a PEIS based on currently pending transmission proposals would be premature and speculative. The Department does not know if these specific proposed projects will be permitted, or if they are permitted, the ultimate location of the transmission facilities. Considering the impacts of pending transmission proposals would inappropriately presume the outcome of permitting actions, first by the States and then by FERC. If the proposed transmission projects are permitted by the States, FERC would never become involved and there would be no Federal action other than DOE's designation. If the transmission projects were not permitted by the States, sponsors of the proposals may or may not seek construction permits from FERC. If FERC were to receive an application, FERC would conduct a full NEPA review. FERC, as a result of its own NEPA review, could very well decide to pick alternative transmission routes that would reduce the environmental impact of currently proposed routes. As described in Sections II.D and III.D, the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor are sufficiently broad to account for numerous alternative transmission routes and sources of generation including renewables and nuclear.[127] Thus, any PEIS performed by DOE now would be entirely speculative and could improperly second-guess both the States and FERC.

G. Cumulative Impacts

Summary of Comments

Certain commenters asserted that DOE should anticipate the impacts from current pending applications for transmission projects and analyze the cumulative impact of such projects in a PEIS. They argue that only DOE, and not FERC, has the ability to assess the overall impact to an area of multiple new transmission facilities and potential associated generation, such as coal-fired power plants.

DOE Response

The Department cannot determine the number, size, or location of new transmission facilities that might be permitted within the National Corridors. The Department also does not know whether any new electricity generation, or what type of generation, will develop in the future. While commenters assert that designation of the Mid-Atlantic Area National Corridor will spur additional coal-fired generation, the Department concludes, as discussed in Section II.G above, that such designation neither favors transmission solutions to congestion over non-transmission solutions nor favors transmission projects accessing one type of generation over transmission projects accessing any other type of generation. Thus, it may be just as likely that renewable or nuclear generation would increase. Cumulative impacts are speculative at this stage; through this designation DOE is not setting criteria for particular transmission facilities, the number of transmission facilities, or type of generation that may be developed within the National Corridors. The Department has no control over how and when any such development might occur and therefore cannot predict or estimate its impacts. It is apparent from a reading of the FPA section 216 that Congress anticipated that the States would be the first to determine whether to site projects within their borders; Congress then gave FERC, in certain specified circumstances, the authority to site projects. If any parties are capable of analyzing or affecting cumulative impacts it would be FERC and the States, and then only after they had actual projects to consider.

H. Planning for Conservation Areas

Summary of Comments

Some commenters, including Sierra Club (National), the ECCP, and the Piedmont Environmental Council, argued that designation of National Corridors will have an immediate impact on conservation easements and State decisions about allocating land as parks and green space. Commenters assert that because existing conservation districts in designated National Corridors are not exempt from potential Federal siting, such areas will lose their State protection. Additionally, commenters claim that because property owners and State planners will anticipate that land within designated National Corridors will be the site of future eminent domain proceedings and transmission construction, property owners will not place property into new conservation easements and States will not designate new protected lands within any designated National Corridors.[128]

DOE Response

The possibility that State land planners and property owners will make land use decisions based on the assumption that there will be future development through environmentally sensitive areas within the Mid-Atlantic Area National Corridor or the Southwest Area National Corridor is too attenuated an impact to require a NEPA review. Analyzing such decisions would require DOE to speculate about actions that are at best weakly linked to the designation of National Corridors, namely how State and property land owners might react to their subjective, perceived risk of FERC granting construction permits for projects that will affect the physical environment in particular sections of the National Corridors.

Even if FERC were to authorize the construction of transmission facilities in the future, FERC would address avoidance of special land use areas in its NEPA review.[129] To the extent that

[127] Arnold & Porter, filing comments on behalf of several Virginia landowners, commented that the Department has issued draft National Corridor designations that are wide to the point of rendering meaningless any environmental review of the National Corridors. *See also* statement of Milton Wagner at June 21, 2007, Phoenix, AZ public meeting. However, the geographic breadth of the Mid-Atlantic Area National Corridor and the Southwest Area National Corridor ensure that FERC has flexibility to choose alternative siting locations if its jurisdiction under FPA section 216(b) is triggered.

[128] Similarly, several commenters argue that designation of National Corridors will lead private sector parties and States to make other decisions based on the assumption that construction of transmission lines is inevitable within the National Corridors. For example, some commenters have said that designation will lead to a decline in the value of real estate in areas within the National Corridors such that residents will move elsewhere. The Department's response to comments on protected lands in this subsection applies with equal force to these comments about other types of planning decisions and commitments made in anticipation of future development within the National Corridors.

[129] *See* FERC Order No. 689, 71 FR 69,440, 69,459, 117 FERC ¶ 61,202 at P 177.

the National Corridors may have any impact on land use planning decisions, those impacts are too speculative and uncertain at this point to meaningfully analyze.

In addition, as described in Section I.A, transmission developers will need rights-of-way in addition to a construction permit when developing State property. The right of eminent domain under FPA section 216 does not apply to State property. Thus, any current State lands will not lose existing conservation protection unless authorized by the appropriate State authorities. In addition, State authorities will not lose any incentive to create new parks or State conservation areas.

I. State Environmental Protection Statutes

Summary of Comments

Certain commenters, including the ECCP, Environmental Defense, the National Trust for Historic Preservation, SELC, the Sierra Club (Pennsylvania Chapter), NJ Highlands Water Protection and Planning, NYDEC, and the Piedmont Environmental Council, raised concerns that designation of National Corridors will have an immediate impact on the environment because it undercuts the ability of States, who are more intimately familiar with local environmental issues and historic artifacts, to implement their own procedural and substantive environmental statutes during the siting process. According to these commenters, State environmental review statutes may, in some instances, be more stringent than NEPA, and such State reviews will be shortchanged in order to meet the one-year timeframe for State action under FPA section 216(b)(1)(C)(i).

DOE Response

The effect of designation of National Corridors on prospective State environmental and cultural reviews would have no physical impact on the environment and is also too remote, indirect, and speculative to require NEPA review. The Department recognizes that designation of National Corridors could theoretically prompt States with lengthy environmental review processes to speed up their environmental and cultural analyses in order to meet the one-year deadline for review established by Congress. However, at the National Corridor designation stage, the environmental effects from such a potential procedural impact are entirely speculative. National Corridor designation may lead to no change in the degree of environmental review or in the role of State expertise in the permitting decision; the States will have an opportunity to share their analysis and expertise during FERC's NEPA comment period. In such instances, even though NEPA may limit the applicability of State environmental review statutes, the substance of a State's environmental review actually becomes an important piece of the NEPA review. Even where State environmental review statutes may be more stringent, FERC's NEPA review will provide a second hard look at environmental impacts. Thus, National Corridor designation may ultimately lead to FERC environmental reviews that are more thorough and/or protective of the environment than State reviews.

J. EPAct Section 368

Summary of Comments

Several commenters, including Environmental Defense, Sierra Club (Grand Canyon Chapter), SELC, and the Advisory Council on Historic Preservation, stated that DOE should be preparing a PEIS because DOE and several other agencies are preparing a PEIS for the designation of corridors on Federal lands in eleven western States under EPAct section 368. For example, Environmental Defense asserts that DOE in both EPAct section 368 and FPA section 216(a) will set the stage for potential site-specific activity and establish energy policy, and that both decisions therefore require a PEIS.

DOE Response

While both EPAct section 368 and FPA section 216(a) call for designation of ''corridors,'' as discussed in Section II.D above the purposes and effects of the two provisions are quite different.

Pursuant to EPAct section 368, the Departments of the Interior, Agriculture, Energy, Defense, and Commerce are required to designate right-of-way corridors on Federal lands in eleven western States for oil, gas, and hydrogen pipelines and electricity transmission and distribution facilities. Congress required very different corridors under EPAct section 368 than it authorized under FPA section 216(a)—EPAct section 368 corridors must have a defined centerline, width, and compatible uses. Congress required that the Federal land management agencies designate these right-of-way corridors through amendments to their land use resource management plans or equivalent land use plans. Finally, EPAct section 368 requires the Federal land management agencies to institute procedures to expedite applications to construct energy transport systems within the corridors. As such, EPAct section 368 influences Federal land use planning decisions. EPAct section 368 is ultimately a land use provision, one which arises in a subtitle on ''Access to Federal Lands.'' [130]

In contrast, the Department, in implementing FPA section 216(a), is not establishing right-of-way corridors or making any other land use planning decision that is even remotely connected to ground-breaking activity that might affect the physical environment. In fact, in implementing FPA section 216(a), the Department is designating National Corridors that are sufficiently broad for FERC to select from a wide array of geographic routes for any transmission facilities that it may permit. As such, FERC, not the Department, will make land use choices; the Department here makes no decisions about the suitability of particular geographical routes for future development of transmission facilities.

In sum, EPAct section 368 and FPA section 216(a) are fundamentally different. Because EPAct section 368 necessarily alters how Federal land management agencies manage their lands, the designation of EPAct section 368 right-of-way corridors is an action less removed from ground-breaking impacts than the designation of National Corridors under FPA section 216(a), which does not itself influence land management decisions.

K. NHPA and ESA

Summary of Comments

Several commenters, including the ECCP, Sierra Club (National), National Trust for Historic Preservation, SELC, Sierra Club (Pennsylvania Chapter), Advisory Council on Historic Preservation, NPCA, Wilderness Society, Arnold & Porter (filing comments on behalf of several landowners in Virginia), Virginia State Historic Preservation Office, and Piedmont Environmental Council, express concern about the lack of DOE review pursuant to NHPA section 106 and ESA section 7. The Advisory Council on Historic Preservation requested clarification of the Department's position on whether NHPA section 106 consultation is required for the designation of National Corridors.

DOE Response

As stated above, the Department does not believe that the designation of National Corridors, in itself, is a major

[130] EPAct, Title III, Subtitle F.

Federal action significantly affecting the quality of the human environment, requiring NEPA review. Similarly, and for the same reasons, the designation of National Corridors, in itself, is not an undertaking that has the potential to cause effects on historic properties, requiring NHPA review, nor is the designation of National Corridors a Federal action that is likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species. If FERC jurisdiction were triggered under FPA section 216(b), FERC would conduct all appropriate NHPA and ESA reviews.[131]

V. Ordering Paragraphs

For the reasons set forth in the May 7 notice as clarified in this report above, it is hereby ordered that:

A. In Docket No. 2007–OE–01, the Department designates the Mid-Atlantic Area National Interest Electric Transmission Corridor as a national interest electric transmission corridor pursuant to FPA section 216(a)(2) encompassing the following counties and cities: Kent County, DE, New Castle County, DE, and Sussex County, DE; Washington, DC; Allegany County, MD, Anne Arundel County, MD, Baltimore County, MD, Calvert County, MD, Caroline County, MD, Carroll County, MD, Cecil County, MD, Charles County, MD, Dorchester County, MD, Frederick County, MD, Garrett County, MD, Harford County, MD, Howard County, MD, Kent County, MD, Montgomery County, MD, Prince George's County, MD, Queen Anne's County, MD, St. Mary's County, MD, Talbot County, MD, Washington County, MD, Wicomico County, MD, Worcester County, MD, and City of Baltimore, MD; Atlantic County, NJ, Bergen County, NJ, Burlington County, NJ, Camden County, NJ, Cape May County, NJ, Cumberland County, NJ, Essex County, NJ, Gloucester County, NJ, Hudson County, NJ, Hunterdon County, NJ, Mercer County, NJ, Middlesex County, NJ, Monmouth County, NJ, Morris County, NJ, Ocean County, NJ, Passaic County, NJ, Salem County, NJ, Somerset County, NJ, Sussex County, NJ, Union County, NJ, and Warren County, NJ; Albany County, NY, Bronx County, NY, Broome County, NY, Cayuga County, NY, Chenango County, NY, Clinton County, NY, Columbia County, NY, Delaware County, NY, Dutchess County, NY, Erie County, NY, Franklin County, NY, Fulton County, NY, Genesee County, NY, Greene County, NY, Herkimer County, NY, Jefferson County, NY, Kings County, NY, Lewis County, NY, Livingston County, NY, Madison County, NY, Monroe County, NY, Montgomery County, NY, Nassau County, NY, New York County, NY, Niagara County, NY, Oneida County, NY, Onondaga County, NY, Ontario County, NY, Orange County, NY, Orleans County, NY, Otsego County, NY, Putnam County, NY, Queens County, NY, Renssalaer County, NY, Richmond County, NY, Rockland County, NY, St. Lawrence County, NY, Saratoga County, NY, Schenectady County, NY, Schoharie County, NY, Seneca County, NY, Suffolk County, NY, Sullivan County, NY, Ulster County, NY, Wayne County, NY, Westchester County, NY, and Wyoming County, NY; Belmont County, OH, Carroll County, OH, Columbiana County, OH, Harrison County, OH, Jefferson County, OH, Monroe County, OH, and Stark County, OH; Adams County, PA, Allegheny County, PA, Armstrong County, PA, Beaver County, PA, Bedford County, PA, Berks County, PA, Blair County, PA, Bradford County, PA, Bucks County, PA, Butler County, PA, Cambria County, PA, Carbon County, PA, Centre County, PA, Chester County, PA, Clearfield County, PA, Clinton County, PA, Columbia County, PA, Cumberland County, PA, Dauphin County, PA, Delaware County, PA, Fayette County, PA, Franklin County, PA, Fulton County, PA, Greene County, PA, Huntingdon County, PA, Indiana County, PA, Jefferson County, PA, Juniata County, PA, Lackawanna County, PA, Lancaster County, PA, Lebanon County, PA, Lehigh County, PA, Luzerne County, PA, Mifflin County, PA, Monroe County, PA, Montgomery County, PA, Montour County, PA, Northampton County, PA, Northumberland County, PA, Perry County, PA, Philadelphia County, PA, Pike County, PA, Schuylkill County, PA, Snyder County, PA, Somerset County, PA, Susquehanna County, PA, Union County, PA, Wayne County, PA, Washington County, PA, Westmoreland County, PA, Wyoming County, PA, and York County, PA; Arlington County, VA, Clarke County, VA, Culpeper County, VA, Fairfax County, VA, Fauquier County, VA, Frederick County, VA, Loudon County, VA, Madison County, VA, Page County, VA, Prince William County, VA, Rappahannock County, VA, Rockingham County, VA, Shenandoah County, VA, Stafford County, VA, Warren County, VA, City of Alexandria, VA, City of Harrisonburg, VA, City of Fairfax, VA, City of Falls Church, VA, City of Manassas, VA, City of Manassas Park, VA, and City of Winchester, VA; and Barbour County, WV, Berkeley County, WV, Boone County, WV,[132] Braxton County, WV, Brooke County, WV, Calhoun County, WV, Clay County, WV, Doddridge County, WV, Gilmer County, WV, Grant County, WV, Hampshire County, WV, Hancock County, WV, Hardy County, WV, Harrison County, WV, Jackson County, WV, Jefferson County, WV, Kanawha County, WV, Lewis County, WV, Marion County, WV, Marshall County, WV, Mason County, WV, Mineral County, WV, Monongalia County, WV, Morgan County, WV, Nicholas County, WV, Ohio County, WV, Pendleton County, WV, Pleasants County, WV, Pocahontas County, WV, Preston County, WV, Putnam County, WV, Randolph County, WV, Ritchie County, WV, Roane County, WV, Taylor County, WV, Tucker County, WV, Tyler County, WV, Upshur County, WV, Webster County, WV, Wetzel County, WV, Wirt County, WV, and Wood County, WV. This designation is effective on October 5, 2007 and will remain in effect until October 7, 2019. The Department reserves the right to rescind, renew or extend this designation or modify the scope of this designation after notice and opportunity for comment.

B. In Docket No. 2007–OE–02, the Department designates the Southwest Area National Interest Electric Transmission Corridor as a national interest electric transmission corridor pursuant to FPA section 216(a)(2) encompassing the following counties: Imperial County, CA, Kern County, CA, Los Angeles County, CA, Orange County, CA, Riverside County, CA, San Bernardino County, CA, and San Diego County, CA; and La Paz County, AZ, Maricopa County, AZ, and Yuma County, AZ. This designation is effective on October 5, 2007 and will remain in effect until October 7, 2019. The Department reserves the right to rescind, renew or extend this

[131] *See, e.g.,* FERC Order No. 689, 71 FR 69,440, 69,457, 117 FERC ¶ 61,202 at P148 (''The Commission will not authorize construction, however, until the permittee has complied with all the requirements of NHPA and all other relevant environmental laws.''). The Wilderness Society asserts that DOE must engage in consultation and carry out conservation programs for listed species pursuant to ESA section 7(a)(1). Section 7(a)(1) is not triggered by specific Federal actions and, in particular, not by ones that are not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of habitat of such species.

[132] Boone County, WV, was inadvertently omitted from the narrative description of the draft Mid-Atlantic Area National Corridor in the May 7, 2007, notice at 72 FR 25909. It was correctly included in the May 7, 2007 map of the draft National Corridor.

designation or modify the scope of this designation after notice and opportunity for comment.

C. The Department grants party status in Docket No. 2007–OE–01 to all persons who either: (1) Filed comments marked ''Attn: Docket No. 2007–OE–01'' electronically at *http://nietc.anl.gov* on or before July 6, 2007; (2) mailed written comments marked ''Attn: Docket No. 2007–OE–01'' to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, that were received on or before July 6, 2007; or (3) hand-delivered written comments marked ''Attn: Docket No. 2007–OE–01'' at one of the public meetings. Only those persons who are parties to the proceeding in Docket No. 2007–OE–01 and who are aggrieved by the Department's order in that docket may apply for rehearing pursuant to FPA section 313.

D. The Department grants party status in Docket No. 2007–OE–02 to all persons who either: (1) Filed comments marked ''Attn: Docket No. 2007–OE–02'' electronically at *http://nietc.anl.gov* on or before July 6, 2007; (2) mailed written comments marked ''Attn: Docket No. 2007–OE–02'' to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, that were received on or before July 6, 2007; or (3) hand-delivered written comments marked ''Attn: Docket No. 2007–OE–02'' at one of the public meetings. Only those persons who are parties to the proceeding in Docket No. 2007–OE–02 and who are aggrieved by the Department's order in that docket may apply for rehearing pursuant to FPA section 313.

E. Any application for rehearing must be either: (1) Mailed or hand-delivered to the Office of Electricity Delivery and Energy Reliability, OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585; or (2) faxed to 202–586–8008. Applications for rehearing of the order in Docket No. 2007–OE–01 must be marked ''Attn: Docket No. 2007–OE–01.'' Applications for rehearing of the order in Docket No. 2007–OE–02 must be marked ''Attn: Docket No. 2007–OE–02.'' Applications for rehearing must be received by 5 p.m., Eastern time November 5, 2007. The Department will not accept responses to requests for rehearing.

Note: Delivery of U.S. Postal Service mail to DOE continues to be delayed by several weeks due to security screening; therefore, applicants who choose to mail their rehearing applications are encouraged to use express mail.

The Secretary of Energy has approved the publication of this notice.

Issued in Washington, DC on October 2, 2007.

Kevin M. Kolevar,

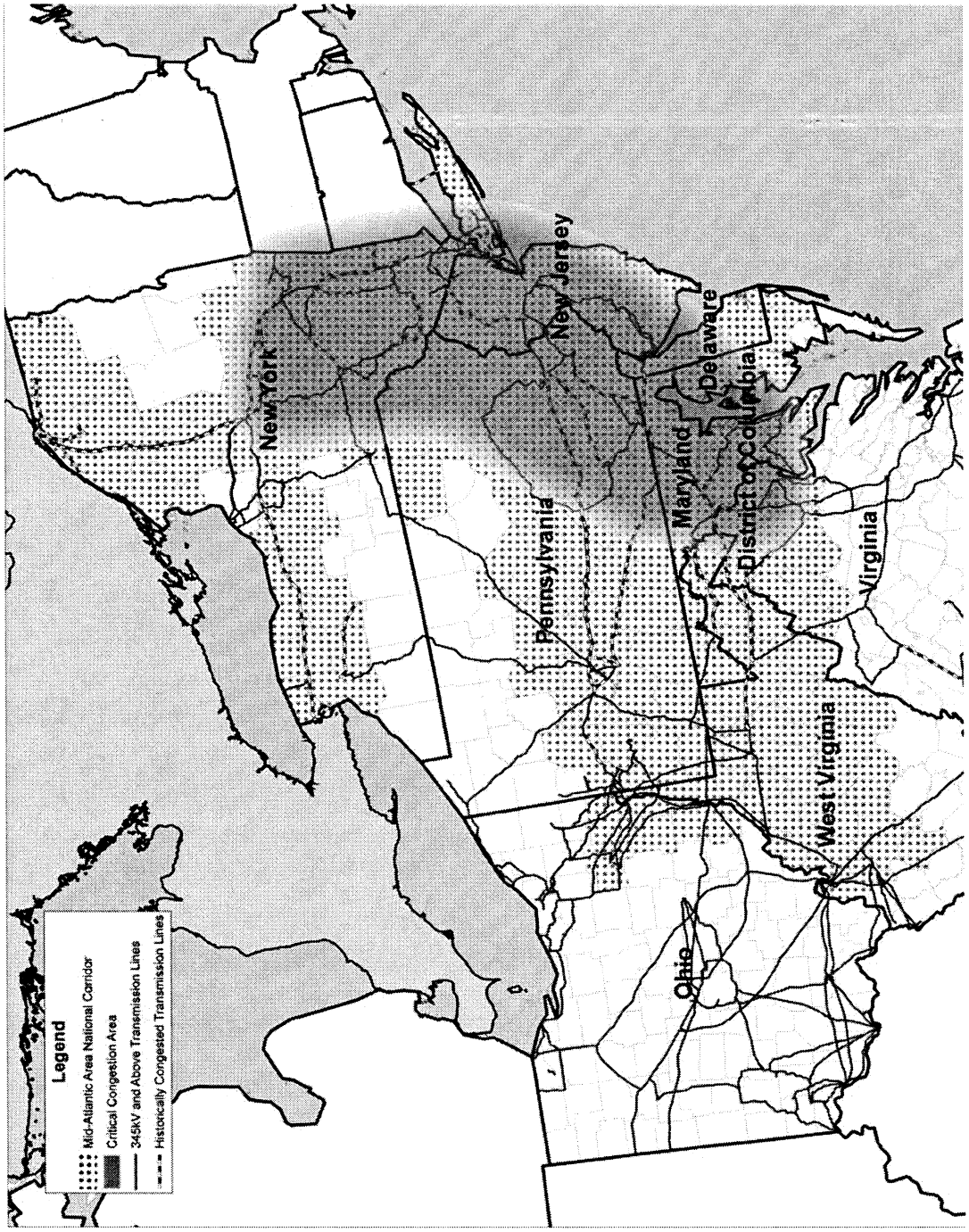
Assistant Secretary, Electricity Delivery and Energy Reliability.

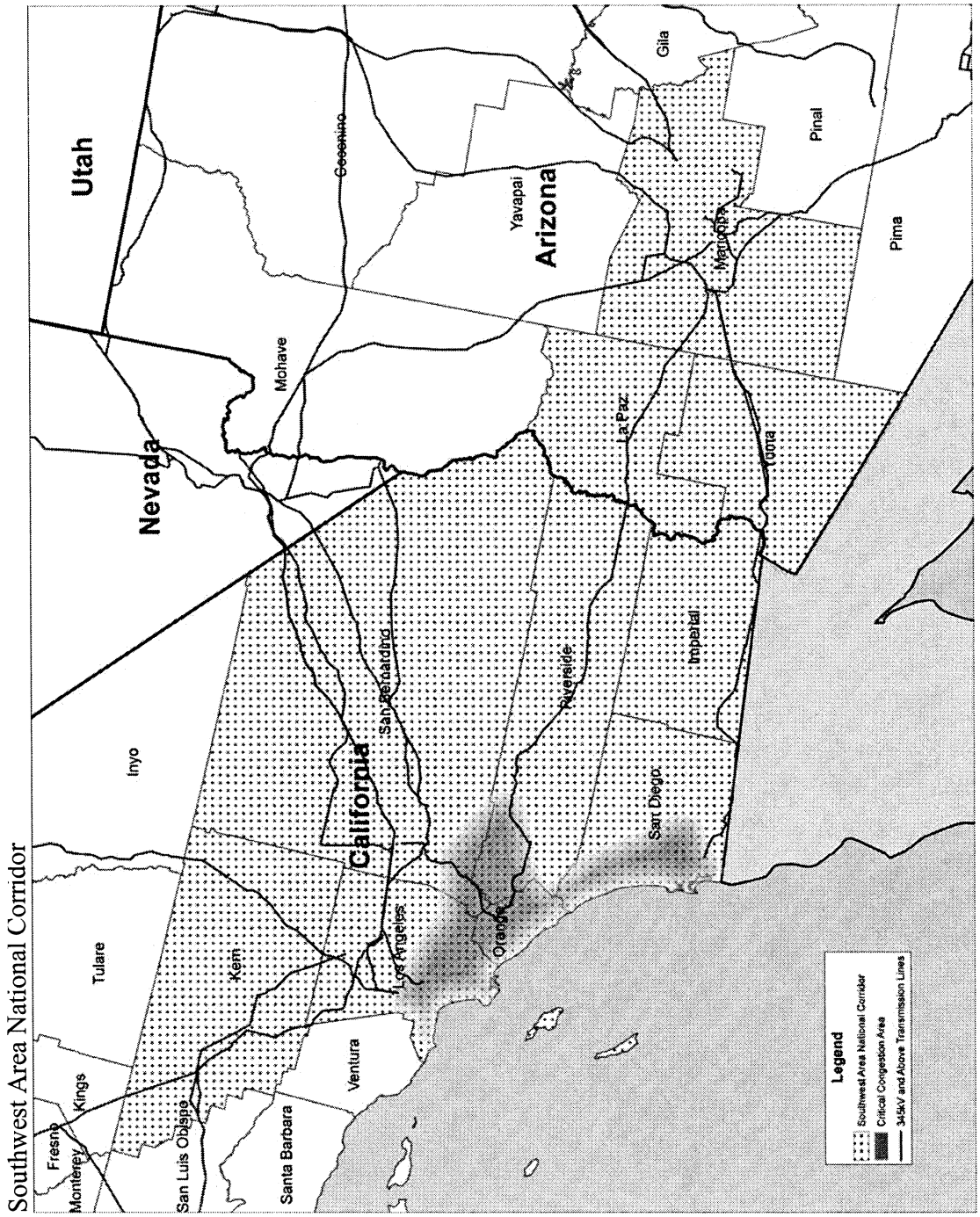
Acronyms

ACC Arizona Corporation Commission
AEP American Electric Power
APA Administrative Procedure Act
CAISO California Independent System Operator
CARI Communities Against Regional Interconnect
CEC California Energy Commission
CPUC California Public Utilities Commission
DeDNR Delaware Department of Natural Resources and Environmental Control
DOE U.S. Department of Energy
DPV2 Devers-Palo Verde 2 project
ECCP Energy Conservation Council of Pennsylvania
EEI Edison Electric Institute
EIS Environmental Impact Statement
EPAct Energy Policy Act of 2005
ESA Endangered Species Act
FERC Federal Energy Regulatory Commission
FPA Federal Power Act
IID Imperial Irrigation District
ISO Independent System Operator
LMP Locational Marginal Price
MiPSC Michigan Public Service Commission
MISO Midwest Independent System Operator
NARUC National Association of Regulatory Commissioners
NEPA National Environmental Policy Act
NERC North American Electric Reliability Council
NHPA National Historic Preservation Act
NJBPU New Jersey Board of Public Utilities
NJDEP New Jersey Department of Environmental Conservation
NPCA National Parks Conservation Association
NPCC Northeast Power Coordinating Council
NYDEC New York Department of Environmental Conservation
NYFB New York Farm Bureau
NYISO New York Independent System Operator
NYPSC New York Public Service Commission
ODEC Old Dominion Electric Cooperative
OMS Organization of MISO States
PaDEP Pennsylvania Department of Environmental Conservation
PaPUC Pennsylvania Public Utilities Commission
PEIS Programmatic EIS
PHI Pepco Holdings, Inc.
PJM PJM Interconnection
RTO Regional Transmission Operator
SCE Southern California Edison Company
SDG&E San Diego Gas and Electric
SELC Southern Environmental Law Center
TEPPC Transmission Expansion Policy Planning Committee of the Western Electricity Coordinating Council
WAPA Western Area Power Administration
WIA Wyoming Infrastructure Authority
WIRES Working Group for Investment in Reliable and Economic Electric Systems

BILLING CODE 6450–01–P

Mid-Atlantic Area National Corridor





[FR Doc. E7–19731 Filed 10–4–07; 8:45 am]

BILLING CODE 6450–01–C

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Hydrogen Storage Engineering Center of Excellence Pre-Solicitation Meeting

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy (DOE).

ACTION: Notice of pre-solicitation meeting on October 15, 2007 in San Antonio, Texas.

SUMMARY: The Department of Energy (DOE) Hydrogen, Fuel Cells and Infrastructure Technologies Program is holding a pre-solicitation meeting on a planned Hydrogen Storage Engineering Center of Excellence on October 15, 2007 in San Antonio, Texas at the Henry B. Gonzalez Convention Center at 3:30 p.m. CDT. A Web cast will also be available for anyone unable to attend the meeting in person. Detailed information regarding the meeting location, Web cast, and the solicitation materials for comment will be updated on the DOE Web site, *http://www.hydrogen.energy.gov/news_storage_center.html*.

At the meeting, DOE seeks questions and comments from the public on the draft solicitation materials that will be posted on this Web site. This information will be used in determining the scope of work of this new center of excellence and the associated solicitation, otherwise known as a

Funding Opportunity Announcement (FOA). Questions and comments will also be accepted via e-mail. All of the questions received (from the meeting and via e-mail) and the associated answers provided at the meeting will be posted on this Web site after the meeting.

DATES: Written questions and comments are welcome. These may be submitted via e-mail and must be received by 5 p.m. CDT on October 11, 2007. Questions will also be taken during the actual meeting on October 15, 2007.

ADDRESSES: Please submit all questions and comments to *engineeringCoE@go.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Carole Read, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–2H, 1000 Independence Avenue, SW., Washington, DC 20585–0121, Phone: (202) 586–3152, e-mail: *carole.read@ee.doe.gov*.

SUPPLEMENTARY INFORMATION: The mission of the DOE's Hydrogen Program is to research, develop and validate fuel cell and hydrogen production, delivery, and storage technologies so that hydrogen from diverse domestic resources can be used in a clean, safe, reliable and affordable manner in fuel cell vehicles, electric power generation and combined heat and power applications. A critical requirement for enabling hydrogen fuel cell vehicles to achieve mass market penetration is the development of on-board hydrogen storage systems with enough capacity to meet driving range expectations (more than 300 miles in the United States), while meeting a number of requirements such as weight, volume and cost. Detailed technical targets developed by DOE, with input through the FreedomCAR and Fuel Partnership, are available at: *http://www1.eere.energy.gov/hydrogenandfuelcells/mypp/pdfs/storage.pdf*.

For more information about the DOE Hydrogen Program and related on-board hydrogen storage activities visit the Program's Web site at *http://www.hydrogen.energy.gov* and *http://www.eere.energy.gov/hydrogenandfuelcells*.

Issued in Golden, CO on October 1, 2007.

Mary Foreman,

Procurement Director, DOE Golden Field Office.

[FR Doc. E7–19689 Filed 10–4–07; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6691–7]

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 202–564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 6, 2007 (72 FR 17156).

DRAFT EISs

EIS No. 20070243, ERP No. D–AFS–J65485–WY, Thunder Basin Analysis Area Vegetation Management, To Implement Best Management Grazing Practices and Activities, Douglas Ranger District, Medicine Bow-Routt National Forests and Thunder Basin National Grassland, Campbell, Converse and Weston Counties, WY. *Summary:* EPA's comments on the draft EIS have not been addressed or incorporated into the final EIS. Accordingly, EPA continues to have environmental concerns related to riparian area condition, water quality, drought management plans, soil quality and the degree of planning and commitment to adaptive management. Rating EC2.

EIS No. 20070247, ERP No. D–NRC–C06017–NY, GENERIC—James A. Fitzpatrick Nuclear Power Plant, License Renewal of Nuclear Plant, Site Specific Supplement 31 to NUREG–1437, Town of Sriba, NY. *Summary:* EPA expressed environmental concern about entrainment issues and requested an analysis of intentional destructive acts. Rating EC2.

EIS No. 20070266, ERP No. D–SFW–B64005–00, Lake Umbagog National Wildlife Refuge, Comprehensive Conservation Plan, 15 Year Guidance for Management of Refuge Operations, Habitat and Visitor Services, Implementation, Coos County, NH and Oxford County, ME. *Summary:* EPA does not object to the proposed project. Rating LO.

EIS No. 20070278, ERP No. D–FHW–K40264–CA, Tier 1—Placer Parkway Corridor Preservation Project, Select and Preserve a Corridor for the Future Construction from CA–70/99 to CA 65, Placer and Sutter Counties, CA. *Summary:* EPA expressed environmental concerns about water quality and air quality impacts and growth-inducing effects to aquatic and biological resources. Rating EC2.

EIS No. 20070289, ERP No. D–SFW–K99037–AZ, Horseshoe and Bartlett Reservoirs Project, To Store and Release Water, Issuance of an Incidental Take Permit for Operation, Located Northeast of Phoenix, Maricopa and Yavapai Counties, AZ. *Summary:* EPA does not object to the proposed project. Rating LO.

EIS No. 20070327, ERP No. D–FTA–G59003–TX, Denton to Carrollton Regional Rail Corridor Project, Transportation Improvements between Downtown Denton and the Dallas Area Rapid (DART) System, Right-of-Way Grant, Denton and Dallas Counties, TX. *Summary:* EPA expressed environmental concerns about wetland and air quality impacts. Rating EC2.

EIS No. 20070216, ERP No. DS–AFS–L65369–00, Southwest Idaho Ecogroup Land and Resource Management Plan, Additional Information Concerning Terrestrial Management Indicator Species (MIS), Boise National Forest, Payette National Forest and Sawtooth National Forest, Forest Plan Revision, Implementation, Several Counties, ID; Malhaur County, OR and Box Elder County, UT. *Summary:* EPA supports the management directions and objectives to improve land condition based on MIS habitat, as well as reducing grazing when needed. Rating LO.

EIS No. 20070273, ERP No. DS–MMS–E02011–00, Eastern Planning Area Outer Continental Shelf (OCS) Oil and Gas Lease Sale 224, Gulf of Mexico Offshore Marine Environment and Coastal Parshes/ Counties of LA, MS, AL, and North Western Florida. *Summary:* EPA expressed environmental concerns about air quality impacts and impacts related to oil spills and drilling discharges. Rating EC2.

EIS No. 20070338, ERP No. DS–TVA–E65073–TN, Watts Bar Reservoir Land Management Plan, Amend and Update the 2005 Plan, Guide Land Use Approvals, Private Water Use Facility, and Resource Management Decisions, Loudon, Meigs, Rhea and Roane Counties, TN. *Summary:* EPA continues to have environmental concerns about reservoir water quality and shoreline habitat impacts, and prefers the selection of the Modified C alternative due to the reduced development, which would reduce impacts to reservoir water quality and shoreline habitat. Rating EC1.

EIS No. 20070346, ERP No. DS–AFS–K65281–CA, Brown Project, Revised Proposal to Improve Forest Health by Reducing Overcrowded Forest Stand Conditions, Trinity River Management Unit, Shasta-Trinity National Forest, Weaverville Ranger District, Trinity County, CA. *Summary:* EPA supports the additional road decommissioning to address our concerns with impacts to water quality. However, EPA continues to have environmental concerns about cumulative impacts to air quality, and suggests monitoring and mitigation measures if warranted. Rating EC2.

Final EISs

EIS No. 20070268, ERP No. F–GSA–B81011–VT, U.S. Commercial Port of Entry, Replacing existing Station at Route I–91, Design and Construction, Derby Line, Vermont. *Summary:* EPA does not object to the proposed project.

EIS No. 20070324, ERP No. F–FAA–C51029–00, New York/New Jersey/Philadelphia Metropolitan Area Airspace Redesign Project, To Increase the Efficiency and Reliability of the Airspace Structure and Air Traffic Control System, NY, NJ and PA. *Summary:* EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070333, ERP No. F–AFS–L65536–OR, Spears Vegetation Management Project, Proposal to Use Commercial Timber Harvest, Precommercial Thinning, Prescribed Fire, Grapple Piling and Hand Piling in the Mark Creek Watershed and Veaqie Creek Subwatershed, Lookout Mountain Ranger District, Ochoco National Forest, Crook and Wheeler Counties, OR. *Summary:* EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070336, ERP No. F–FHW–J40175–UT, South Logan to Providence Transportation Corridor Project, Improvements to 100 East Street between 300 South (Logan) to Providence Lane (100 North) in Providence, Funding and Right-of Way Grant, Cities of Logan and Providence, Cache County, UT. *Summary:* EPA's previous issues have been resolved; therefore, EPA does not object to the proposed action.

EIS No. 20070341, ERP No. F–NPS–B61025–MA, Cape Cod National Seashore (CACO) Hunting Program, General Management Plan, Implementation, Barnstable County, MA. *Summary:* EPA does not object to the proposed project.

EIS No. 20070345, ERP No. F–BLM–L65503–OR, North Steens Ecosystem Restoration Project, To Reduce Juniper-Related Fuels and Restore Various Plant Communities, Implementation, Andrews Resource Area, Cooperative Management and Protection Area (CMPA), Harney County, OR. *Summary:* The Final EIS addressed EPA's concerns about document clarity, descriptions of alternatives, as well as issues involving water quality, source water, and riparian vegetation. However, EPA continues to have environmental concerns about the potential air quality impacts.

EIS No. 20070375, ERP No. F–AFS–L65502–AK, Kuiu Timber Sale Area, Proposes to Harvest Timber and Build Associated Temporary Roads, U.S. Army COE Section 10 and 404 Permits, North Kuiu Island, Petersburg Ranger District, Tongass National Forest, AK. *Summary:* The Final EIS addressed EPA's concerns about short-term impacts to watersheds, cumulative harvest level, and timeframe mass movement. However, EPA continues to have environmental concerns about sediment impacts to wetlands and aquatic wildlife, and supports the selection of Alternative 2 which would minimize these impacts.

Dated: October 2, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–19719 Filed 10–4–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6691–6]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *http://www.epa.gov/compliance/nepa/*

Weekly receipt of Environmental Impact Statements

Filed 09/24/2007 Through 09/28/2007 Pursuant to 40 CFR 1506.9.

EIS No. 20070403, Draft Supplement, BLM, UT, Vernal Field Office Resource Management Plan, Updated Information, Managing Non-Wilderness Study Area (WSA) Lands with Wilderness Characteristics, Implementation, Vernal, UT, Comment Period Ends: 01/03/2008, Contact: Kelly Buckner 435–781–4400.

EIS No. 20070404, Draft EIS, NRC, KS, GENERIC—License Renewal of Nuclear Plants Regarding Wolf Creek Generating Station, (WCGS) Unit 1. Supplement 32 to NUREG 1437, Implementation, Coffey Country, KS, Comment Period Ends: 12/26/2007, Contact: Christian Jacobs 301–415–3874.

EIS No. 20070405, Final EIS, AFS, 00, Yellowstone and Grand Teton National Parks and the John D. Rockefeller, Jr. Memorial Parkway, Winter Use Plan, To Provide a Framework for Managing Winter Use Activities, Implementation, Fremont County, ID, Gallatin and Park Counties, MT Park and Teton Counties, WY, Wait Period Ends: 11/05/2007, Contact: Debbie VanDerPolder 307–344–2019.

EIS No. 20070406, Draft EIS, AFS, AK, Iyouktug Timber Sales, Proposes Harvesting Timber, Implementation, Hoonah Ranger District, Tongass National Forest, Hoonah, AK, Comment Period Ends: 11/19/2007, Contact: Hans von Rekowski 907–747–4217.

EIS No. 20070407, Final EIS, AFS, MT, North Bridger Allotment Management Plan Update, Proposal to Update Allotment Management Plan on 11 Livestock Grazing Allotments, Bozeman Ranger District, Gallatin National Forest, Gallatin County, MT, Wait Period Ends: 11/05/2007, Contact: John Councilman 406–522–2533.

EIS No. 20070408, Final EIS, AFS, ND, NE McKenzie Allotment Management Plan Revisions, Proposes to Continue Livestock Grazing on 28 Allotments, Dakota Prairie Grasslands Land and Resource Management Plan, Dakota Prairie Grasslands, McKenzie Ranger District, McKenzie County, ND, Wait Period Ends: 11/05/2007, Contact: Libby Knotts 701–842–2393.

EIS No. 20070409, Draft EIS, AFS, MT, Beartooth Ranger District Travel Management Planning, Proposing to Designate Routes for Public Motorized Use, and Change Management of Pack and Saddle Stock on Certain Trail, Beartooth Ranger District, Custer National Forest, Carbon, Stillwater, Sweet Grass, and Park Counties, MT, Comment Period Ends: 11/19/2007, Contact: Doug Epperly 406–657–6205 Ext 225.

EIS No. 20070410, Draft EIS, BLM, NV, Cortez Hills Expansion Project, Proposes to Construct and Operate a New Facilities and Expansion of the Existings Open-Pit Gold Mining and Processing Operations, Crescent

Valley, Lander and Eureka Counties, NV, Comment Period Ends: 12/03/2007, Contact: Steve Drummond 775–635–4000.

EIS No. 20070411, Draft EIS, FRC, NC, Yadkin—Yadkin-Pee Dee Hydro Electric Project (Docket Nos. P–2197–073 & P–2206–030), Issuance of New Licenses for the Existing and Proposed Hydropower Projects, Yadkin—Yadkin-Pee Dee Rivers, Davidson, Davie, Montgomery, Rowan, Stanly, Anson and Richmond Counties, NC, Comment Period Ends: 12/03/2007, Contact: Andy Black 1–866–208–3372.

EIS No. 20070412, Draft EIS, TVA, TN, Ruthford-Williamson-Davidson Power Supply Improvement Project, Proposes to Construct and Operate a New 500-kilovolt (kV) Ruthford Substation , a New 27-mile 500-kV Transmission Line and Two New 9- and 15 mile 161-kV Transmission Lines, Ruthford, Williamson Counties, TN, Comment Period Ends: 11/19/2007, Contact: Anita E. Masters 423–751–8697.

Amended Notices

EIS No. 20070221, Draft EIS, AFS, MT, Butte Resource Management Plan, Implementation, Beaverhead, Broadwater, Deerlodge, Gallatin, Jefferson, Lewis and Clark, Silver Bow and Park Counties, MT, Comment Period Ends: 09/06/2007, Contact: Tim LaMarr 406–533–7645 Revision of FR Notice Published on 06/08/2007: Extending 09/06/2007 from 10/09/2007.

Dated: October 2, 2007.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E7–19720 Filed 10–4–07; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8477–3]

Issuance of Final NPDES General Permits for Facilities/Operations That Generate, Treat, and/or Use/Dispose of Sewage Sludge by Means of Land Application, Landfill, and Surface Disposal in EPA Region 8

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of NPDES general permits.

SUMMARY: Region 8 of EPA is hereby giving notice of its reissuance of the National Pollutant Discharge Elimination System (NPDES) general permits for facilities or operations that generate, treat, and/or use/dispose of sewage sludge by means of land application, landfill, and surface disposal in the States of CO, MT, ND, and WY and in Indian country in the States of CO, MT, ND, SD, WY and UT (except for the Goshute Indian Reservation and the Navajo Indian Reservation). The effective date of the general permits is October 19, 2007.

The NPDES permit numbers and the areas covered by each general permit are listed below.

State	Permit No.	Area covered by the general permit
Colorado	COG650000	State of Colorado except for Federal Facilities and Indian country.
	COG651000	Indian country within the State of Colorado and the portions of the Ute Mountain Indian Reservation located in New Mexico and in Utah.
	COG652000	Federal Facilities in the State of Colorado, except those located in Indian country, which are covered under permit COG51000.
Montana	MTG650000	State of Montana except for Indian country.
	MTG651000	Indian country in the State of Montana.
North Dakota	NDG650000	State of North Dakota except for Indian country.
	NDG651000	Indian country within the State of North Dakota (except for Indian country located within the former boundaries of the Lake Traverse Indian Reservation, which are covered under permit SDG651000) and that portion of the Standing Rock Indian Reservation located in South Dakota.
South Dakota	SDG651000	Indian country within the State of South Dakota (except for the Standing Rock Indian Reservation, which is covered under permit NDG651000), that portion of the Pine Ridge Indian Reservation located in Nebraska, and Indian country located in North Dakota within the former boundaries of the Lake Traverse Indian Reservation.
Utah	UTG651000	Indian country within the State of Utah except for the Goshute Indian Reservation, Navajo Indian Reservation, and Ute Mountain Indian Reservation (which is covered under permit COG651000).
Wyoming	WYG650000	State of Wyoming except for Indian country.
	WYG651000	Indian country within the State of Wyoming.

DATES: The general permits become effective on October 19, 2007 and will expire five years from that date. For appeal purposes, the 120 day time period for appeal to the U.S. Federal Courts will begin October 19, 2007.

ADDRESSES: The administrative record is available by appointment for review and copying at the EPA Region 8 offices during the hours of 10 a.m. to 4 p.m. Monday through Friday, Federal holidays excluded. To make an appointment to look at or copy the documents call Ellen Bonner at 303–312–6371 or Bob Brobst at 303–312–6129. The Region 8 offices are located at 1595 Wynkoop Street, Denver, CO 80202–1129. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the final permits may be obtained from Bob Brobst, EPA Region 8, Wastewater Unit (8P–W–WW), 1595 Wynkoop Street, Denver, CO 80202–1129, telephone (303) 312–6129 or E-mail at *brobst.bob@epa.gov.* The final general permits, the fact sheet, Response to Comments, and additional information may be downloaded from the EPA Region 8 Web page at *http://www.epa.gov/region08/biosolids.* Please allow one week after date of this publication for items to be uploaded to the Web page. Copies of a specific general permit, the fact sheet, and/or Response to Comments may also be obtained by writing Ellen Bonner at the above address or telephone 303–312–6371.

SUPPLEMENTARY INFORMATION: On February 19, 1993 (58 FR 9248), the EPA

promulgated ''Standards for the Use or Disposal of Sewage Sludge'' (40 CFR part 503) and made revisions to the NPDES regulations to include the permitting of facilities/operations that generate, treat, and/or use/dispose of sewage sludge. The 503 regulations were amended on August 4, 1999 (64 FR 42551). The States of South Dakota and Utah currently are the only States in Region 8 that have been authorized to administer the biosolids (sludge) program. The State of Colorado has not been authorized permitting authority for Federal facilities. In 2002 EPA issued general permits for facilities or operations that generate, treat, and/or use/dispose of sewage sludge by means of land application, landfill, and surface disposal in the States of CO, MT, ND, and WY and in Indian country in the States of CO, MT, ND, SD, WY and UT (except for the Goshute Indian Reservation and the Navajo Indian Reservation). Those general permits expire on August 16, 2007. Proposed reissuance of the general permits was published in the **Federal Register** on July 3, 2007 (72 FR 36453). The public comment period closed on August 2, 2007. A summary of each comment received and Region 8's response to the comments are given in a separate document, ''Response to Comments on Reissuance of Region 8 Biosolids General Permits in 2007.'' To obtain a copy of the Response to Comments See **FOR FURTHER INFORMATION CONTACT:** above. None of the comments resulted in a change to the general permits as proposed. Accordingly, the permits are being issued without any change from the public notice draft.

The renewal permits are very similar to the previous permits. The administrative burden for most of the regulated sources is expected to be less under the general permits than with individual permits, and it will be much quicker to obtain permit coverage with general permits than with individual permits. The substantive permit requirements would be essentially the same with an individual permit or under the general permit. Facilities or operations that incinerate sewage sludge are not eligible for coverage under these general permits and must apply for an individual permit. Wastewater lagoon systems that are not using/disposing of sewage sludge do not need to apply for permit coverage unless notified by the permit issuing authority. The deadlines for applying for coverage under the general permits are given in the permits and the Fact Sheet. Facilities/operations that had coverage under the previous general permit and have submitted a timely request for coverage under this renewal permit are covered automatically under the permits unless the permit issuing authority requires the submittal of a new notice of intent (NOI).

Other Legal Requirements

Section 401(a)(1) Certification: Since these permits do not involve discharges to waters of the United States, certification under § 401(a)(1) of the Clean Water Act is not necessary for the issuance of these permits and certification will not be requested.

Economic Impact (Executive Order 12866): EPA has determined that the issuance of this general permit 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 formal OMB review prior to proposal.

Paperwork Reduction Act: EPA has reviewed the requirements imposed on regulated facilities in these proposed general permits under the Paperwork Reduction Act of 1980, 44 U.S.C. 501, *et seq.* The information collection requirements of these permits have already been approved by the Office of Management and Budget in submissions made for the NPDES permit program under the provisions of the Clean Water Act.

Regulatory Flexibility Act (RFA), 5 U.S.C 601, *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA): The RFA requires that EPA prepare a regulatory flexibility analysis for rules subject to the requirements of 5 U.S.C. 553(b) that have a significant impact on a substantial number of small entities. The permit proposed today, however, is not a ''rule'' subject to the requirements of 5 U.S.C. 553(b) and is therefore not subject to the RFA.

Unfunded Mandates Reform Act: Section 201 of the Unfunded Mandates Reform Act (UMRA), Public Law 104–4, generally requires Federal agencies to assess the effects of their ''regulatory actions'' defined to be the same as ''rules'' subject to the RFA) on tribal, state, local governments and the private sector. The permit proposed today, however, is not a ''rule'' subject to the RFA and is therefore not subject to the requirements of the UMRA.

Appeal of Permit: Any interested person may appeal the general permits in the Federal Court of Appeals in accordance with Section 509(b)(1) of the Clean Water Act (33 U.S.C. 1369(b)(1)). This appeal must be filed within 120 days of the effective date of the permit. Persons affected by a general NPDES permit may not challenge the conditions of the permit as a right of further EPA proceedings (see 40 CFR 124.19). Instead, they may either challenge the permit in court or apply for an individual permit and then request a formal hearing on the issuance or denial on an individual permit.

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

Dated: September 18, 2007.

Stephen S. Tuber,

Assistant Regional Administrator, Office of Partnerships and Regulatory Assistance.

[FR Doc. E7–19704 Filed 10–4–07; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

PREVIOUSLY ANNOUNCED DATE & TIME: Thursday, September 20, 2007, 10 AM Meeting closed To the Public. This Meeting Was Cancelled.

DATE AND TIME: Wednesday, October 10, 2007 at 10 AM.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, October 11, 2007 at 10 AM.

PLACE: 999 E Street, NW., Washington, DC. (ninth floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Draft Advisory Opinion 2007–15: GMAC LLC, by counsel, Jan Witold Baran and Caleb P. Burns.

Draft Advisory Opinion 2007–16: American Kennel Club, Inc., by counsel, Timothy W. Jenkins.

Draft Advisory Opinion 2007–17: Democratic Senatorial Campaign Committee, by counsel, Marc E. Elias.

Draft Advisory Opinion 2007–18: Rangel for Congress and the National Leadership PAC, by counsel, Phu Huynh.

Report of the Audit Division on Edwards for President.

Management and Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Robert Biersack, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 07–4967 Filed 10–3–07; 1:16 pm]

BILLING CODE 6715–01–M

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 October 23, 2007.

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Jack L. Justice, Pauls Valley, Oklahoma; to acquire voting shares of First Lindsay Corporation, and thereby indirectly acquire voting shares of The First National Bank of Lindsay, both in Lindsay, Oklahoma.

Board of Governors of the Federal Reserve System, October 2, 2007.

Margaret M. Shanks,

Associate Secretary of the Board.

[FR Doc. E7–19693 Filed 10–4–07; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 2, 2007.

A. Federal Reserve Bank of Atlanta (David Tatum, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Metropolitan BancGroup, Inc., Ridgeland, Mississippi; to become a bank holding company by acquiring 100 percent of the voting shares of BancSouth Financial Corporation, and thereby acquire Bank of the South, both of Crystal Springs, Mississippi.

Board of Governors of the Federal Reserve System, October 2, 2007.

Margaret M. Shanks,

Associate Secretary of the Board.

[FR Doc. E7–19694 Filed 10–4–07; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: OS–0990–NEW; 30-day notice]

Agency Information Collection Request. 30-Day Public Comment Request

AGENCY: Office of the Secretary, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, is publishing the following summary of a proposed collection for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, e-mail your request, including your address, phone number, OMB number, and OS document identifier, to *Sherette.funncoleman@hhs.gov*, or call the Reports Clearance Office on (202) 690–6162. Written comments and recommendations for the proposed information collections must be received within 30 days of this notice directly to the OS OMB Desk Officer all comments must be faxed to OMB at 202–395–6974.

Title: HHS Web Site Customer Satisfaction Survey—0990–NEW—Office of the Assistant Secretary for Public Affairs.

Abstract: The results of the HHS Web Site Customer Satisfaction Survey will be used to ensure that the content on the HHS Web sites meets visitor needs and expectations. The results will also determine if the site is easy to use and the content easy to understand.

ESTIMATED ANNUALIZED BURDEN TABLE

Form	Number of respondents	Number of responses per respondent	Average burden hours per response (in hrs.)	Total burden hours
Survey	48,000	1	12/60	9,600

Alice Bettencourt,

Office of the Secretary, Paperwork Reduction Act Reports Clearance Officer.

[FR Doc. E7–19724 Filed 10–4–07; 8:45 am]

BILLING CODE 4150–25–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10218 and CMS–10250]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Survey for the Evaluation of the Low Vision Rehabilitation Demonstration; *Use:* This information collection request relates to the collection of health status indicators for the Low Vision Rehabilitation Demonstration through the beneficiary survey. The survey will be conducted among Medicare beneficiaries with vision problems who have received vision services. CMS intends to administer the Low Vision Survey (LVS) for approximately eighteen months. Data on the process of implementing the demonstration will also be collected through telephone interviews with physicians and beneficiaries who receive low vision services. Focus groups will be conducted with low vision rehabilitation specialists. *Form Numbers:* CMS–10218 (OMB#: 0938–NEW); *Frequency:* Reporting—Once and Yearly; *Affected Public:* Individuals and households; *Number of Respondents:* 2131; *Total Annual Responses:* 2131; *Total Annual Hours:* 1059.

2. *Type of Information Collection Request:* New Collection; *Title of Information Collection:* Submission of Information for the Hospital Outpatient Quality Data Program; *Use:* The submission of outpatient hospital quality of care information builds on the requirement to submit such data for inpatient hospital care as required under 501(b) of the Medicare Prescription Drug, Improvement and Modernization Act of 2003 (MMA) (Pub. L. 108–173). The requirement to submit hospital quality of care information is intended to empower consumers with quality of care information to make more informed decisions about their health care while also encouraging hospitals and clinicians to improve the quality of care. This information is used by CMS to direct its contractor, including Quality Improvement Organizations (QIOs), to focus on particular areas of improvement, and to develop quality improvement initiatives. The information will be made available to hospitals for their use in internal quality improvement initiatives. Most importantly, this information is available to beneficiaries, as well as to the public in general, to provide hospital information to assist them in making decisions about their health care. *Form Numbers:* CMS–10250 (OMB#: 0938-NEW); *Frequency:* Reporting—quarterly; *Affected Public:* Private Sector—For-profit and not-for-profit institutions; *Number of Respondents:* 3,500; *Total Annual Responses:* 17,500; *Total Annual Hours:* 914,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received at the address below, no later than 5 p.m. on December 4, 2007.

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development—C, Attention: Bonnie L Harkless, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: September 27, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–19505 Filed 10–4–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10052, CMS–R–249 and CMS–10047]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated

burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Recognition of pass-through payment for additional (new) categories of devices under the Outpatient Prospective Payment System and Supporting Regulations in 42 CFR, Part 4 19; *Use:* Section 20 1 (b) of the Balanced Budget Act of 1999 amended section 1833(t) of the Social Security Act (the Act) by adding new section 1833(t)(6). This provision requires the Secretary to make additional payments to hospitals for a period of 2 to 3 years for certain drugs, radiopharmaceuticals, biological agents, medical devices and brachytherapy devices. Section 1833(t)(6)(A)(iv) establishes the criteria for determining the application of this provision to new items. Section 1833(t)(6)(C)(ii) provides that the additional payment for medical devices be the amount by which the hospital's charges for the device, adjusted to cost, exceed the portion of the otherwise applicable hospital outpatient department fee schedule amount determined by the Secretary to be associated with the device. Section 402 of the Benefits Improvement and Protection Act of 2000 made changes to the transitional pass-through provision for medical devices. The most significant change is the required use of categories as the basis for determining transitional pass-through eligibility for medical devices, through the addition of section 1833(t)(6)(B) of the Act.

Interested parties such as hospitals, device manufacturers, pharmaceutical companies, and physicians apply for transitional pass-through payment for certain items used with services covered in the outpatient prospective payment system. After CMS receives all requested information, CMS will evaluate the information to determine if the creation of an additional category of medical devices for transitional pass-through payments is justified. *Form Number:* CMS–10052 (OMB#: 0938–0857); *Frequency:* Reporting: Yearly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 10; *Total Annual Responses:* 10; *Total Annual Hours:* 160.

2. *Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Hospice Cost and Data Report and supporting regulations 42 CFR 413.20 and 42 CFR 413.24; *Use:* In accordance with sections 1815(a), 1833(e), 1861(v)(A)(ii) and 1881 (b)(2)(B) of the Social Security Act, providers of services in the Medicare program are required to submit annual information to receive reimbursement for health care services provided to Medicare beneficiaries. In addition, 42 CFR 413.20(b) requires that cost reports be filed with the provider's fiscal intermediary/Medicare Administrative Contractor (FI/MAC). The functions of the FI/MAC are described in section 1816 of the Social Security Act. The Center for Medicare and Medicaid Services will use the information from providers for rate evaluations for the Prospective Payment System. *Form Number:* CMS–R–249 (OMB#: 0938–0758); *Frequency:* Reporting: Yearly; *Affected Public:* Business or other for-profit; *Number of Respondents:* 1938; *Total Annual Responses:* 1938; *Total Annual Hours:* 341,088.

3. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships and Supporting Regulations in 42 CFR, Sections 411.352 through 411.361; *Use:* The collection of information contained in 42 CFR sections 411.352(d), 411.354(d), 411.355(e), 411.357(a), (b), (d), (e), (h), (l), (p), and (s), and 411.361 is necessary to allow CMS to implement section 1877 of the Social Security Act. This collection has been revised to eliminate the requirement in section 411.357(s) to notify insurance companies that an entity has a professional courtesy policy. CMS issued these regulations to comply with the provisions of section 1877 of the Social Security Act that prohibit a physician from referring a patient to an entity for a designated health service for which Medicare might otherwise pay, if the physician or an immediate family member has a financial relationship with the entity, unless an exception applies. *Form Number:* CMS–10047 (OMB#: 0938–0846); *Frequency:* Yearly; *Affected Public:* Business or other for-profit and Not-for-profit institutions; *Number of Respondents:* 154,404 *Total Annual Responses:* 154,404; *Total Annual Hours:* 116,035.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995*, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov*, or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on November 5, 2007.

OMB Human Resources and Housing Branch, Attention: Carolyn Lovett, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395–6974.

Dated: September 27, 2007.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E7–19506 Filed 10–4–07; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8032–N]

RIN 0938–AO61

Medicare Program; Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for Calendar Year 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year (CY) 2008 under Medicare's Hospital Insurance program (Medicare Part A). The Medicare statute specifies the formulae used to determine these amounts.

For CY 2008, the inpatient hospital deductible will be $1024. The daily coinsurance amounts for CY 2008 will be: (a) $256 for the 61st through 90th day of hospitalization in a benefit period; (b) $512 for lifetime reserve days; and (c) $128 for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period.

DATES: *Effective Date:* This notice is effective on January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390. For case-mix analysis: Gregory J. Savord, (410) 786–1521.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1813 of the Social Security Act (the Act) provides for an inpatient hospital deductible to be subtracted from the amount payable by Medicare for inpatient hospital services furnished to a beneficiary. It also provides for certain coinsurance amounts to be subtracted from the amounts payable by Medicare for inpatient hospital and extended care services. Section 1813(b)(2) of the Act requires us to determine and publish, between September 1 and September 15 of each year, the amount of the inpatient hospital deductible and the hospital and extended care services coinsurance amounts applicable for services furnished in the following CY.

II. Computing the Inpatient Hospital Deductible for CY 2008

Section 1813(b) of the Act prescribes the method for computing the amount of the inpatient hospital deductible. The inpatient hospital deductible is an amount equal to the inpatient hospital deductible for the preceding CY, changed by our best estimate of the payment-weighted average of the applicable percentage increases (as defined in section 1886(b)(3)(B) of the Act) used for updating the payment rates to hospitals for discharges in the fiscal year (FY) that begins on October 1 of the same preceding CY, and adjusted to reflect real case-mix. The adjustment to reflect real case-mix is determined on the basis of the most recent case-mix data available. The amount determined under this formula is rounded to the nearest multiple of $4 (or, if midway between two multiples of $4, to the next higher multiple of $4).

Under section 1886(b)(3)(B)(i) of the Act, the percentage increase used to update the payment rates for FY 2008 for inpatient hospitals paid under the prospective payment system is the market basket percentage increase. Under section 1886(b)(3)(B)(viii) of the Act, hospitals will receive the full market basket update only if they submit quality data as specified by the Secretary. Those hospitals that do not submit data will receive an update of market basket minus 2.0 percentage points. We are estimating that after including the impact of those hospitals receiving the lower update in the payment-weighted average update, the calculated deductible will remain the same.

Under section 1886(b)(3)(B)(ii) of the Act, the percentage increase used to update the payment rates for FY 2008 for hospitals excluded from the prospective payment system is the market basket percentage increase, defined according to section 1886(b)(3)(B)(iii) of the Act.

The market basket percentage increase for 2008 is 3.3 percent, as announced in the final rule published in the **Federal Register** entitled ''Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2008 Rates'' 72 FR 47130. Therefore, the percentage increase for hospitals paid under the prospective payment system is 3.3 percent. The average payment percentage increase for hospitals excluded from the prospective payment system is 3.3 percent. Weighting these percentages in accordance with payment volume, our best estimate of the payment-weighted average of the increases in the payment rates for FY 2008 is 3.3 percent.

To develop the adjustment for real case-mix, we first calculated for each hospital an average case-mix that reflects the relative costliness of that hospital's mix of cases compared to those of other hospitals. We then computed the change in average case-mix for hospitals paid under the Medicare prospective payment system in FY 2007 compared to FY 2006. (We excluded from this calculation hospitals excluded from the prospective payment system because their payments are based on reasonable costs.) We used Medicare bills from prospective payment hospitals that we received as of July 2007. These bills represent a total of about 8.9 million Medicare discharges for FY 2007 and provide the most recent case-mix data available at this time. Based on these bills, the change in average case-mix in FY 2007 is −0.48 percent. Based on these bills and past experience, we estimate that the change in real case-mix for FY 2007 will be 0 percent.

Section 1813 of the Act requires that the inpatient hospital deductible be adjusted only by that portion of the case-mix change that is determined to be real.

Thus, the estimate of the payment-weighted average of the applicable percentage increases used for updating the payment rates is 3.3 percent, and the real case-mix adjustment factor for the deductible is 0 percent. Therefore, under the statutory formula, the inpatient hospital deductible for services furnished in CY 2008 is $1024. This deductible amount is determined by multiplying $992 (the inpatient hospital deductible for CY 2007) by the payment-weighted average increase in the payment rates of 1.033 multiplied by the increase in real case-mix of 1.00, which equals $1024.74 and is rounded to $1024.

III. Computing the Inpatient Hospital and Extended Care Services Coinsurance Amounts for CY 2008

The coinsurance amounts provided for in section 1813 of the Act are defined as fixed percentages of the inpatient hospital deductible for services furnished in the same CY. Thus, the increase in the deductible generates increases in the coinsurance amounts. For inpatient hospital and extended care services furnished in CY 2008, in accordance with the fixed percentages defined in the law, the daily coinsurance for the 61st through 90th day of hospitalization in a benefit period will be $256 (one-fourth of the inpatient hospital deductible); the daily coinsurance for lifetime reserve days will be $512 (one-half of the inpatient hospital deductible); and the daily coinsurance for the 21st through 100th day of extended care services in a skilled nursing facility in a benefit period will be $128 (one-eighth of the inpatient hospital deductible).

IV. Cost to Medicare Beneficiaries

Table 1 summarizes the deductible and coinsurance amounts for CYs 2007 and 2008, as well as the number of each that is estimated to be paid.

TABLE 1.—PART A DEDUCTIBLE AND COINSURANCE AMOUNTS FOR CALENDAR YEARS 2007 AND 2008

Type of cost sharing	Value		Number paid (in millions)	
	2007	2008	2007	2008
Inpatient hospital deductible	$992	$1,024	8.57	8.81
Daily coinsurance for 61st–90th Day	248	256	2.23	2.30
Daily coinsurance for lifetime reserve days	496	512	1.01	1.04
SNF coinsurance	124	128	39.42	40.40

The estimated total increase in costs to beneficiaries is about $870 million (rounded to the nearest $10 million), due to: (1) the increase in the deductible and coinsurance amounts; and (2) the change in the number of deductibles and daily coinsurance amounts paid.

V. Waiver of Proposed Notice and Comment Period

The Medicare statute, as discussed previously, requires publication of the Medicare Part A inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services for each CY. The amounts are determined according to the statute. As has been our custom, we use general notices, rather than notice and comment rulemaking procedures, to make the announcements. In doing so, we acknowledge that, under the Administrative Procedure Act (APA), interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulae used to calculate the inpatient hospital deductible and hospital and extended care services coinsurance amounts are statutorily directed, and we can exercise no discretion in following the formulae. Moreover, the statute establishes the time period for which the deductible and coinsurance amounts will apply and delaying publication would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

VI. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 35).

VII. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the total increase in costs to beneficiaries associated with this notice is about $870 million due to: (1) The increase in the deductible and coinsurance amounts and (2) the change in the number of deductibles and daily coinsurance amounts paid. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2), and is an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6.5 million to $31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditures in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $120 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector. However, States are required to pay the premiums for dually-eligible beneficiaries.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Sections 1813(b)(2) of the Social Security Act (42 U.S.C. 1395e–2(b)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 26, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: September 26 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–4911 Filed 10–1–07; 11:18 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8031–N]

RIN 0938–AO62

Medicare Program; Part A Premium for Calendar Year 2008 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This annual notice announces Medicare's Hospital Insurance (Part A) premium for uninsured enrollees in calendar year (CY) 2008. This premium is to be paid by enrollees age 65 and over who are not otherwise eligible for benefits under Medicare Part A (hereafter known as the ''uninsured aged'') and by certain disabled individuals who have exhausted other entitlement. The monthly Part A premium for the 12 months beginning January 1, 2008 for these individuals will be $423. The reduced premium for

certain other individuals as described in this notice will be $233.

DATES: *Effective Date:* This notice is effective on January 1, 2008.

FOR FURTHER INFORMATION CONTACT: Clare McFarland, (410) 786–6390.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1818 of the Social Security Act (the Act) provides for voluntary enrollment in the Medicare Hospital Insurance program (Medicare Part A), subject to payment of a monthly premium, of certain persons aged 65 and older who are uninsured under the Old-Age, Survivors and Disability Insurance (OASDI) program or the Railroad Retirement Act and do not otherwise meet the requirements for entitlement to Medicare Part A. (Persons insured under the OASDI program or the Railroad Retirement Act and certain others do not have to pay premiums for hospital insurance.)

Section 1818A of the Act provides for voluntary enrollment in Medicare Part A, subject to payment of a monthly premium, of certain disabled individuals who have exhausted other entitlement. These are individuals who are not currently entitled to Part A coverage, but who were entitled to coverage due to a disabling impairment under section 226(b) of the Act, and who would still be entitled to Part A coverage if their earnings had not exceeded the statutorily defined substantial gainful activity amount (section 223(d)(4) of the Act).

Section 1818A(d)(2) of the Act specifies that the provisions relating to premiums under section 1818(d) through section 1818(f) of the Act for the aged will also apply to certain disabled individuals as described above.

Section 1818(d) of the Act requires us to estimate, on an average per capita basis, the amount to be paid from the Federal Hospital Insurance Trust Fund for services incurred in the following calendar year (CY) (including the associated administrative costs) on behalf of individuals aged 65 and over who will be entitled to benefits under Medicare Part A. We must then determine, during September of each year, the monthly actuarial rate for the following year (the per capita amount estimated above divided by 12) and publish the dollar amount for the monthly premium in the succeeding CY. If the premium is not a multiple of $1, the premium is rounded to the nearest multiple of $1 (or, if it is a multiple of 50 cents but not of $1, it is rounded to the next highest $1).

Section 13508 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) amended section 1818(d) of the Act to provide for a reduction in the premium amount for certain voluntary enrollees (section 1818 and section 1818A). The reduction applies to an individual who is eligible to buy into the Medicare Part A program and who, as of the last day of the previous month—

- Had at least 30 quarters of coverage under title II of the Act;
- Was married, and had been married for the previous 1-year period, to a person who had at least 30 quarters of coverage;
- Had been married to a person for at least 1 year at the time of the person's death if, at the time of death, the person had at least 30 quarters of coverage; or
- Is divorced from a person and had been married to the person for at least 10 years at the time of the divorce if, at the time of the divorce, the person had at least 30 quarters of coverage.

Section 1818(d)(4)(A) of the Act specifies that the premium that these individuals will pay for CY 2008 will be equal to the premium for uninsured aged enrollees reduced by 45 percent.

II. Monthly Premium Amount for CY 2008

The monthly premium for the uninsured aged and certain disabled individuals who have exhausted other entitlement for the 12 months beginning January 1, 2008, is $423.

The monthly premium for those individuals subject to the 45 percent reduction in the monthly premium is $233.

III. Monthly Premium Rate Calculation

As discussed in section I of this notice, the monthly Medicare Part A premium is equal to the estimated monthly actuarial rate for CY 2008 rounded to the nearest multiple of $1 and equals one-twelfth of the average per capita amount, which is determined by projecting the number of Part A enrollees aged 65 years and over as well as the benefits and administrative costs that will be incurred on their behalf.

The steps involved in projecting these future costs to the Federal Hospital Insurance Trust Fund are:

- Establishing the present cost of services furnished to beneficiaries, by type of service, to serve as a projection base;
- Projecting increases in payment amounts for each of the service types; and
- Projecting increases in administrative costs.

We base our projections for CY 2008 on: (a) Current historical data, and (b) projection assumptions derived from current law and the Mid-Session Review of the President's Fiscal Year 2008 Budget.

We estimate that in CY 2008, 36.777 million people aged 65 years and over will be entitled to benefits (without premium payment) and that they will incur $186.757 billion of benefits and related administrative costs. Thus, the estimated monthly average per capita amount is $423.17 and the monthly premium is $423. The full monthly premium reduced by 45 percent is $233.

IV. Costs to Beneficiaries

The CY 2008 premium of $423 is over 3 percent higher than the CY 2007 premium of $410.

We estimate that approximately 579,000 enrollees will voluntarily enroll in Medicare Part A by paying the full premium. We estimate an additional 10,000 enrollees will pay the reduced premium. We estimate that the aggregate cost to enrollees paying these premiums will be about $91 million in CY 2008 over the amount that they paid in CY 2007.

V. Waiver of Proposed Notice and Comment Period

We are not using notice and comment rulemaking in this notification of Part A premiums for CY 2008, as that procedure is unnecessary because of the lack of discretion in the statutory formula that is used to calculate the premium and the solely ministerial function that this notice serves. The Administrative Procedure Act (APA) permits agencies to waive notice and comment rulemaking when notice and public comment thereon are unnecessary. On this basis, we waive publication of a proposed notice and a solicitation of public comments.

VI. Regulatory Impact Statement

We have examined the impacts of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically

significant effects ($100 million or more in any 1 year). As stated in section IV of this notice, we estimate that the overall effect of these changes in the Part A premium will be a cost to voluntary enrollees (section 1818 and section 1818A of the Act) of about $91 million. Therefore, this notice is not a major rule as defined in Title 5, United States Code, section 804(2) and is not an economically significant rule under Executive Order 12866.

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year. Individuals and States are not included in the definition of a small entity. We have determined that this notice will not have a significant economic impact on a substantial number of small entities. Therefore, we are not preparing an analysis for the RFA.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area (MSA) and has fewer than 100 beds. We have determined that this notice will not have a significant effect on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing an analysis for section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $120 million. This notice has no consequential effect on State, local, or tribal governments or on the private sector. However, States are required to pay the premiums for dually-eligible beneficiaries.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This notice will not have a substantial effect on State or local governments.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

Authority: Sections 1818(d)(2) and 1818A(d)(2) of the Social Security Act (42 U.S.C. 1395i–2(d)(2) and 1395i–2a(d)(2)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: September 26, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Dated: September 26, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–4909 Filed 10–1–07; 11:18 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–8033–N]

RIN 0938–AO68

Medicare Program; Medicare Part B Monthly Actuarial Rates, Premium Rate, and Annual Deductible Beginning January 1, 2008

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice.

SUMMARY: This notice announces the monthly actuarial rates for aged (age 65 and over) and disabled (under age 65) beneficiaries enrolled in Part B of the Medicare Supplementary Medical Insurance (SMI) program beginning January 1, 2008. In addition, this notice announces the monthly premium for aged and disabled beneficiaries as well as the income-related monthly adjustment amounts to be paid by beneficiaries with modified adjusted gross income above certain threshold amounts. The monthly actuarial rates for 2008 are $192.70 for aged enrollees and $209.70 for disabled enrollees. The standard monthly Part B premium rate for 2008 is $96.40, which is equal to 50 percent of the monthly actuarial rate for aged enrollees or approximately 25 percent of the expected average total cost of Part B coverage for aged enrollees. (The 2007 standard premium rate was $93.50.) The Part B deductible for 2008 is $135.00 for all Part B beneficiaries. If a beneficiary has to pay an income-related monthly adjustment, they may have to pay a total monthly premium of about 35, 50, 65, or 80 percent of the total cost of Part B coverage, by the end of the 3-year transition period. However, for 2008, the beneficiary is only responsible for 67 percent of any applicable income-related monthly adjustment amount. (For 2007, the beneficiary was responsible for 33 percent of the applicable amount.)

DATES: *Effective Date:* January 1, 2008.

FOR FURTHER INFORMATION CONTACT: M. Kent Clemens, (410) 786–6391.

SUPPLEMENTARY INFORMATION:

I. Background

Part B is the voluntary portion of the Medicare program that pays all or part of the costs for physicians' services, outpatient hospital services, certain home health services, services furnished by rural health clinics, ambulatory surgical centers, comprehensive outpatient rehabilitation facilities, and certain other medical and health services not covered by Medicare Part A, Hospital Insurance. Medicare Part B is available to individuals who are entitled to Medicare Part A, as well as to U.S. residents who have attained age 65 and are citizens, and aliens who were lawfully admitted for permanent residence and have resided in the United States for 5 consecutive years. Part B requires enrollment and payment of monthly premiums, as provided for in 42 CFR part 407, subpart B, and part 408, respectively. The difference between the premiums paid by all enrollees and total incurred costs is met from the general revenues of the Federal Government.

The Secretary of the Department of Health and Human Services (the Secretary) is required by section 1839 of the Social Security Act (the Act) to announce the Part B monthly actuarial rates for aged and disabled beneficiaries as well as the monthly Part B premium. The Part B annual deductible is included because its determination is directly linked to the aged actuarial rate.

The monthly actuarial rates for aged and disabled enrollees are used to determine the correct amount of general revenue financing per beneficiary each month. These amounts, according to actuarial estimates, will equal, respectively, one-half the expected average monthly cost of Part B for each aged enrollee (age 65 or over) and one-half the expected average monthly cost of Part B for each disabled enrollee (under age 65).

The Part B deductible to be paid by enrollees is also announced. Prior to the Medicare Prescription Drug, Improvement, and Modernization Act of

2003 (MMA) (Pub. L. 108–173), the Part B deductible was set in statute. After setting the 2005 deductible amount at $110.00, section 629 of the MMA (amending section 1833(b) of the Act) requires that the Part B deductible be indexed beginning in 2006. The inflation factor to be used each year is the annual percentage increase in the Part B actuarial rate for enrollees age 65 and over. Specifically, the 2008 Part B deductible is calculated by multiplying the 2007 deductible by the ratio of the 2008 aged actuarial rate over the 2007 aged actuarial rate. The amount determined under this formula is then rounded to the nearest $1.

The monthly Part B premium rate to be paid by aged and disabled enrollees is also announced. (Although the costs to the program per disabled enrollee are different than for the aged, the statute provides that they pay the same premium amount.) Beginning with the passage of section 203 of the Social Security Amendments of 1972 (Pub. L. 92–603), the premium rate, which was determined on a fiscal year basis, was limited to the lesser of the actuarial rate for aged enrollees, or the current monthly premium rate increased by the same percentage as the most recent general increase in monthly Title II social security benefits.

However, the passage of section 124 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (Pub. L. 97–248) suspended this premium determination process. Section 124 of TEFRA changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). Section 606 of the Social Security Amendments of 1983 (Pub. L. 98–21), section 2302 of the Deficit Reduction Act of 1984 (DEFRA 84) (Pub. L. 98–369), section 9313 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA 85) (Pub. L. 99–272), section 4080 of the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) (Pub. L. 100–203), and section 6301 of the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) (Pub. L. 101–239) extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees). This extension expired at the end of 1990.

The premium rate for 1991 through 1995 was legislated by section 1839(e)(1)(B) of the Act, as added by section 4301 of the Omnibus Budget Reconciliation Act of 1990 (OBRA 90) (Pub. L. 101–508). In January 1996, the premium determination basis would have reverted to the method established by the 1972 Social Security Act Amendments. However, section 13571 of the Omnibus Budget Reconciliation Act of 1993 (OBRA 93) (Pub. L. 103–66) changed the premium basis to 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees) for 1996 through 1998.

Section 4571 of the Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) permanently extended the provision that the premium be based on 50 percent of the monthly actuarial rate for aged enrollees (that is, 25 percent of program costs for aged enrollees).

The BBA included a further provision affecting the calculation of the Part B actuarial rates and premiums for 1998 through 2003. Section 4611 of the BBA modified the home health benefit payable under Part A for individuals enrolled in Part B. Under this section, beginning in 1998, expenditures for home health services not considered ''post-institutional'' are payable under Part B rather than Part A. However, section 4611(e)(1) of the BBA required that there be a transition from 1998 through 2002 for the aggregate amount of the expenditures transferred from Part A to Part B. Section 4611(e)(2) of the BBA also provided a specific yearly proportion for the transferred funds. The proportions were 1/6 for 1998, 1/3 for 1999, 1/2 for 2000, 2/3 for 2001, and 5/6 for 2002. For the purpose of determining the correct amount of financing from general revenues of the Federal Government, it was necessary to include only these transitional amounts in the monthly actuarial rates for both aged and disabled enrollees, rather than the total cost of the home health services being transferred.

Section 4611(e)(3) of the BBA also specified, for the purpose of determining the premium, that the monthly actuarial rate for enrollees age 65 and over be computed as though the transition would occur for 1998 through 2003 and that 1/7 of the cost be transferred in 1998, 2/7 in 1999, 3/7 in 2000, 4/7 in 2001, 5/7 in 2002, and 6/7 in 2003. Therefore, the transition period for incorporating this home health transfer into the premium was 7 years while the transition period for including these services in the actuarial rate was 6 years.

Section 811 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L. 108–173, also known as the Medicare Modernization Act, or MMA), which amended section 1839 of the Act, requires that, starting on January 1, 2007, the Part B premium a beneficiary pays each month be based on their annual income. Specifically, if a beneficiary's ''modified adjusted gross income'' is greater than the legislated threshold amounts (for 2008, $82,000 for a beneficiary filing an individual income tax return, and $164,000 for a beneficiary filing a joint tax return) the beneficiary is responsible for a larger portion of the estimated total cost of Part B benefit coverage. In addition to the standard 25 percent premium, these beneficiaries will now have to pay an income-related monthly adjustment amount. The MMA made no change to the actuarial rate calculation, and the standard premium, which will continue to be paid by beneficiaries whose modified adjusted gross income is below the applicable thresholds, still represents 25 percent of the estimated total cost to the program of Part B coverage for an aged enrollee. However, once the adjustments are fully phased in, and depending on income and tax filing status, a beneficiary could now be responsible for 35, 50, 65, or 80 percent of the estimated total cost of Part B coverage, rather than 25 percent. The end result of the higher premium is that the Part B premium subsidy is reduced and less general revenue financing is required for beneficiaries with higher income because they are paying a larger share of the total cost with their premium. That is, the premium subsidy will continue to be approximately 75 percent for beneficiaries with income below the applicable income thresholds, but will be reduced for beneficiaries with income above these thresholds. The MMA specified that there be a 5-year transition to full implementation of this provision. However, section 5111 of the Deficit Reduction Act of 2005 (Pub. L. 109–171) (DRA) modified the transition to a 3-year period.

Section 4732(c) of the BBA added section 1933(c) of the Act, which required the Secretary to allocate money from the Part B trust fund to the State Medicaid programs for the purpose of providing Medicare Part B premium assistance from 1998 through 2002 for the low-income Medicaid beneficiaries who qualify under section 1933 of the Act. This allocation, while not a benefit expenditure, was an expenditure of the trust fund and was included in calculating the Part B actuarial rates through 2002. For 2003 through 2007, the expenditure was made from the trust fund because the allocation was temporarily extended. However, because the extension occurred after the financing was determined, the allocation was not included in the calculation of the financing rates.

A further provision affecting the calculation of the Part B premium is

section 1839(f) of the Act, as amended by section 211 of the Medicare Catastrophic Coverage Act of 1988 (MCCA 88) (Pub. L. 100–360). (The Medicare Catastrophic Coverage Repeal Act of 1989 (Pub. L. 101–234) did not repeal the revisions to section 1839(f) made by MCCA 88.) Section 1839(f) of the Act, referred to as the ''hold-harmless'' provision, provides that if an individual is entitled to benefits under section 202 or 223 of the Act (the Old-Age and Survivors Insurance Benefit and the Disability Insurance Benefit, respectively) and has the Part B premiums deducted from these benefit payments, the premium increase will be reduced, if necessary, to avoid causing a decrease in the individual's net monthly payment. This decrease in payment occurs if the increase in the individual's social security benefit due to the cost-of-living adjustment under section 215(i) of the Act is less than the increase in the premium. Specifically, the reduction in the premium amount applies if the individual is entitled to benefits under section 202 or 223 of the Act for November and December of a particular year and the individual's Part B premiums for December and the following January are deducted from the respective month's section 202 or 223 benefits. The ''hold-harmless'' provision does not apply to beneficiaries who are required to pay an income-related monthly adjustment amount.

A check for benefits under section 202 or 223 of the Act is received in the month following the month for which the benefits are due. The Part B premium that is deducted from a particular check is the Part B payment for the month in which the check is received. Therefore, a benefit check for November is not received until December, but has December's Part B premium deducted from it.

Generally, if a beneficiary qualifies for hold-harmless protection, that is, if the beneficiary was in current payment status for November and December of the previous year, the reduced premium for the individual for that January and for each of the succeeding 11 months for which he or she is entitled to benefits, under section 202 or 203 of the Act, is the greater of the following—

- The monthly premium for January reduced as necessary to make the December monthly benefits, after the deduction of the Part B premium for January, at least equal to the preceding November's monthly benefits, after the deduction of the Part B premium for December; or
- The monthly premium for that individual for that December.

In determining the premium limitations under section 1839(f) of the Act, the monthly benefits to which an individual is entitled under section 202 or 223 of the Act do not include retroactive adjustments or payments and deductions on account of work. Also, once the monthly premium amount is established under section 1839(f) of the Act, it will not be changed during the year even if there are retroactive adjustments or payments and deductions on account of work that apply to the individual's monthly benefits.

Individuals who have enrolled in Part B late or who have re-enrolled after the termination of a coverage period are subject to an increased premium under section 1839(b) of the Act. The increase is a percentage of the premium and is based on the new premium rate before any reductions under section 1839(f) of the Act are made.

II. Provisions of the Notice

A. Notice of Medicare Part B Monthly Actuarial Rates, Monthly Premium Rates, and Annual Deductible

The Medicare Part B monthly actuarial rates applicable for 2008 are $192.70 for enrollees age 65 and over and $209.70 for disabled enrollees under age 65. Section II.B. of this notice below, presents the actuarial assumptions and bases from which these rates are derived. The Part B standard monthly premium rate for 2008 is $96.40. The Part B annual deductible for 2008 is $135.00. Listed below are the 2008 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $82,000	Less than or equal to $164,000	$0.00	$96.40
Greater than $82,000 and less than or equal to $102,000.	Greater than $164,000 and less than or equal to $204,000.	25.80	122.20
Greater than $102,000 and less than or equal to $153,000.	Greater than $204,000 and less than or equal to $306,000.	64.50	160.90
Greater than $153,000 and less than or equal to $205,000.	Greater than $306,000 and less than or equal to $410,000.	103.30	199.70
Greater than $205,000	Greater than $410,000	142.00	238.40

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed below.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $82,000	$0.00	$96.40
Greater than $82,000 and less than or equal to $123,000	103.30	199.70
Greater than $123,000	142.00	238.40

The Part B annual deductible for 2008 is $135.00 for all beneficiaries.

B. Statement of Actuarial Assumptions and Bases Employed in Determining the Monthly Actuarial Rates and the Monthly Premium Rate for Part B Beginning January 2008

1. Actuarial Status of the Part B Account in the Supplementary Medical Insurance Trust Fund

Under the statute, the starting point for determining the standard monthly premium is the amount that would be necessary to finance Part B on an incurred basis. This is the amount of income that would be sufficient to pay for services furnished during that year (including associated administrative costs) even though payment for some of these services will not be made until after the close of the year. The portion of income required to cover benefits not paid until after the close of the year is added to the trust fund and used when needed.

The premium rates are established prospectively and are, therefore, subject to projection error. Additionally, legislation enacted after the financing was established, but effective for the period in which the financing is set, may affect program costs. As a result, the income to the program may not equal incurred costs. Therefore, trust fund assets must be maintained at a level that is adequate to cover an appropriate degree of variation between actual and projected costs, and the amount of incurred, but unpaid, expenses. Numerous factors determine what level of assets is appropriate to cover variation between actual and projected costs. The three most important of these factors are: (1) The difference from prior years between the actual performance of the program and estimates made at the time financing was established; (2) the likelihood and potential magnitude of expenditure changes resulting from enactment of legislation affecting Part B costs in a year subsequent to the establishment of financing for that year, and (3) the expected relationship between incurred and cash expenditures. These factors are analyzed on an ongoing basis, as the trends can vary over time.

Table 1 summarizes the estimated actuarial status of the trust fund as of the end of the financing period for 2006 and 2007.

TABLE 1.—ESTIMATED ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SUPPLEMENTARY MEDICAL INSURANCE TRUST FUND AS OF THE END OF THE FINANCING PERIOD

Financing period ending	Assets (millions)	Liabilities (millions)	Assets less liabilities (millions)
Dec. 31, 2006	$32,325	$10,929	$21,396
Dec. 31, 2007	39,469	9,470	29,999

2. Monthly Actuarial Rate for Enrollees Age 65 and Older

The monthly actuarial rate for enrollees age65 and older is one-half of the sum of monthly amounts for: (1) The projected cost of benefits; and (2) administrative expenses for each enrollee age 65 and older, after adjustments to this sum to allow for interest earnings on assets in the trust fund and an adequate contingency margin. The contingency margin is an amount appropriate to provide for possible variation between actual and projected costs and to amortize any surplus assets or unfunded liabilities.

The monthly actuarial rate for enrollees age 65 and older for 2008 is determined by first establishing per-enrollee cost by type of service from program data through 2006 and then projecting these costs for subsequent years. The projection factors used for financing periods from January 1, 2005 through December 31, 2008 are shown in Table 2.

As indicated in Table 3, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for enrollees age 65 and over for 2008 is $183.25. The monthly actuarial rate of $192.70 also provides an adjustment of −$2.40 for interest earnings and $11.85 for a contingency margin. Based on current estimates, the assets are not sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a positive contingency margin is needed to increase assets to a more appropriate level.

The size of the contingency margin for 2008 is affected by several factors. First, a significant portion of the assets of the Part B account in the SMI trust fund was drawn down in 2003 and 2004 as a result of faster-than-expected expenditure growth, along with the enactment of the Consolidated Appropriations Resolution (Pub. L. 108–7) in February 2003 and the Medicare Modernization Act in December 2003. Each of these two legislative packages was enacted after the establishment of the Part B premium (for 2003 and 2004, respectively). Because each Act raised Part B expenditures subsequent to the setting of the premium, total Part B revenues from premiums and general fund transfers were inadequate to cover total costs. As a consequence, the assets of the Part B account in the Supplementary Medical Insurance trust fund were drawn on to cover the shortfall. Due to continuing faster-than-expected growth in Part B expenditures, only a minimal increase in assets occurred in 2005, despite a large increase in the 2005 Part B premium that was intended to partially replenish the assets in the Part B account. In 2006 and 2007, the Part B expenditures were again higher in each year than expected when the Part B financing was determined as a result of the enactment of legislation after the financing was set (specifically, the Deficit Reduction Act of 2005 and the Tax Relief and Health Care Act of 2006). Therefore, while the Part B assets increased in 2006 and 2007, the asset level remains lower than intended for contingency purposes.

In addition, the likelihood and magnitude of possible differences between actual and estimated Part B expenditures have increased significantly. Under current law, the cumulative actual level of physician (and physician-related) Part B expenditures is substantially in excess of the ''allowable'' level provided by the Sustainable Growth Rate (SGR) provisions. As a result, current law mandates a reduction in Medicare payment rates for physicians of approximately 10 percent for 2008 and another 5 percent per year for roughly another 10 years. As noted above, Congress has acted repeatedly in recent years to prevent such fee reductions from occurring, and is very likely to continue to do so for 2008 and subsequent years. Because of this continuing possibility, and the significant increase in Part B expenditures that results when Congress

overrides the statutory provisions that otherwise mandate decreases in physician fees, it is appropriate to maintain a somewhat larger Part B contingency reserve than would otherwise be necessary.

The traditional goal for the Part B reserve has been that assets minus liabilities at the end of a year should represent between 15 and 20 percent of the following year's total incurred expenditures. Within this range, 17 percent has been the normal target. In view of the strong likelihood of actual expenditures exceeding estimated levels, due to the enactment of legislation after the financing has been set for a given year, a contingency reserve ratio of about 20 percent of the following year's expenditures would better ensure that the assets of the Part B account can adequately cover the cost of incurred-but-not-reported benefits together with variations between actual and estimated cost levels.

The final factor affecting the contingency margin in the 2008 aged actuarial rate is the correction of an accounting error. Beginning in May 2005, expenditures for certain Part A hospice benefits were inadvertently drawn from the Part B account of the SMI trust fund, rather than from the Hospital Insurance (HI) trust fund. Correction of this error will result in adjustments to the HI and SMI trust funds to account for the misallocated hospice expenditures during fiscal years 2005 through 2007. As a result of this error, Part B outlays had been overstated in 2005 through 2007; Part B benefit costs estimated for 2008 are lower than previously projected, and Part B assets available for contingency purposes will be greater. Both factors serve to reduce the level of assets needed to serve as an adequate contingency reserve. In addition, the lower expected amount of Part B outlays in 2008 reduces the premium increase that, together with matching general fund transfers, is needed to finance Part B benefits and administrative expenses. This error has no impact on the 2008 Part A premium.

The actuarial rate of $192.70 per month for aged beneficiaries, as announced in this notice for 2008, reflects the combined net effect of the factors described above and the projection assumptions listed in Table 2.

3. Monthly Actuarial Rate for Disabled Enrollees

Disabled enrollees are those persons under age 65 who are enrolled in Part B because of entitlement to Social Security disability benefits for more than 24 months or because of entitlement to Medicare under the end-stage renal disease (ESRD) program. Projected monthly costs for disabled enrollees (other than those with ESRD) are prepared in a fashion parallel to the projection for the aged using appropriate actuarial assumptions (see Table 2). Costs for the ESRD program are projected differently because of the different nature of services offered by the program.

As shown in Table 4, the projected monthly rate required to pay for one-half of the total of benefits and administrative costs for disabled enrollees for 2008 is $213.50. The monthly actuarial rate of $209.70 also provides an adjustment of -$3.83 for interest earnings and $0.03 for a contingency margin, reflecting the same factors described above for the aged actuarial rate. Based on current estimates, the assets associated with the disabled Medicare beneficiaries are sufficient to cover the amount of incurred, but unpaid, expenses and to provide for a significant degree of variation between actual and projected costs. Thus, a near-zero contingency margin is sufficient to maintain assets at an appropriate level.

The actuarial rate of $209.70 per month for disabled beneficiaries, as announced in this notice for 2008, reflects the combined net effect of the factors described above for aged beneficiaries and the projection assumptions listed in table 2.

4. Sensitivity Testing

Several factors contribute to uncertainty about future trends in medical care costs. It is appropriate to test the adequacy of the rates using alternative assumptions. The results of those assumptions are shown in Table 5. One set represents increases that are lower and, therefore, more optimistic than the current estimate. The other set represents increases that are higher and, therefore, more pessimistic than the current estimate. The values for the alternative assumptions were determined from a statistical analysis of the historical variation in the respective increase factors.

As indicated in Table 5, the monthly actuarial rates would result in an excess of assets over liabilities of $41,627 million by the end of December 2008—(1) Under the assumptions used in preparing this report; and (2) with the Part B account of the SMI trust fund fully reimbursed for the cost of Part A hospice benefits inadvertently drawn from the Part B account. This amounts to 20.8 percent of the estimated total incurred expenditures for the following year.

Assumptions that are somewhat more pessimistic (and that therefore test the adequacy of the assets to accommodate projection errors) produce a surplus of $27,532 million by the end of December 2008, which amounts to 12.4 percent of the estimated total incurred expenditures for the following year. Under fairly optimistic assumptions, the monthly actuarial rates would result in a surplus of $53,492 million by the end of December 2008, or 29.6 percent of the estimated total incurred expenditures for the following year.

The above analysis indicates that the premium and general revenue financing established for 2008, together with existing Part B account assets (including the restoration of assets inadvertently drawn from the Part B account to pay the cost of Part A hospice benefits), would be adequate to cover estimated Part B costs for 2008 under current law, even if actual costs prove to be somewhat greater than expected.

5. Premium Rates and Deductible

As determined pursuant to section 1839 of the Act, listed below are the 2008 Part B monthly premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $82,000	Less than or equal to $164,000	$0.00	$96.40
Greater than $82,000 and less than or equal to $102,000.	Greater than $164,000 and less than or equal to $204,000.	25.80	122.20
Greater than $102,000 and less than or equal to $153,000.	Greater than $204,000 and less than or equal to $306,000.	64.50	160.90

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Greater than $153,000 and less than or equal to $205,000.	Greater than $306,000 and less than or equal to $410,000.	103.30	199.70
Greater than $205,000	Greater than $410,000	142.00	238.40

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are listed below.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $82,000	$0.00	$96.40
Greater than $82,000 and less than or equal to $123,000	103.30	199.70
Greater than $123,000	142.00	238.40

TABLE 2.—PROJECTION FACTORS[1] 12-MONTH PERIODS ENDING DECEMBER 31 OF 2005–2008

[In percent]

Calendar year	Physicians' services		Durable medical equipment	Carrier lab[4]	Other carrier services[5]	Outpatient hospital	Home health agency	Hospital Lab[6]	Other intermediary services[7]	Managed care
	Fees[2]	Residual[3]								
Aged:										
2005	2.1	3.4	1.6	6.6	3.4	8.4	16.2	3.5	13.6	9.8
2006	0.2	4.7	6.8	7.9	5.8	4.6	6.3	4.8	5.2	13.5
2007	−1.4	4.7	4.4	7.9	9.7	2.8	8.9	3.1	−3.7	3.5
2008	10.1	7.7	4.6	5.5	12.7	10.0	7.4	3.4	−2.6	6.4
Disabled:										
2005	2.1	2.8	1.9	7.9	8.5	6.2	17.3	5.5	11.6	2.3
2006	0.2	0.9	5.1	7.1	−5.7	2.0	5.9	3.5	7.4	8.9
2007	−1.4	2.6	3.7	12.3	1.6	3.3	8.5	−1.0	−18.4	3.4
2008	−10.1	7.7	4.9	5.4	11.6	9.9	8.1	3.4	−3.2	7.8

[1] All values for services other than managed care are per fee-for-service enrollee. Managed care values are per managed care enrollee.
[2] As recognized for payment under the program.
[3] Increase in the number of services received per enrollee and greater relative use of more expensive services.
[4] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[5] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[6] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[7] Includes services furnished in dialysis facilities, rural health clinics, federally qualified health centers, rehabilitation and psychiatric hospitals, etc.

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2005 THROUGH DECEMBER 31, 2008

	Financing periods			
	CY 2005	CY 2006	CY 2007	CY 2008
Covered services (at level recognized):				
Physician fee schedule	79.51	79.96	79.06	75.12
Durable medical equipment	9.68	9.92	9.92	10.19
Carrier lab[1]	3.63	3.75	3.88	4.02
Other carrier services[2]	19.38	19.68	20.67	22.86
Outpatient hospital	28.23	28.31	27.88	30.11
Home health	7.64	7.79	8.13	8.57
Hospital lab[3]	2.79	2.80	2.77	2.81
Other intermediary services[4]	12.32	12.44	11.47	10.97
Miscellaneous intermediary[5]	2.25	5.63	4.42	1.34
Managed care	26.12	36.06	43.86	49.56
Total services	191.56	206.34	212.07	215.55
Cost-sharing:				
Deductible	−4.48	−5.05	−5.33	−5.50
Coinsurance	−31.81	−31.18	−29.97	−29.51
Total benefits	155.27	170.12	176.76	180.54
Administrative expenses	3.39	3.37	3.03	2.71
Incurred expenditures	158.66	173.48	179.79	183.25
Value of interest	−1.27	−1.52	−1.70	−2.40

TABLE 3.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR ENROLLEES AGE 65 AND OVER FOR FINANCING PERIODS ENDING DECEMBER 31, 2005 THROUGH DECEMBER 31, 2008—Continued

	Financing periods			
	CY 2005	CY 2006	CY 2007	CY 2008
Contingency margin for projection error and to amortize the surplus or deficit	−0.98	4.94	8.91	11.85
Monthly actuarial rate	156.40	176.90	187.00	192.70

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician-administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.
[5] Represents intermediary Part B expenditures reported on a cash basis that have not yet been reconciled with corresponding incurred benefit costs.

TABLE 4.—DERIVATION OF MONTHLY ACTUARIAL RATE FOR DISABLED ENROLLEES FINANCING PERIODS ENDING DECEMBER 31, 2005 THROUGH DECEMBER 31, 2008

	Financing periods			
	CY 2005	CY 2006	CY 2007	CY 2008
Covered services (at level recognized):				
Physician fee schedule	81.05	80.70	80.26	77.02
Durable medical equipment	16.73	17.25	17.58	18.29
Carrier lab [1]	4.43	4.70	5.14	5.37
Other carrier services [2]	24.32	22.92	23.11	25.59
Outpatient hospital	37.51	37.98	38.53	42.01
Home health	6.25	6.50	6.91	7.42
Hospital lab [3]	4.28	4.33	4.26	4.37
Other intermediary services [4]	39.06	39.48	37.29	35.49
Miscellaneous intermediary [5]	2.59	6.22	5.00	1.57
Managed care	12.45	16.80	20.69	23.74
Total services	228.68	236.88	238.77	240.87
Cost-sharing:				
Deductible	−4.17	−4.71	−4.98	−5.14
Coinsurance	−45.63	−44.37	−33.98	−25.33
Total benefits	178.87	187.80	199.80	210.39
Administrative expenses	3.78	3.56	3.24	3.11
Incurred expenditures	182.66	191.36	203.04	213.50
Value of interest	−2.33	−3.53	−3.74	−3.83
Contingency margin for projection error and to amortize the surplus or deficit	11.47	15.87	−2.00	0.03
Monthly actuarial rate	$191.80	$203.70	$197.30	$209.70

[1] Includes services paid under the lab fee schedule furnished in the physician's office or an independent lab.
[2] Includes physician − administered drugs, ambulatory surgical center facility costs, ambulance services, parenteral and enteral drug costs, supplies, etc.
[3] Includes services paid under the lab fee schedule furnished in the outpatient department of a hospital.
[4] Includes services furnished in dialysis facilities, rural health clinics, Federally qualified health centers, rehabilitation and psychiatric hospitals, etc.
[5] Represents intermediary Part B expenditures reported on a cash basis that have not yet been reconciled with corresponding incurred benefit costs.

TABLE 5.—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2008

	As of December 31		
	2006	2007	2008
This projection:			
Actuarial status (in millions):			
Assets	32,325	39,469	51,547
Liabilities	10,929	9,470	9,920
Assets less liabilities	21,396	29,999	41,627
Ratio (in percent) [1]	11.9	16.0	20.8

TABLE 5.—ACTUARIAL STATUS OF THE PART B ACCOUNT IN THE SMI TRUST FUND UNDER THREE SETS OF ASSUMPTIONS FOR FINANCING PERIODS THROUGH DECEMBER 31, 2008—Continued

	As of December 31		
	2006	2007	2008
Low cost projection:			
Actuarial status (in millions):			
Assets	32,325	39,488	62,911
Liabilities	10,929	8,687	9,419
Assets less liabilities	21,396	30,761	53,492
Ratio (in percent) [1]	12.5	17.7	29.6
High cost projection:			
Actuarial status (in millions):			
Assets	32,325	39,448	38,098
Liabilities	10,929	10,267	10,566
Assets less liabilities	21,396	29,181	27,532
Ratio (in percent) [1]	11.4	14.5	12.4

[1] Ratio of assets less liabilities at the end of the year to the total incurred expenditures during the following year, expressed as a percent.

III. Regulatory Impact Analysis

We have examined the impact of this notice as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $6 million to $29 million in any 1 year.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We have determined that this notice will not have a significant effect on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule that may result in expenditure in any 1 year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This notice has no consequential effect on State, local, or tribal governments. We believe the private sector costs of this notice fall below this threshold as well.

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct compliance costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have determined that this notice does not significantly affect the rights, roles, and responsibilities of States.

This notice announces that the monthly actuarial rates applicable for 2008 are $192.70 for enrollees age 65 and over and $209.70 for disabled enrollees under age 65. It also announces the 2008 monthly Part B premium rates to be paid by beneficiaries who file an individual tax return (including those who are single, head of household, qualifying widow(er) with a dependent child, or married filing separately who lived apart from their spouse for the entire taxable year), or a joint tax return.

Beneficiaries who file an individual tax return with income:	Beneficiaries who file a joint tax return with income:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $82,000	Less than or equal to $164,000	$0.00	$96.40
Greater than $82,000 and less than or equal to $102,000.	Greater than $164,000 and less than or equal to $204,000.	25.80	122.20
Greater than $102,000 and less than or equal to $153,000.	Greater than $204,000 and less than or equal to $306,000.	64.50	160.90
Greater than $153,000 and less than or equal to $205,000.	Greater than $306,000 and less than or equal to $410,000.	103.30	199.70
Greater than $205,000.	Greater than $410,000.	142.00	238.40

In addition, the monthly premium rates to be paid by beneficiaries who are married and lived with their spouse at any time during the taxable year, but file a separate tax return from their spouse, are also announced and listed below.

Beneficiaries who are married and lived with their spouse at any time during the year, but file a separate tax return from their spouse:	Income-related monthly adjustment amount	Total monthly premium amount
Less than or equal to $82,000	$0.00	$96.40
Greater than $82,000 and less than or equal to $123,000	103.30	199.70
Greater than $123,000	142.00	238.40

The Part B deductible for calendar year 2008 is $135.00. The standard Part B premium rate of $96.40 is 3.1 percent higher than the $93.50 premium rate for 2007. We estimate that this increase will cost approximately 41.5 million Part B enrollees about $1.4 billion for 2008. The monthly impact on the beneficiaries who are required to pay a higher premium for 2008 because their incomes exceed specified thresholds is $25.80, $64.50, $103.30, or $142.00, which is in addition to the standard monthly premium. Therefore, this notice is a major rule as defined in Title 5, United States Code, section 804(2) and is an economically significant rule under Executive Order 12866.

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

IV. Waiver of Proposed Notice

The Medicare statute requires the publication of the monthly actuarial rates and the Part B premium amounts in September. We ordinarily use general notices, rather than notice and comment rulemaking procedures, to make such announcements. In doing so, we note that, under the Administrative Procedure Act, interpretive rules, general statements of policy, and rules of agency organization, procedure, or practice are excepted from the requirements of notice and comment rulemaking.

We considered publishing a proposed notice to provide a period for public comment. However, we may waive that procedure if we find, for good cause, that prior notice and comment are impracticable, unnecessary, or contrary to the public interest. We find that the procedure for notice and comment is unnecessary because the formulas used to calculate the Part B premiums are statutorily directed, and we can exercise no discretion in applying those formulas. Moreover, the statute establishes the time period for which the premium rates will apply, and delaying publication of the Part B premium rate such that it would not be published before that time would be contrary to the public interest. Therefore, we find good cause to waive publication of a proposed notice and solicitation of public comments.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 26, 2007.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: September 26, 2007.

Michael O. Leavitt,

Secretary.

[FR Doc. 07–4910 Filed 10–1–07; 11:18 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project

Title: Supporting Healthy Marriage (SHM) Demonstration and Evaluation Project: 12-month Follow-up and Implementation Research Data Collection.

OMB No.: New Collection.

The Administration for Children and Families (ACF), U.S. Department of Health and Human Services, is conducting a demonstration and evaluation called the Supporting Healthy Marriage (SHM) project. SHM is a test of marriage education demonstration programs in eight separate locations that will aim to enroll up to 1,000 couples per location, up to 500 couples participating in SHM programs and 500 control group couples.

SHM is designed to inform program operators and policymakers of the most effective ways to help low-income married couples strengthen and maintain healthy marriages. In particular, the project will measure the effectiveness of marriage education programs by randomly assigning eligible volunteer couples to SHM program groups and control groups.

This data collection request includes three components. First, a survey will be administered to couples 12 months after they are enrolled in the program. The survey is designed to assess the effects of the SHM program on marital status and stability, quality of relationship with spouse, marital expectations and ideals, marital satisfaction, participation in services, parenting outcomes, child outcomes, parental well-being, employment, income, material hardship, and social support characteristics of study participants assigned to both the program and control groups. Second, survey data will be complemented by videotaped observations of couple, co-parenting, and parent-child interactions with a subset of intact and separated couples at the 12-month follow-up. Third, qualitative data will be collected through a process and implementation study in each of the eight SHM demonstration programs across the country.

These data will complement the information gathered by the SHM baseline data collection (OMB Control No. 0970–0299). The information collected at the 12-month follow-up will allow the research team to examine the effects of SHM services on outcomes of interest and to identify mechanisms that might account for these effects. The process and implementation research will consist of a qualitative component that will help ACF to better understand the results from the impact analysis as well as how to replicate programs that prove to be successful.

Respondents: Low-income married couples with children.

ANNUAL BURDEN ESTIMATES

Instrument	Annual number of respondents	Number of responses per respondent	Average burden hours per response	Estimated annual burden hours
12-month survey	10,240	1	0.83	8,499.2
12-month observational study (intact couples)	3,200	1	0.68	2,176
12-month observational study (separated couples)	160	1	0.17	27.2
12-month observational study (children of intact couples)	1,600	1	0.33	528
12-month observational study (children of separated couples)	160	1	0.17	27.2
The process and implementation field research guide	504	1	1	504

Estimated Total Annual Burden Hours: 11,761.6.

In compliance with the requirements of Section 3506(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: October 1, 2007

Brendan C. Kelly,

OPRE Reports, Clearance Officer.

[FR Doc. 07–4943 Filed 10–4–07; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERIVCES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Ryan White HIV/AIDS Treatment Modernization Act of 2006: Program Allocation and Expenditure Forms (NEW)

The Ryan White HIV/AIDS Program Allocation and Expenditure Reports will enable the Health Resources and Services Administration's HIV/AIDS Bureau to track spending requirements for each program as outlined in the 2006 legislation. Grantees funded under Parts A, B, C, and D of the Ryan White HIV/AIDS Program (codified under Title XXVI of the Public Health Service Act) would be required to report financial data to HRSA at the beginning and end of their grant cycle.

All Parts of the Ryan White HIV/AIDS Program specify HRSA's responsibilities in the administration of grant funds. Accurate allocation and expenditure records of the grantees receiving Ryan White HIV/AIDS Program funding are critical to the implementation of the legislation and thus are necessary for HRSA to fulfill its responsibilities.

The new law changes how Ryan White HIV/AIDS Program funds can be used, with an emphasis on providing life-saving and life-extending services for people living with HIV/AIDS across this country. More money will be spent on direct health care for Ryan White HIV/AIDS Program clients. Under the new law, unless they receive a waiver, grantees receiving funds under Parts A, B, and C must spend at least 75 percent of funds on ''core medical services'' and can spend no more than 5 percent or 3 million dollars (whichever is smaller) on clinical quality management. Under Parts A–D, there is also a 10 percent spending cap on grantee administration.

The forms would require grantees to report on how funds are allocated and spent on core and non-core services, and on various program components, such as administration, planning and evaluation, and quality management. The two forms are identical in the types of information they collect. However, the first report would track the allocation of their award at the beginning of their grant cycle and the second report would track actual expenditures (including carryover dollars) at the end of their grant cycle.

The primary purposes of these forms are to (1) provide information on the number of grant dollars spent on various services and program components, and (2) oversee compliance with the intent of congressional appropriations in a timely manner. In addition to meeting the goal of accountability to the Congress, clients, advocacy groups, and the general public, information

collected on these reports is critical for HRSA, State and local grantees, and individual providers to evaluate the effectiveness of these programs.

The response burden for grantees is estimated as:

Program under which grantee is funded	Number of grantee respondents	Responses per grantee	Total Responses	Hours to complete each form	Total hours
Part A	56	2	112	8	896
Part B	59	2	118	12	1416
Part A MAI	56	2	112	4	448
Part B MAI	59	2	118	4	472
Part C	361	2	722	7	5054
Part D	90	2	180	7	1260
Total	681		1,362		9,546

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 10–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: October 1, 2007.

Alexandra Huttinger,

Acting Director, Division of Policy Review and Coordination.

[FR Doc. E7–19721 Filed 10–4–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Reimbursement of Travel and Subsistence Expenses Toward Living Organ Donation Proposed Eligibility Guidelines and Publication of Final Program Eligibility Guidelines

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Response to Solicitation of Comments and Publication of Final Program Eligibility Guidelines.

SUMMARY: A notice was published in the **Federal Register** on April 9, 2007 (72 FR 17564). The purpose of this notice was to solicit comments on the eligibility criteria that were proposed by HRSA concerning the Reimbursement of Travel and Subsistence Expenses Grant Program.

FOR FURTHER INFORMATION CONTACT: James F. Burdick, M.D., Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or e-mail: *jburdick@hrsa.gov.*

SUPPLEMENTARY INFORMATION: Congress has provided specific authority under section 377 of the Public Health Service (PHS) Act, as amended, 42 U.S.C. 274f, for providing reimbursement of travel and subsistence expenses for living organ donors, with preference for those for whom paying such expenses would create a financial hardship. On September 25, 2006, HRSA awarded a 4-year, $8,000,000 Cooperative Agreement to the Regents of the University of Michigan to establish this Program.

Congress requires that the Secretary, in carrying out this Program, give preference to those individuals the Secretary determines are more likely to be unable to pay for the travel and related expenses associated with the donation process. In addition, Congress requires that funds from the Program not be used to reimburse travel and related expenses associated with being a living donor, if the donor has received any payments or is expected to receive any payments related to these expenses from:

(1) Any State compensation program, an insurance policy, or a Federal or State health benefits program;

(2) An entity that provides health services on a prepaid basis; or

(3) The recipient of the organ.

On April 9, 2007, HRSA published a notice in the **Federal Register**, requesting comments on the proposed eligibility criteria for the Program. HRSA outlined that the two main issues raised in developing program eligibility criteria are: (1) Criteria to identify potential living organ donors who may be unable to pay for travel and subsistence expenses associated with living organ donation, since Congress mandates that these individuals be given priority for reimbursement; and (2) criteria to assess the potential organ recipient's ability to pay for these expenses incurred by the living organ donor, since Congress prohibits reimbursement of these expenses if the recipient of the organ can reasonably pay for these expenses. HRSA proposed 200 percent of the HHS Poverty Guidelines as an income threshold for determining which transplant recipients could reasonably be expected to pay for travel and subsistence expenses incurred by the living donor. HRSA requested comments as to whether this was a reasonable approach for assessing a recipient's ability to pay. HRSA also proposed some additional criteria governing donor reimbursement including: Good faith effort to become a donor, U.S. legal status, donor informed consent, compliance with the criminal provisions contained in section 301 of the National Organ Transplant Act of 1984, as amended, concerning the transfer of a human organ for valuable consideration and requirements of the transplant program to be in good standing with the Organ Procurement and Transplantation Network.

HRSA received 29 public comments from advocacy groups, transplant hospitals, and concerned citizens. Nineteen of these comments expressed dissatisfaction in limiting reimbursement to specific donors. The majority of these respondents remarked that reimbursement should be available to all living donors without conditions. Three of these commenters proposed that HRSA increase the threshold to 300 percent of the HHS Poverty Guidelines. One respondent expressed concerns that the expectation of recipients paying for donors' costs and the income guidelines providing preference for the lowest socioeconomic class may result in the exchange of valuable consideration for the organ or otherwise be coercive towards individuals of lower socioeconomic status. Three respondents stated that they support the criteria as proposed. One of these two respondents stated that the Program should be based on the donor's ability to pay, that if people really want to donate and can afford it, money shouldn't be an issue.

One respondent asked HRSA to protect the rights of all living donors. Another respondent feels that HRSA is 'pushing' the black market by paying $6,000, which is an insufficient amount, to living organ donors. Furthermore, this respondent feels that the Program,

as outlined, is offensive to living donors and that no Program would be better than the Program that is proposed. None of the respondents explicitly addressed the criteria for donor reimbursement or qualifying expenses.

HRSA wishes to thank the respondents for the quality and thoroughness of their comments. HRSA's response to the comments received and final decisions are discussed below.

I. Response to Comment That Reimbursement Should Be Provided to All Living Donors Without Regard to the Financial Situation of the Donor or Recipient

Most respondents commented that reimbursement should be available to all living donors regardless of their financial situation. The authorizing statute requires HRSA to give preference to individuals for whom paying for the travel and subsistence expenses in the donation process would be financially burdensome. Another restriction bars HRSA from making funds available for reimbursement to living donors whenever it is reasonable to expect the donor to receive reimbursement for these expenses from other sources including the recipient of the organ. Thus, HRSA is required to establish criteria to assess the donor's ability to be reimbursed from these sources. Based on these restrictions and in an effort to provide for a transparent and administratively manageable mechanism to assess an individual's ability to pay for covered expenses, HRSA believes that the use of the HHS Poverty Guidelines satisfies these legislative requirements.

II. Response to Comment To Increase the Income Threshold to 300 Percent of the HHS Poverty Guidelines

In addition to the 19 respondents who believe that reimbursement should be available to all living donors, three respondents proposed that HRSA increase the income threshold to 300 percent of the HHS Poverty Guidelines for both donors and recipients. After further deliberations, HRSA accepted this recommendation. Individuals in need of a transplant face many financial obligations such as direct medical expenses, insurance co-pays, medications, etc., associated with end-stage organ failure. Similarly, potential donors face the potential loss of income and other expenses that may increase as a result of the donation. It is the hope of HRSA that this change will help to ease the burden for both donors and recipients.

III. Response to Concern Over Expectation by the Organ Donor That Recipient Should Pay Donor's Expenses

One respondent expressed concerns about the expectation that the recipient pay for the donor's expenses. As stated previously, the authorizing statute requires that HRSA consider the recipient's ability to pay.

IV. Response to Comment That All Organ Donors Deserve This Gift for Their Sacrifice

The majority of respondents commented that all donors should receive reimbursement under this Program. The most frequent reason stated was that donors deserve this gift for their sacrifice. The authorizing legislation does not intend the payment authorized under this program to be a gift or recognition for the sacrifice of the donor or as an enticement to donate. The intent is to ease the financial burden on those individuals who make the altruistic decision to donate and to give priority to those who have no other available sources to pay for travel and subsistence expenses associated with the donation.

V. Response to Comment That Overall Reimbursement Level Should Exceed $6,000

Eight respondents mentioned the $6,000 level in their comments. HRSA wishes to clarify that $6,000 is the ceiling or reimbursement cap for each donor participating in the Program. The Program will provide reimbursement for only the qualifying expenses outlined in the final eligibility criteria. The eligibility criteria provide more details on qualifying expenses.

Conclusion

HRSA has reviewed and considered all comments and has revised certain eligibility criteria as appropriate. HRSA will continually monitor the progress of the Program grantee, the Regents of the University of Michigan, to ensure that it adheres to the Program eligibility criteria in the operation of the National Living Donor Assistance Center. The final eligibility criteria are included in this document. The final eligibility criteria guidelines document is also available at *http://www.livingdonorassistancecenter.gov.*

National Living Donor Assistance Center (NLDAC) Program Eligibility Guidelines

Section 3 of the Organ Donation and Recovery Improvement Act (ODRIA), 42 U.S.C. 274f, establishes the authority and legislative parameters to provide reimbursement for travel and subsistence expenses incurred towards living organ donation. HRSA awarded a cooperative agreement to the Regents of the University of Michigan (Michigan), which partnered with the American Society of Transplant Surgeons (ASTS), to establish the National Living Donor Assistance Center (NLDAC) to operate this Program.

As provided for in the statutory authorization, this Program is intended to provide reimbursement only in those circumstances when payment cannot reasonably be covered by other sources of reimbursement. The NLDAC, under Federal law, cannot provide reimbursement to any living organ donor for travel and other qualifying expenses if the donor can receive reimbursement for these expenses from any of the following sources:

(1) Any State compensation program, an insurance policy, or any Federal or State health benefits program;

(2) an entity that provides health services on a prepaid basis; or

(3) the recipient of the organ.

In response to public solicitation of comments, a threshold of income eligibility for the recipient of the organ is 300 percent of the Department of Health and Human Services (HHS) Poverty Guidelines in effect at the time of the eligibility determination. The Program assumes that recipients whose income exceeds this level will have the ability to reimburse the living organ donor for the travel and subsistence expenses and any other qualifying expenses that can be authorized by the Secretary of HHS. The Program provides an exception to this rule for financial hardships. A transplant social worker, or appropriate transplant center representative, based on a complete recipient evaluation, can provide an official statement, notwithstanding the recipient's income level, that the recipient of the organ would face significant financial hardship if required to pay for the qualifying living organ donor expenses. A recipient's financial hardship is defined as circumstances in which the recipient's income exceeds 300 percent of the HHS Poverty Guidelines in effect at the time of the eligibility determination, but the individual will have difficulty paying the donor's expenses due to other significant expenses. Whether or not hardship exists in a particular case requires a fact-specific analysis; examples of significant expenses include circumstances such as paying for medical expenses not covered by insurance or providing significant financial support for a family member not living in the household (e.g., elderly parent). Waiver requests by the

transplant center, on behalf of the donor, shall be made in writing and shall clearly describe the circumstances for the waiver request. The NLDAC will review waiver requests and make a recommendation to HRSA to either approve or deny the request. HRSA will make the final determination and communicate its final determination to the NLDAC. The NDLAC will notify the transplant center of the final determination. HRSA's determination will not be subject to appeal.

All persons who wish to become living organ donors are eligible to receive reimbursement for their travel and qualified expenses if they cannot receive reimbursement from the sources outlined above and if all the requirements outlined in the *Criteria for Donor Reimbursement Section* are satisfied. However, because of the limited funds available, prospective living donors who are most likely not able to cover these expenses will receive priority.

The ability to cover these expenses is determined based on an evaluation of (1) the donor and recipient's income, in relation to the HHS Poverty Guidelines (described in Table 1.1 below), and (2) financial hardship. As a general matter, income refers to the donor or recipient's total household income. A donor may be able to demonstrate financial hardship, even if the donor's income exceeds 300 percent of the HHS Poverty Guidelines, if the donor will have difficulty paying the qualifying expenses due to other significant expenses. Although all requests will be reviewed on a case-by-case basis, examples of significant expenses include circumstances such as providing significant financial support for a family member not living in the household (e.g., elderly parent), loss of income due to donation process. Waiver requests by the transplant center, on behalf of the donor, shall be made in writing and shall clearly describe the circumstances for the waiver request. The NLDAC will review waiver requests and make a recommendation to HRSA to either approve or deny the request. HRSA will make the final determination and communicate its final determination to the NLDAC. The NLDAC will notify the transplant center of the final determination. HRSA's determination will not be subject to appeal.

Donors will be given preference in the following order of priority:

Preference Category 1: The donor's income and the recipient's income are each 300 percent or less of HHS Poverty Guidelines in effect at the time of the eligibility determination in their respective states of primary residence.

Preference Category 2: Although the donor's income exceeds 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination, the donor demonstrates financial hardship. The recipient's income is at or below 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination.

Preference Category 3: Any living organ donor, regardless of income or financial hardship, if the recipient's income is at or below 300 percent of the HHS Poverty Guidelines in effect in the recipient's State of primary residence at the time of the eligibility determination.

Preference Category 4: Any living organ donor, regardless of income or financial hardship, if the recipient (with income above 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination) demonstrates financial hardship.

HRSA reserves the right to prioritize those most in financial need (based on income or other specified factors) if it receives large numbers of applications concerning donors meeting preference category 1.

The HHS Poverty Guidelines for 2007 (**Federal Register**, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148) are shown in the table below.

2007 HHS POVERTY GUIDELINES

Persons in family or household	48 Contiguous States and DC	Alaska	Hawaii
1	$10,210	$12,770	$11,750
2	13,690	17,120	15,750
3	17,170	21,470	19,750
4	20,650	25,820	23,750
5	24,130	30,170	27,750
6	27,610	34,520	31,750
7	31,090	38,870	35,750
8	34,570	43,220	39,750
For each additional person, add	3,480	4,350	4,000

Source: **Federal Register**, Vol. 72, No. 15, January 24, 2007, pp. 3147–3148.
These guidelines are updated periodically.

Criteria for Donor Reimbursement

1. Any individual who in good faith incurs travel and other qualifying expenses toward the intended donation of an organ.

2. Donor and recipient of the organ are U.S. citizens or lawfully admitted residents of the U.S.

3. Donor and recipient have primary residences in the U.S. or its territories.

4. Travel is originating from the donor's primary residence.

5. Donor and recipient certify that they understand and are in compliance with Section 301 of NOTA (42 U.S.C. 274e) which states in part ''* * * It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.''

6. The transplant center where the donation procedure occurs certifies to its status of good standing with the Organ Procurement and Transplantation Network (OPTN).

Qualifying Expenses

For the purposes of the Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Program, *qualifying expenses* presently include only travel, lodging, and meals and incidental expenses incurred by the donor and/or his/her accompanying person(s) as part of:

(1) Donor evaluation, clinic visit or hospitalization,

(2) Hospitalization for the living donor surgical procedure, and/or

(3) Medical or surgical follow-up clinic visit or hospitalization within 90 days following the living donation procedure.

The Program will pay for a total of up to five trips; three for the donor and two for accompanying persons. The accompanying persons need not be the same each trip.

The total Federal reimbursement for qualified expenses during the donation process for the donor and accompanying individuals shall not exceed $6,000.00. Reimbursement for qualifying expenses shall be provided at the Federal per-diem rate, except for hotel accommodation, which shall be reimbursed at no more than 150 percent of the Federal per diem rate.

For donor and recipient pairs participating in a paired exchange program, the applicable eligibility criteria for the originally intended recipient shall be considered for the purpose of reimbursement of qualifying donor expenses even though the final recipient of the donated organ may not be the recipient identified in the original donor-recipient pair.

Maximum Number of Prospective Donors per Recipient

- *Kidney:* One donor at a time with a maximum of three donors.
- *Liver:* One donor at a time with a maximum of five donors.
- *Lung:* Two donors at a time with a maximum of six donors.

Special Provisions

Many factors may prevent the intended and willing donor from proceeding with the donation. Circumstances that would prevent the transplant or donation from proceeding include: Present health status of the intended donor or recipient, perceived long-term risks to the intended donor, justified circumstances such as acts of God (e.g., major storms or hurricanes), or a circumstance when an intended donor proceeds toward donation in good faith, subject to a case-by-case evaluation by the NLDAC, but then elects not to pursue donation. In such cases, the intended donor and accompanying persons may receive reimbursement for qualified expenses incurred as if the donation had been completed. Under Program policy, a form will be filed with the Internal Revenue Service (IRS) reporting funds disbursed as income for expenses not incurred.

Dated: October 1, 2007.

Elizabeth M. Duke,

Administrator.

[FR Doc. E7–19747 Filed 10–4–07; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Law Enforcement Training Center

[Docket No. FLETC–2007–0002]

Advisory Committee to the Office of State and Local Training

AGENCY: Federal Law Enforcement Training Center (FLETC), DHS.

ACTION: Committee Management; Notice of Federal Advisory Committee Meeting.

SUMMARY: The Office of State and Local Training Advisory Committee (OSLTAC) will meet on November 8, 2007, on St. Simons Island, GA. The meeting will be open to the public.

DATES: The Office of State and Local Training Advisory Committee will meet Thursday, November 8, 2007, from 8 a.m. to 4 p.m. Please note that the meeting may close early if the committee has completed its business.

ADDRESSES: The meeting will be held at Epworth By The Sea, 100 Arthur J. Moore Drive, St. Simons Island, GA. Send written material, comments, and/or requests to make an oral presentation to the contact person listed below by October 19th. Requests to have a copy of your material distributed to each member of the committee prior to the meeting should reach the contact person at the address below by October 19th. Comments must be identified by FLETC–2007–0002 and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *E-mail: reba.fischer@dhs.gov*. Include docket number in the subject line of the message.
- *Fax:* (912) 267–3531. (Not a toll-free number.)
- *Mail:* Reba Fischer, Designated Federal Officer (DFO), Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *www.regulations.gov*, including any personal information provided.

Docket: For access to the docket to read background documents or comments received by the Advisory Committee to the Office of State and Local Training, go to *www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Reba Fischer, Designated Federal Officer, Federal Law Enforcement Training Center, Department of Homeland Security, 1131 Chapel Crossing Road, Townhouse 396, Glynco, GA 31524; (912) 267–2343; *reba.fischer@dhs.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. (Pub. L. 92–463). The mission of the Advisory Committee to the Office of State and Local Training is to advise and make recommendations on matters relating to the selection, development, content and delivery of training services by the OSL/FLETC to its state, local, campus, and tribal law enforcement customers.

Draft Agenda: The draft agenda for this meeting includes briefings to update committee members on OSL and FLETC training initiatives and provide feedback on committee recommendations. Committee members will be asked to provide recommendations on OSL strategic planning; training needs of state, local, campus, and tribal law enforcement officers; and upcoming training initiatives.

Procedural: This meeting is open to the public. Please note that the meeting may close early if all business is finished.

Visitors must pre-register attendance to ensure adequate seating. Please provide your name and telephone number by close of business on October 19, 2007, to Reba Fischer (contact information above).

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Reba Fischer as soon as possible.

Dated: September 25, 2007.

Malcolm Adams,

Acting Deputy Assistant Director, Office of State and Local Law Enforcement Training.

[FR Doc. 07–4958 Filed 10–4–07; 8:45 am]

BILLING CODE 4810–32–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[USCG–2007–29053]

Collection of Information Under Review by Office of Management and Budget: OMB Control Number: 1625–0024, 1625–0036, 1625–0061, and 1625–0100

AGENCY: Coast Guard, DHS.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the U.S. Coast Guard intends to submit Information Collection Requests (ICRs) to the Office of Management and Budget (OMB) requesting an extension of their approval for the following collections of information: (1) 1625–0024, Safety Approval of Cargo Containers; (2) 1625–0036, Plan Approval and Records for U.S. and Foreign Tank Vessels Carrying Oil in Bulk; (3) 1625–0061, Commercial Fishing Industry Vessel Safety Regulations; and (4) 1625–0100, Advance Notice of Vessel Arrival. Before submitting these ICRs to OMB, the Coast Guard is inviting comments as described below.

DATES: Comments must reach the Coast Guard on or before December 4, 2007.

ADDRESSES: To make sure your comments and related material do not enter the docket [USCG–2007–29053] more than once, please submit them by only one of the following means:

(1) *Online: http://www.regulations.gov*.

(2) *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.

(3) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

The Docket Management Facility maintains the public docket for this notice. Comments and material received from the public, as well as documents mentioned in this notice as being available in the docket, will become part of this docket and will be available for inspection or copying at room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://www.regulations.gov*.

Copies of the completed ICRs are available through this docket on the Internet at *http://www.regulations.gov*. Additionally, copies are available from Commandant (CG–611), U.S. Coast Guard Headquarters, (Attn: Mr. Arthur Requina), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–475–3523.

FOR FURTHER INFORMATION CONTACT: Mr. Arthur Requina, Office of Information Management, telephone 202–475–3523, or fax 202–475–3929, for questions on these documents. Contact Ms. Renee V. Wright, Program Manager, Docket Operations, 202–366–9826, for questions on the docket.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to respond to this request by submitting comments and related materials. We will post all comments received, without change, to *http://www.regulations.gov*. They will include any personal information you provide. We have an agreement with DOT to use the Docket Management Facility. Please see the paragraph on DOT's ''Privacy Act Policy'' below.

Submitting comments: If you submit a comment, please include the docket number [USCG–2007–29053], indicate the specific section of the document to which each comment applies, providing a reason for each comment. We recommend that you include your name, mailing address, and an e-mail address or other contact information in the body of your document to ensure that you can be identified as the submitter. This also allows us to contact you in the event further information is needed or if there are questions. For example, if we cannot read your submission due to technical difficulties and you cannot be contacted, your submission may not be considered. You may submit your comments and material by electronic means, mail, fax, or delivery to the Docket Management Facility at the address under **ADDRESSES**; but please submit them by only one means. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8–½ 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. We may change the documents supporting this collection of information or even the underlying requirements in view of them.

Viewing comments and documents: Go to *http://www.regulations.gov* to view comments and documents mentioned in this notice as being available in the docket. Conduct a simple search using the docket number. You may also visit the Docket Management Facility in room W12–140 on the West Building Ground Floor, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy Act: Anyone can search the electronic form of all comments received in 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 the Privacy Act Statement of DOT in the **Federal Register** published on April 11, 2000 (65 FR 19477), or you may visit *http://DocketsInfo.dot.gov*.

Information Collection Requests

1. *Title:* Safety Approval of Cargo Containers.

OMB Control Number: 1625–0024.

Summary: This information collection requires owners/manufacturers of cargo containers to submit information and keep records associated with their approval/inspection. This information is required to ensure compliance with the International Convention for Safe Containers (CSC); 29 U.S.T. 3707; T.I.A.S. 9037.

Need: This collection of information addresses the reporting/recordkeeping requirements for containers in 49 CFR parts 450 through 453. These rules are necessary since the U.S. is signatory to the CSC, which requires all containers to be safety approved prior to being used in trade. These rules prescribe only the minimum requirements of the CSC.

Respondents: Owners and manufacturers of containers and organizations the Coast Guard delegates to act as an approval authority.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 73,272 hours to 105,920 hours a year.

2. *Title:* Plan Approval and Records for U.S. and Foreign Tank Vessels Carrying Oil in Bulk.

OMB Control Number: 1625–0036.

Summary: This information collection aids the Coast Guard in determining if a vessel complies with certain safety and environmental protection standards. Plans, to include records, for construction or modification of U.S. or foreign vessels submitted and

maintained on board are required for compliance with these standards.

Need: Title 46 U.S.C. 3703 provides the Coast Guard with the authority to regulate design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels carrying oil in bulk. See 33 CFR part 157, Rules for the Protection of the Marine Environment Relating to Tank Vessels Carrying Oil in Bulk, and 46 CFR chapter I, subchapter D, Tank Vessels.

Respondents: Owners and operators of vessels.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 582 hours to 1,253 hours a year.

3. *Title:* Commercial Fishing Industry Vessel Safety Regulations.

OMB Control Number: 1625–0061.

Summary: This information collection is intended to improve safety on board vessels in the commercial fishing industry. Requirements apply to those vessels and to seamen on them.

Need: Under the authority of 46 U.S.C. 6104, the Coast Guard has promulgated regulations in 46 CFR part 28 to improve the overall safety of commercial fishing industry vessels. The rules allowing the collection provide a means of verifying compliance and enhancing safe operation of fishing vessels.

Respondents: Owners, agents, individuals-in-charge of commercial fishing vessels, and insurance underwriters.

Frequency: On occasion.

Burden Estimate: The estimated burden has decreased from 7,720 hours to 5,917 hours a year.

4. *Title:* Advance Notice of Vessel Arrival.

OMB Control Number: 1625–0100.

Summary: The Ports and Waterways Safety Act authorizes the Coast Guard to require pre-arrival messages from any vessel entering a port or place in the United States.

Need: This information is required under 33 CFR part 160 subpart C to control vessel traffic, develop contingency plans, and enforce regulations.

Respondents: Vessel owners and operators.

Frequency: On occasion.

Burden Estimate: The estimated burden has increased from 175,525 hours to 199,889 hours a year.

Dated: September 27, 2007.

D. T. Glenn,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Command, Control, Communications, Computers and Information Technology.

[FR Doc. E7–19674 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1728–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1728–DR), dated September 21, 2007, and related determinations.

DATES: *Effective Date:* September 21, 2007.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated September 21, 2007, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms and flooding during the period of August 19–21, 2007, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas, Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act that you deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. Federal funds provided under the Stafford Act for Public Assistance also will be limited to 75 percent of the total eligible costs, except for any particular projects that are eligible for a higher Federal cost-sharing percentage under the FEMA Public Assistance Pilot Program instituted pursuant to 6 U.S.C. 777.

If Other Needs Assistance under Section 408 of the Stafford Act is later requested and warranted, Federal funding under that program also will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Michael L. Parker, of FEMA is appointed to act as the Federal Coordinating Officer for this declared disaster.

The following areas of the State of Missouri have been designated as adversely affected by this declared major disaster:

Dade, Dallas, Greene, Laclede, Lawrence, Polk, and Webster Counties for Public Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund Program; 97.032, Crisis Counseling; 97.033, Disaster Legal Services Program; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance; 97.048, Individuals and Households Housing; 97.049, Individuals and Households Disaster Housing Operations; 97.050, Individuals and Households Program—Other Needs; 97.036, Public Assistance Grants; 97.039, Hazard Mitigation Grant Program.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E7–19679 Filed 10–4–07; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–89]

Notice of Submission of Proposed Information Collection to OMB; HUD-Owned Real Estate—Good Neighbor Next Door Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of

Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

This collection of information will be used in binding contracts between the purchaser and HUD in implementing the Good Neighbor Next Door Program. The respondents are purchasers of HUD-owned properties, teachers, law enforcement officers, and firefighters/emergency responders.

DATES: *Comments Due Date:* November 5, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD-Owned Real Estate—Good Neighbor Next Door Program.

OMB Approval Number: 2502–NEW.

Form Numbers: HUD–9548–A, HUD–9549, HUD–9549–A, HUD–9549–B, HUD–9549–C, HUD–9549–D, 9549–E.

Description of the Need for the Information and Its Proposed Use: This collection of information will be used in binding contracts between the purchaser and HUD in implementing the Good Neighbor Next Door Program. The respondents are purchasers of HUD-owned properties, teachers, law enforcement officers, and firefighters/emergency responders.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	13,136	1.54		0.61		1,249

Total Estimated Burden Hours: 12,249.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 28, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–19664 Filed 10–4–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–88]

Notice of Submission of Proposed Information Collection to OMB; HUD-Owned Real Estate—Dollar Home Sales Program

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

The proposed rule would implement the Department's program that offers single family properties to local governments for one dollar and to Community Development Corporations (CDCs) on a cost recovery basis. The information collected will be used in binding contracts between the purchaser and HUD. The respondents are purchasers of HUD-owned properties: Community development corporations and governmental entities.

DATES: *Comments Due Date:* November 5, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–NEW) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer or from HUD's Web site at *http://www5.hud.gov:63001/po/i/icbts/collectionsearch.cfm*.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate

automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: HUD-Owned Real Estate-Dollar Home Sales Program.

OMB Approval Number: 2502–NEW.

Form Numbers: None.

Description of the Need for the Information and Its Proposed Use: The proposed rule would implement the Department's program that offers single family properties to local governments for one dollar and to Community Development Corporations (CDCs) on a cost recovery basis. The information collected will be used in binding contracts between the purchaser and HUD. The respondents are purchasers of HUD-owned properties: Community development corporations and governmental entities.

Frequency of Submission: On occasion, Annually.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	56	2.23		7.48		936

Total Estimated Burden Hours: 936.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: September 28, 2007.

Lillian L. Deitzer,

Departmental Paperwork Reduction Act Officer, Office of the Chief Information Officer.

[FR Doc. E7–19665 Filed 10–4–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5117–N–90]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request, Disaster Housing Assistance Program (DHAP)

AGENCY: Office of Public and Indian Housing, 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:* October 6, 2007.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within one day from the date of this Notice. Comments should refer to the proposal by name and should be sent to: HUD Desk Officer, Office of Management and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Paperwork Reduction Act Compliance Officer, QDAM Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail *Lillian_Deitzer@hud.gov*, telephone (202) 402–8048. This is not a toll-free number. Copies of documentation submitted to OMB 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 requirement as described below.

This Notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Disaster Housing Assistance Program (DHAP).

Description of Information Collection: This document provides notice that HUD and the Federal Emergency Management Agency (FEMA) have executed an Interagency Agreement (IAA) establishing a pilot grant program called the Disaster Housing Assistance Program (DHAP), and that the operating requirements for the DHAP have been issued through HUD Notice. DHAP is a joint initiative undertaken by HUD and FEMA to provide monthly rent subsidies and case management services for individuals and families displaced by Hurricane Katrina or Hurricane Rita who were not receiving housing assistance from HUD.

OMB Control Number: 2577–New.

Agency Form Numbers: None.

Members of Affected Public: State, Local or Tribal Government.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of responses, and hours of response: The estimated total number of burden hours needed to prepare the information collection is 469,700; the number of respondents is 700; the frequency of response for each form varies from weekly, quarterly and annually.

Status: This is a request for new collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: October 3, 2007.

Lillian Deitzer,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. E7–19766 Filed 10–4–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5125–N–40]

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.

DATES: *Effective Date:* October 5, 2007.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing

and Urban Development, Room 7262, 451 Seventh Street, SW., 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 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: September 27, 2007.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E7–19443 Filed 10–4–07; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission; Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, November 15, 2007.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on November 15, 2007 at 9 a.m. at Douglas Town Hall, located at 29 Depot Street, Douglas, MA for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about twenty-five people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Jan H. Reitsma, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, *Tel.:* (401) 762–0250.

Further information concerning this meeting may be obtained from Jan H. Reitsma, Executive Director of the Commission at the aforementioned address.

Jan H. Reitsma,

Executive Director, BRVNHCC.

[FR Doc. 07–4942 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Tesuque Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Department of the Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Pueblo of Tesuque Liquor Control Ordinance. The Ordinance regulates and controls the possession, sale and consumption of liquor within the Pueblo of Tesuque Indian Reservation. The Reservation is located on trust land and this Ordinance allows for the possession and sale of alcoholic beverages within the exterior boundaries of the Pueblo of Tesuque Indian Reservation. This Ordinance will increase the ability of the tribal government to control the distribution and possession of liquor within their reservation and at the same time will provide an important source of revenue and strengthening of the tribal government and the delivery of tribal services.

DATES: *Effective Date:* This Ordinance is effective as of October 5, 2007.

FOR FURTHER INFORMATION CONTACT: Iris A. Drew, Tribal Government Services Officer, Southwest Regional Office, 1001 Indian School Road, Albuquerque, New Mexico 87104; Telephone (505) 563–3530; Fax (505) 563–3060; or Elizabeth Colliflower, Office of Tribal Services, 1849 C Street, NW., Mail Stop 4513–MIB, Washington, DC 20240; Telephone (202) 513–7627; Fax (202) 208–5113.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953; Public Law 82–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme court in *Rice* v. *Rehner,* 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Pueblo of Tesuque Tribal Council adopted this Liquor Control Ordinance by Resolution 14–06–18–2007, on June 12, 2007. The purpose of this Ordinance is to govern the sale, possession and distribution of alcohol within the Pueblo of Tesuque Indian Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that this Liquor Ordinance of the Pueblo of Tesuque was duly adopted by the Tribal Council on June 12, 2007.

Dated: October 1, 2007.

Carl J. Artman,

Assistant Secretary—Indian Affairs.

The Pueblo of Tesuque Liquor Ordinance reads as follows:

Pueblo of Tesuque, Liquor Control Ordinance, Adopted on December 8, 1970 by the Pueblo of Tesuque Tribal Council, and Published in the **Federal Register**; Vol. 30, No. 79, on page 23, 1971 Amended by Resolution No. 14–06–18–2007 adopted on June 12, 2007.

Section I. Title

This Liquor Ordinance shall be known as the Pueblo of Tesuque Liquor Control Ordinance (''Liquor Ordinance'').

Section II. Purpose

The purpose of this Liquor Ordinance is to regulate and control the possession, sale, and consumption of liquor within the exterior boundaries of the Pueblo of Tesuque.

Section III. Authority

The Pueblo enacts this Liquor Ordinance pursuant to its inherent governmental powers and in accordance with its traditional law, which empowers its Tribal Council to enact Ordinances. This Liquor Ordinance conforms with and also has been enacted pursuant to the Act of August 15, 1953 (Pub. L. 83–277, 67 Stat. 586, 18 U.S.C. 1161). The Sale of Liquor shall be lawful within the Reservation if such Sale complies with this Liquor Ordinance and, to the extent required by federal law, applicable laws of the State of New Mexico.

Section IV. Definitions

Except as otherwise provided herein, the following definitions apply throughout this Liquor Ordinance:

A. ''Beer'' means any beverage obtained by the alcoholic fermentation of an infusion or decoction of barley, malt, and hops or other cereals in drinking water, and includes porter, beer, ale and stout;

B. ''Certified Server'' means any employee of a Liquor Licensee who is twenty-one (21) years of age or older, who is certified to Sell Liquor on the Reservation on behalf of the Liquor Licensee in accordance with this Liquor Ordinance, and who has successfully completed a Liquor server training program

approved by the Commission or the Tribal Council;

C. ''Commission'' means the Pueblo of Tesuque Liquor Licensing Commission;

D. ''Commissioner'' means a member of the Commission who reviews and decides upon Liquor Licensing applications;

E. ''Enterprise'' means a business wholly-owned, operated, and/or controlled by the Pueblo that is engaged in, or wishes to engage in, the business of Selling Liquor on the Reservation;

F. ''Governor'' means the Governor of the Pueblo or his designee;

G. ''Liquor'' means the product of distillation of any fermented liquid, rectified either once or more often, of whatever the origin, and includes synthetic ethyl alcohol, which is considered nonpotable. ''Liquor'' includes distilled or rectified spirits, potable alcohol, brandy, whiskey, rum, gin, and aromatic bitters bearing the federal internal revenue strip stamps or any similar alcoholic beverage, including blended or fermented beverages, dilutions, or mixtures of one or more of the foregoing containing more than one-half percent alcohol, but less than twenty-one percent alcohol by volume, including Beer, Spirits, Wine, and Malt Liquor. Beer, Spirits, Wine, and Malt Liquor and liquors or solids containing in excess of ½ of 1% (.05%) of alcohol by volume, but not more than twenty-one percent (21%) shall be considered liquor.

H. ''Licensed Liquor Establishment'' means a designated physical location within the Reservation from which a Liquor Licensee is authorized to Sell Liquor under the provisions of the Liquor License granted by the Commission in accordance with this Liquor Ordinance;

I. ''Liquor License'' means a revocable license granted by the Commission authorizing the Liquor Licensee named therein and its Certified Servers to Sell Liquor at a specified Licensed Liquor Establishment on the Reservation;

J. ''Liquor Licensee'' means the holder of a valid Liquor License allowing the Sale of Liquor in a designated Licensed Liquor Establishment, as authorized and granted by the Commission; *provided* that a ''Liquor Licensee'' may be any eligible Person or the Pueblo, including any subdivision thereof or an Enterprise;

K. ''Malt Liquor'' means an alcoholic drink made from malt, typically having a higher alcohol content than most Beer or ale;

L. ''Minor'' means any individual under the age of twenty-one (21);

M. ''Package Sale'' means any Sale of Liquor in containers filled or packed by a manufacturer or wine bottler and Sold by a Liquor Licensee in an unbroken package for consumption off the Licensed Liquor Establishment premises and not for resale;

N. ''Person'' means an individual, trust, firm, association, partnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever;

O. ''Public Place'' means gaming, eating, and commercial or community facilities of every nature that are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access or to which the general public has been invited, and generally used by the public;

P. ''Pueblo'' means the Pueblo of Tesuque;

Q. ''Reservation'' means all lands within the exterior boundaries of the Pueblo's territories, all lands owned by the Pueblo subject to federal restrictions on alienation, and all other lands that are now or may hereafter be acquired or conveyed in fee to, held in trust for the benefit of the Pueblo, or held by the Pueblo subject to restrictions against alienation, whether by purchase, gift, act of Congress, or otherwise;

R. ''Sale'' or ''Sell'' means an exchange, transfer, sale, supply, barter, traffic, donation, with or without consideration, serving for consumption, dispensing, delivering, or distributing, by any means whatsoever, of Liquor on the Reservation by any Person;

S. ''Spirits'' means any beverage that contains alcohol obtained by distillation, mixed with drinkable water and other substances in solution, including brandy, rum, whiskey, and gin.

T. ''State'' means the State of New Mexico.

U. ''Tax Commission'' means the Tax Commission of the Pueblo of Tesuque or such other tribal commission, official, council, or subdivision designated by the Tribal Council to carry out the duties of the Tax Commission hereunder;

V. ''Tribal Council'' means the Pueblo of Tesuque Tribal Council.

W. ''Tribal Court'' means any or all of the courts established by the Pueblo to enforce its law;

X. ''Wholesaler'' means a person whose place of business is located off the Reservation and who Sells, or possesses for the purpose of Sale, any Liquor for resale by a Liquor Licensee;

Y. ''Wholesaler License'' means a revocable license granted by the Commission authorizing the Wholesaler named therein to do business on the Reservation with a Liquor Licensee; and

Z. ''Wholesaler Licensee'' means the holder of a valid Wholesaler License.

AA. ''Wine'' means any alcoholic beverage obtained by the fermentation of the natural sugar content of fruits, such as grapes or apples or other agricultural products, containing sugar, including fortified wines such as port, sherry, and champagne.

Section V. Powers of Enforcement

A. The Tribal Council hereby asserts primary regulatory authority over the subject matter of this Liquor Ordinance. The Tribal Council shall have the following powers and duties:

1. To establish, publish and enforce rules and regulations governing the Sale, and distribution of Liquor within the Reservation. Such rules and regulations shall be at least as stringent as the rules and regulations of the State;

2. To employ managers, accountants, security personnel, inspectors, and other such persons as may be reasonably necessary to allow the Tribal Council to perform its functions under this Liquor Ordinance;

3. To establish a Commission to handle the rights and responsibilities of the Commission.

4. To exercise such other powers as are necessary and appropriate to fulfill the purposes of this Liquor Ordinance.

B. The Commission shall have the authority to enforce this Liquor Ordinance and shall have the following powers and duties:

1. To authorize the Sale of Liquor at licensed Liquor establishments and in Public Places within the Reservation that have been specifically approved by a duly adopted Resolution of the Tribal Council.

2. To bring suit in any court of competent jurisdiction to enforce this Liquor Ordinance as necessary;

3. To determine penalties and seek damages for violations of this Liquor Ordinance; and

4. To collect fees levied or set in relation to this Liquor Ordinance and keep accurate records, books, and accounts.

Section VI. Limitations

A. In the exercise of its powers and duties under this Liquor Ordinance, the Tribal Council, Commission, and their individual members shall not accept gratuities, compensation, or other things of value from any Liquor Licensee, Wholesaler, retailer, or distributor.

B. Notwithstanding any other provision of this Liquor Ordinance, no penalty may be imposed pursuant or related to this Liquor Ordinance in contravention of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C. 1301, *et seq.*, or other applicable federal law.

C. No violations of this Liquor Ordinance shall be construed to be a criminal act, and as such, this Liquor Ordinance is intended to be applicable to Indians and non-Indians alike.

D. If any act prohibited under this Liquor Ordinance would be deemed a criminal act under state or federal law, and if the person so acting is non-Indian, the Pueblo shall cause the non-Indian to be referred to state and/or federal authorities for criminal investigation and possible prosecution under applicable state and/or federal criminal law.

E. If any act prohibited under this Liquor Ordinance would be deemed a criminal act under state or federal law, and if the individual so acting is an Indian, the Pueblo may prosecute the individual in Tribal Court, and, if found guilty, such Indian shall be punished in accordance with the criminal laws of the Pueblo.

F. Nothing in this Liquor Ordinance, including but not limited to any penalty imposed by the Tribal Court or Commission, shall be construed to bar a similar trial or punishment to the full extent of any applicable state and/or federal civil or criminal law.

Section VII. Inspection Rights

A. All premises upon which Liquor is sold, stored, or distributed, including any Licensed Liquor Establishment, shall be open to inspection by Pueblo, Tribal law enforcements officers, federal inspectors and federal law enforcement officers for the

purposes of ascertaining compliance with this Liquor Ordinance and applicable law.

B. Any Person who prevents or hinders, or attempts to prevent or hinder, such inspection shall be in violation of this Liquor Ordinance.

Section VIII. Authorized Liquor Sales and Practices

A. *Generally.* Except as otherwise provided herein, Liquor Licensees may Sell Liquor on the Reservation at such places and hours permitted by their Liquor License and allowed by applicable Pueblo and State law.

B. *Sales on Sundays and Election Days.* Except as otherwise limited by the Tribal Council, the Sale of Liquor shall be allowed on Sunday and on any Pueblo, federal, or State election day to the same extent authorized by the State.

C. *Sales Only by Certified Servers.* All Liquor Sales on the Reservation authorized by this Liquor Ordinance must be made only by Certified Servers who have been certified by the entity providing the training program. Annually, and upon the request of the Tesuque Governor or the Commission, a Liquor Licensee must submit proof that all its employees Selling Liquor are Certified Servers.

D. *Liquor Sales at Gaming Facility.* Any Sale of Liquor at a gaming facility must comply with all applicable provisions of any tribal-state class III gaming compact between the Pueblo and the State, as it now exists or hereafter may be amended.

E. *Wholesale Liquor Transactions.* A Liquor Licensee may purchase Liquor for resale at a Licensed Liquor Establishment only from a Wholesaler possessing a valid Wholesale License. A Wholesale Licensee may Sell Liquor for resale at a Licensed Liquor Establishment only to holders of valid Liquor Licenses issued by the Commission, *provided* that such Sales are otherwise in conformity with this Liquor Ordinance and applicable laws of the State.

Section IX. Prohibited Liquor Sales and Practices

A. *Resale.* No Liquor Licensee shall Sell Liquor on the Reservation for resale; all such Sales must be for the personal use and consumption of the purchaser. Resale of any Liquor purchased from other than a licensed wholesaler within the exterior boundaries of the Reservation is prohibited. Any Person who is not licensed pursuant to this Liquor Ordinance who purchases Liquor within the boundaries within the Reservation and re-sells it, whether in the original container or not, shall be in violation of this Liquor Ordinance and shall be subject to penalties under this Liquor Ordinance.

B. *Bringing Liquor onto Licensed Liquor Establishment Premises.* No Person shall bring any Liquor for personal consumption into any Licensed Liquor Establishment where Liquor is authorized to be Sold by the drink, unless such Liquor was purchased on such premises, or unless the possession or distribution of such Liquor on such premises is otherwise authorized under the provisions of this Liquor Ordinance.

C. *Other Prohibitions on Hours and Days of Sales.* The Tribal Council may, by duly enacted resolution, establish other days on which, or times at which, Sales or consumption of Liquor is not permitted within the Reservation. The Tribal Council shall give prompt notice of any such enactment to all Wholesaler Licensees, Liquor Licensees, and Licensed Liquor Establishments doing business within the Reservation.

D. *No Sales to Minors.* No Person shall Sell Liquor on the Reservation to a Minor. It shall be a defense to an alleged violation of this Section that the Minor presented to the Seller of the Liquor an apparently valid identification document showing the Minor's age to be twenty-one (21) years or older.

E. *No Sales to Intoxicated Persons.* No Person shall Sell Liquor on the Reservation to a Person believed to be intoxicated.

F. *Sales Must Be Made by Adults.* No Minor shall take any order, make any delivery, or accept payment for any Sale of Liquor within the Reservation, or otherwise have any direct involvement in any such Sale.

G. *All Sales Cash.* A Licensed Liquor Establishment shall not make any Sale of any Liquor without receiving payment therefore by cash, check, or credit card at or about the time the Sale is made; *provided* that nothing herein shall preclude the Licensed Liquor Establishment from receiving a delivery of Liquor from a duly authorized Wholesaler if arrangements have been made to pay for such delivery at a different time; and *provided further* that nothing herein shall preclude the Licensed Liquor Establishment from allowing a customer to purchase more than one item in sequence, and to pay for all such purchases at the conclusion thereof, so long as payment is made in full before the customer has left the premises; and *provided further* that nothing herein shall prevent the Licensed Liquor Establishment from distributing Liquor to customers without charge, so long as such distribution is not otherwise in violation of any provision of this Liquor Ordinance.

H. *Open Containers Prohibited.* No Person shall have an open container of any Liquor in any automobile, whether moving or standing still, or in a Public Place, other than on the premises of a Licensed Liquor Establishment or in Public Places as authorized by a duly adopted Resolution of the Tribal Council. This Section shall not apply to empty containers.

Section X. Licensing

A. Pueblo of Tesuque Licensing Commission

1. All applications for Liquor Licenses will be reviewed and decided upon by the Pueblo of Tesuque Liquor Licensing Commission.

2. This Commission will be made of up three individuals from the Pueblo.

3. These individuals shall be referred to as ''Commissioners.''

4. The Commission shall be made up of the following commissioners:

a. One member shall be the tax administrator for the Pueblo; and

b. Two members shall be tribal members selected by the Tribal Council.

B. General Eligibility; Applications

1. The Pueblo, including any Pueblo governmental entity, or an Enterprise, is deemed eligible to be a Liquor Licensee without further application under this Liquor Ordinance except as such licensing pertains to the designation of the Licensed Liquor Establishment itself. If the applicant is an Enterprise of the Pueblo, the Enterprise shall be the named Liquor Licensee.

2. Any other Person that wants to Sell Liquor on the Reservation must demonstrate general eligibility and apply to become a Liquor Licensee on the application forms, accompanied by the fee, and in the manner prescribed by the Commission. Any Person that is currently employed by the Pueblo or an Enterprise of the Pueblo is not eligible to be a Liquor Licensee.

C. Additional Tribal Liquor License Requirements

No License shall be issued under this Liquor Ordinance except upon a sworn application filed with the Commission containing a full and complete showing of the following:

1. Satisfactory proof that the applicant is duly licensed by the State to sell Liquor;

2. The description and location of the premises in which the Liquor is to be sold and proof that the applicant is entitled to use such premises for such purpose for the duration of the time period of the Liquor License.

3. Agreement by the applicant to accept and abide by all conditions of the Liquor License and this Liquor Ordinance.

4. Payment of a fee established by the Commission.

5. Satisfactory proof that neither the applicant, nor the applicant's spouse, nor any principal owner, officer, shareholder, or director of the applicant, has ever been convicted of a felony or a crime of moral turpitude as defined by the laws of the State.

6. If such Person is an individual, he or she must be at least twenty-one (21) years of age, and not have been convicted of a Liquor-related misdemeanor within the last five (5) years or a felony; and

7. If such Person is a corporation, partnership, or other business entity, the manager of the proposed Licensed Liquor Establishment must be an individual at least twenty-one (21) years of age, who has not been convicted of a Liquor-related misdemeanor within the last five (5) years or a felony.

8. Any non-Tribal applicant for a Liquor License must submit to a background investigation by filing with the application two (2) complete sets of his or her fingerprints taken under the supervision of and certified to by a Tribe or federal law enforcement officer. In such a case, the Commission may issue a temporary Liquor License pending the results of the background clearance, subject to revocation at any time, with or without cause.

C. Licensed Liquor Establishments

1. In its application for a Liquor License, the applicant also must request that the Commission designate and license a specific location where the Liquor Licensee is authorized to Sell Liquor on the Reservation. The applicant shall, at a minimum, submit a map showing the location of the proposed

site and the perimeters of the land and building, together with a general description of the premises. A parcel of land not containing a building may be a Licensed Liquor Establishment, including but not limited to areas within and adjacent to a racetrack and/or golf course. The applicant shall submit such request on the forms and in the manner prescribed by the Commission.

2. No Licensed Liquor Establishment shall be located closer than three hundred (300) feet from any church, kiva, plaza, or school.

3. The Commission, in its sole discretion, may place terms, conditions, and/or restrictions on the Sale of Liquor at a Licensed Liquor Establishment, including but not limited to the hours and days of operation and the type of Liquor Sold; *provided* that a Liquor Licensee may appeal the imposition of any special restrictions as provided in this Liquor Ordinance.

Section XI. Processing Applications for Tribal Liquor License

A. After considering the information submitted on the application for a Liquor License, the Commission shall grant and issue a Liquor License if it concludes that the Liquor License will serve the best interests of the Pueblo and the regulatory goals of this Liquor Ordinance.

B. The Commission shall deny the application if it finds that granting a Liquor License would be contrary to the best interests of the Pueblo or the regulatory goals of this Liquor Ordinance, considering such factors as the applicant's compliance history with applicable Pueblo and federal law, whether the applicant is currently in violation of any Pueblo law, the number and density of Licensed Liquor Establishments on the Reservation, whether the applicant will operate a new or existing establishment, whether food will be sold on the premises, or any other reason bearing on the health, safety, and welfare of the Reservation community or the economic security of the Pueblo.

C. The Commission shall send the applicant a final written decision explaining the grounds for its decision either granting or denying the application for a Liquor License.

D. No member of the Commission shall be involved in any decision making process involving an application submitted by a member or member of the immediate family of a member of the Commissioner.

Section XII. Temporary Permits

Upon request, the Commission may, in its sole discretion, issue special events liquor permits authorizing specific Sales of Liquor for specific time periods not to exceed three (3) days on such terms as may be established by the Commission; *provided* that an applicant for a special events liquor permit must be at least twenty-one (21) years of age and not have been convicted of a Liquor-related felony or misdemeanor within the last five (5) years. Each permit issued shall specify the types of alcoholic beverages to be sold, the time, date and location permitted. A fee, as set by the Commission, will be assessed on temporary permits.

Section XIII. Conditions of the Tribal License

A. Any license issued under this Liquor Ordinance shall be subject to such reasonable conditions, as the Commission shall fix, including, but not limited to the following:

1. The license shall be for a term not to exceed two (2) years.

2. An application for a renewal of a Liquor License may not be made more than ninety (90), nor less than sixty (60) days prior to the expiration of the Liquor License, made on such forms as prescribed by the Tribal Council or Commission, and shall be accompanied by any required fees. Denial of an application for renewal of a Liquor License is appealable as provided in this Liquor Ordinance.

3. The Licensee shall at all times maintain an orderly, clean, and neat establishment, both inside and outside the Licensed Liquor Establishment.

4. The Licensed Liquor Establishment shall be open to inspection by duly authorized tribal officials at all times during regular business hours.

5. All acts and transactions under authority of a Liquor License shall be in conformity with applicable law and shall be in accordance with this Liquor Ordinance and such Liquor License issued.

6. No Minor shall be sold, served, delivered, given, or allowed to consume Alcoholic Beverages.

7. There shall be no discrimination in the operations under the Liquor License by reason of race, color, creed, sexual orientation, or national origin.

B. *Liabilities of Liquor Licensee.* Except as otherwise provided herein, each Liquor Licensee shall be accountable for all violations of its Liquor License and this Liquor Ordinance, and for all taxes, fees, and penalties that may be charged against its Liquor License or Licensed Liquor Establishment.

C. *Classes of Liquor Licenses.* The Commission may establish by regulation classes of Liquor Licenses and the activities authorized with each class, including but not limited to restaurants, bars, and Package Sales.

D. *Transfer, Assignment, or Lease of Liquor License.* No Liquor Licensee shall transfer, assign, or lease a Liquor License without the prior written approval of the Commission.

E. *License is Not a Property Right.* Notwithstanding any other provision of this Liquor Ordinance, a Liquor License is a mere permit for a fixed duration of time. A Liquor License shall not be deemed a property right or vested right of any kind, nor shall the granting of a Liquor License give rise to a presumption of legal entitlement to the granting of such license for a subsequent time period.

F. *Wholesaler—Wholesaler License Required.* A Wholesaler shall apply for a Wholesaler License on such forms, accompanied by such fee, and in such manner as may be prescribed by the Commission. No Wholesaler shall Sell, offer for Sale, or ship Liquor to a Liquor Licensee for sale at a Licensed Liquor Establishment on the Reservation except pursuant to a Wholesaler License.

Section XIV. Rules, Regulations, and Enforcement

A. *Sale or possession with intent to sell without a permit.* Any Person who shall Sell or offer for Sale, or distribute or transport in any manner, any Liquor in violation of this Liquor Ordinance, or who shall have Liquor in his possession with intent to Sell or distribute without a License or permit shall be in violation of this Liquor Ordinance.

B. *Purchases from other than licensed or allowed facilities.* Any Person who, within the boundaries of the Reservation, buys Liquor from any Person other than a Liquor Licensee shall be in violation of this Liquor Ordinance.

C. *Consumption or possession of Liquor by Minors.* No Minor shall consume, acquire, or have in his or her possession any Liquor. No Person shall permit any Minor to consume Liquor as set out in this Section.

D. *Sales of Liquor to Minors.* Any Person who shall Sell or provide Liquor to any Minor shall be in violation of this Liquor Ordinance for every Sale or drink provided.

E. *Transfer of identification to a minor.* Any Person who transfers in any manner an identification of age to a Minor for the purpose of permitting such Minor to obtain Liquor shall be in violation of this Liquor Ordinance; provided, that corroborative testimony of a witness other than the Minor shall be a requirement of finding a violation of this Liquor Ordinance.

F. *Use of False or Altered Identification.* Any Person who attempts to purchase Liquor through the use of a false or altered identification shall be in violation of this Liquor Ordinance.

G. *Acceptable Identification.* If there is a question of a Person's right to purchase Liquor, such Person shall be required to present any one of the following cards of identification which shows his or her correct age and bears his or her signature and photograph: (1) A valid driver's license of any state or identification card issued by any state department of motor vehicles; (2) United States active duty military ID; (3) a passport.; or (4) a recognized tribal identification card.

H. *Happy Hours.* The Commission may adopt a policy or regulations on the conduct of happy hours at Licensed Liquor Establishments wherein Liquor is Sold on certain occasions or at certain times for a price substantially lower than at other times. The Commission also may request that each Licensed Liquor Establishment conducting Happy Hour establish written policies on Happy Hour for approval or disapproval by the Commission.

I. Violations of This Liquor Ordinance

1. *Civil Liabilities.* Any Person authorized to enforce this Liquor Ordinance in the name of the Pueblo may bring a civil action in the Tribal Court against any Person who engaged in an activity or activities prohibited herein and may recover monetary damages, civil fines not exceeding five hundred dollars ($500.00) per violation, attorney fees, injunctive relief, and/or any other relief that is just and equitable under the circumstances, including but not limited to orders for the violator:

a. To perform up to one hundred and twenty (120) hours of community service on the Reservation;

b. To make restitution; and/or

c. To disgorge any monetary benefit derived from engaging in the prohibited activities.

2. *Exclusion from Reservation.* For good and sufficient cause found, the Tribal Court may exclude from the Reservation any Person who engages in an activity or activities prohibited by this Liquor Ordinance to the extent such exclusion is not inconsistent with Pueblo law.

3. *Suspension and Revocation of Liquor License or Wholesaler License.* In addition to any civil penalties, any Liquor License or Wholesaler License issued hereunder may be suspended or revoked on the following grounds:

a. Violation of any provision of this Liquor Ordinance or any regulations promulgated hereunder or of the applicable liquor laws of the State;

b. Violation of any applicable Pueblo law;

c. Violation of the terms, conditions, and scope of a Liquor License or Wholesaler License and/or otherwise Selling Liquor in violation of a Liquor License or Wholesaler License;

d. Making a material misstatement on the application for a Liquor License or Wholesaler License;

e. As a Liquor Licensee or Wholesaler Licensee, being convicted of a felony;

f. Allowing a nuisance or dangerous behavior to occur within the Licensed Liquor Establishment or on its premises;

g. Allowing the sale, possession, purchase, manufacture, or transfer of drug-related paraphernalia, prohibited drugs, or other controlled substances, except for the possession of controlled substances for which the person in possession has a valid prescription; *provided* that, for purposes of this Liquor Ordinance, ''prohibited drug'' means any substance the sale, possession, purchase, manufacture, or transfer of which is prohibited by federal, state, or Pueblo criminal drug provisions, and which has not been obtained by its possessor pursuant to a valid prescription, and ''controlled substance'' includes all prohibited drugs; or

h. Any other good cause shown.

4. *Temporary Revocation or Suspension of a Liquor License or Wholesaler License Without Notice.* In the event of an emergency and/or to protect the health, safety, and welfare of the public present on the Reservation, the Commission may temporarily revoke or suspend a Liquor License or Wholesaler License without prior notice for a period not exceeding thirty (30) days.

5. *Notice.*

a. Except as provided in subpart 4 of this section, the Commission shall provide written notice of its intent to revoke or suspend a Liquor License or Wholesaler License or to impose special restrictions for a violation of this Liquor Ordinance. Such notice shall be received in person or by certified mail, return receipt requested, to the last known address of the Liquor Licensee or Wholesaler Licensee, at least ten (10) days in advance of the hearing. The notice will be delivered in person or by certified mail with the Commission retaining proof of service. The notice will set out the rights of the alleged violator, including but not limited to the right to have an attorney present, and the right to speak, to present witnesses, and to cross-examine any adverse witnesses.

b. If the Liquor Licensee or Wholesaler Licensee cannot be so served with notice, the Liquor Licensee or Wholesaler Licensee may be served by publication in a newspaper of general circulation in the area once each week for two (2) consecutive weeks. The Liquor Licensee or Wholesaler Licensee shall have at least ten (10) days from the day the notice was delivered, or from the date of last publication, to show cause why the Liquor License or Wholesaler License should not be revoked or suspended or the special restrictions imposed.

6. *Hearing.* The Commission shall afford the Liquor Licensee or Wholesaler Licensee an opportunity to appear and be heard, either in person or through a representative, and to submit such evidence as may be relevant.

I. *Possession of Liquor Contrary to This Liquor Ordinance.* Liquor obtained, possessed, or controlled in violation of this Liquor Ordinance is declared to be contraband. Any Pueblo agent, employee, or officer who is authorized by the Tribal Council or Commission to enforce this Section shall have the authority to, and shall, seize all contraband.

J. *Disposition of Seized Contraband.* Any Pueblo agent, employee, or officer seizing contraband shall preserve the contraband in accordance with applicable tribal and federal law, and the party previously in possession or control of the contraband shall forfeit all right, title, and interest in the items seized, which shall become the property of the Pueblo.

Section XV. Certified Servers

A. *Application Requirements.* Every employee of a Liquor Licensee, who Sells Liquor at a Licensed Liquor Establishment, must be a Certified Server twenty-one (21) years of age or older. Such employee shall apply for certification on such forms, accompanied by such fee, and in such manner as may be prescribed by the Commission. The application for certification shall contain:

1. The name and address of the applicant;

2. A list of all the applicant's jobs and employment for the preceding three (3) years;

3. A list of all residences for the preceding three (3) years, including street address, city, and state, and dates of residence at each address;

4. A signed statement that the applicant agrees to abide by this Liquor Ordinance and consents to the personal jurisdiction of the Pueblo for purposes of Liquor regulation and enforcement of this Liquor Ordinance; and

5. Evidence (*i.e.*, certificate of completion) that the applicant has successfully completed a liquor server education training program approved by the Commission.

B. *Certification Term.* A Certified Server's certification shall be valid for five (5) years from the date of his or her successful completion of the liquor server education training program.

C. *Revocation.* The Commission may revoke any certification issued under this Section if the Certified Server violates any provision of this Liquor Ordinance or any regulations promulgated hereunder, violates any applicable Pueblo law, makes a material misstatement on the application for certification, is convicted of a felony, or for other good cause shown.

Section XVI. Appeals to Tribal Court

A. *Appealable Actions.* Any Person or entity that is denied a Liquor License or a Wholesaler License, or whose Liquor License or Wholesaler License is limited by special restrictions, is suspended, revoked, or denied renewal, may appeal the adverse action to the Tribal Court. Any Person that is denied a certification or whose status as a Certified Server has been revoked or deemed unacceptable may appeal the adverse action to the Tribal Court. All appeals hereunder must be filed with the Tribal Court within [thirty (30)] days of the date of the adverse action or be forever barred; *provided* that, if no appeal is timely made as provided herein, an action is final and shall not be subject to further appeal in any forum or court.

B. *Rules; Stay; Bond.* The procedural rules of the Tribal Court appropriate for administrative appeals, or such other procedural rules that may be established by regulation to govern such appeals, shall apply. Upon request, the Tribal Court in its discretion may stay a suspension or revocation pending an appeal and/or require that the appellant post an appeal bond in such amount as it may be set by the Tribal Court.

C. *Decision of Tribal Court Final.* All decisions of the Tribal Court on appeals under this Section are final and not further appealable in any forum or court.

Section XVII. Inspection of Licensed Liquor Establishment Premises

A. All premises used in the storage or Sale of Liquor or any premises or parts of premises used or in any way connected, physically or otherwise, with a Licensed Liquor Establishment shall at all times be open to inspection by any Pueblo or federal inspectors or federal law enforcement officers.

B. Any Person, being on such premises and having charge thereof, who refuses or fails to admit a Pueblo or federal inspector or Pueblo or federal law enforcement officer demanding to enter therein in pursuance of this Section in the execution of his or her duty, or who obstructs or attempts to obstruct the entry of such inspector or officer, shall be deemed to have violated this Liquor Ordinance.

Section XVIII. Transportation Through Reservation

Nothing in this Liquor Ordinance shall apply to the otherwise lawful transportation of Liquor through the Reservation by Persons remaining on public highways or other paved facilities for motor vehicles provided that such Liquor is not Sold, or offered for Sale, within the Reservation.

Section XIX. Profits

A. *Disposition of Proceeds.* The gross proceeds collected by the Commission from licensing shall be distributed as follows:

1. For the payment of all necessary personnel, administrative costs, and legal fees for the administration of the provisions of this Liquor Ordinance.

2. The remainder shall be remitted to the General Fund Account of the Tribe.

Section XX. Sovereign Immunity

Nothing in this Liquor Ordinance is intended nor shall be construed as a waiver of the sovereign immunity of the Pueblo. No employee, officer, or agent of the Pueblo shall be authorized, nor shall he or she attempt, to waive the immunity of the Pueblo.

Section XXI. Jurisdiction; Conflicts With Other Laws

A. *Jurisdiction.* Exceptions as otherwise provided in this Liquor Ordinance, any and all actions pertaining to alleged violations of this Liquor Ordinance, or seeking any relief against the Pueblo, its officers, employees, or agents arising under this Liquor Ordinance, shall be brought in the Tribal Court, which court shall have exclusive jurisdiction consistent with the inherent sovereignty and immunity of the Pueblo and applicable federal and Pueblo law.

B. *Conflicts with Other Laws.* If this Liquor Ordinance is determined to conflict with any other Pueblo law of general application, this Liquor Ordinance shall control.

Section XXII. Severability

If any provisions of this Liquor Ordinance or the application of any provision to any Person or circumstances is held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remainder of this Liquor Ordinance and its application to any other Person or circumstances, and, to this end, the provisions of this Liquor Ordinance are severable.

Section XXIII. Effective Date

This Liquor Ordinance shall be effective on such date as the Secretary of the Interior certifies this Liquor Ordinance and publishes the same in the **Federal Register**, and it supersedes any and all prior Liquor Ordinances that have been so adopted and certified.

Section XXIV. Amendment

This Liquor Ordinance may be amended by a resolution adopted by a majority vote of the Tribal Council.

[FR Doc. E7–19740 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990]

Notice of Availability of the Draft Environmental Impact Statement for a Proposed Expansion of Existing Gold Mining/Processing Operations in Lander and Eureka Counties, NV

AGENCY: Bureau of Land Management, Interior.

COOPERATING AGENCY: Nevada Department of Wildlife.

ACTION: Notice of Availability.

SUMMARY: In accordance with section 102(2)(c) of the National Environmental Policy Act of 1969, 43 CFR Part 3809, and the Council on Environmental Quality Regulations found at 40 CFR 1500–1508, the Bureau of Land Management (BLM) Battle Mountain Field Office has prepared a Draft Environmental Impact Statement (DEIS) on the Cortez Gold Mines' (CGM) proposed Cortez Hills Expansion Project, which is a proposed amendment to the Pipeline/South Pipeline Plan of Operations. The DEIS analyzes the environmental effects of the Proposed Action and alternatives, including the No Action Alternative.

DATES: The DEIS is available for public comment for 60 days starting on October 5, 2007, the date the Environmental Protection Agency publishes its Notice of Availability (NOA) in the **Federal Register**. To provide the public with an opportunity to review the proposal and project information, the BLM will host public meetings in Crescent Valley and Battle Mountain, Nevada. The BLM will notify the public of the meeting dates, times, and locations at least 15 days prior to the meetings. Announcements of the public meeting will be made by news release to the media, individual letter mailings, and posting on the BLM Web site: *http://www.blm.gov/nv/st/en/fo/battle_mountain_field.html*.

Comments, including names and street addresses, will be available for public review at the address below during regular business hours, 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays, and will be published as part of the Final EIS. Before including your address, phone number, e-mail address or other personal identifying information in your comment, be advised that your entire comment and personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, ATTN: Stephen Drummond, Battle Mountain Field Office, 50 Bastian Road, Battle Mountain, NV 89820.

FOR FURTHER INFORMATION CONTACT: Stephen Drummond, 775–635–4000.

SUPPLEMENTARY INFORMATION: CGM, on behalf of Cortez Joint Venture, proposes to expand its Pipeline/South Pipeline Project, an existing open-pit gold mining and processing operation. The Pipeline/South Pipeline Project is located in north-central Nevada approximately 31 miles south of Beowawe in Lander County.

The proposed Cortez Hills Expansion Project (Project) is located in:

Mount Diablo Meridian, Nevada

T. 27 N., R. 48 E.;
T. 27 N., R. 47 E.;
T. 27 N., R. 46 E.;
T. 26 N., R. 47 E.;
T. 26 N., R. 48 E.;
T. 28 N., R. 46 E.; and
T. 28 N., R. 47 E. in Lander and Eureka counties.

The Proposed Action would require new surface disturbance of 6,792 acres, including 6,571 acres of public land administered by the BLM Battle Mountain Field Office and 221 acres of private land owned by CGM. Existing CGM mining and processing facilities are located in three main areas in the Cortez Gold Mines Operations Area. These areas are referred to as the Pipeline Complex, Cortez Complex and Gold Acres Complex . The existing and proposed disturbance acreages for the Project would total 16,231 acres. The Proposed Action would include development of new mining facilities in the proposed Cortez Hills Complex, including development of a new open pit, underground mining, three new waste rock facilities, new heap leach pad, construction of a 12-mile conveyor system, modification or construction of related roads and ancillary facilities, and a new groundwater dewatering system to include in pit, perimeter, and underground facilities. The Proposed Action also would include continued use of existing facilities in the Pipeline Complex, Cortez Complex and Gold Acres Complex, as well as expansion of existing facilities (pits and waste rock facilities) in the Pipeline Complex and Cortez Complex. CGM proposes to mine the ore bodies associated with the Cortez and Cortez Hills complexes concurrently with their existing Pipeline/South Pipeline ore bodies. The majority of the high grade ore mined

under the Cortez Hills Expansion Project would be processed at the existing Pipeline and/or Cortez mills. The proposed Project would expand existing tailings facilities at both the Pipeline and Cortez complexes. A lesser quantity of refractory ore would be sold to an off-site processing facility. The primary method of processing low-grade ore would be heap leaching.

The DEIS addresses concerns identified by the BLM and other agencies, as well as comments raised during the public scoping period in 2005. Issues analyzed in the DEIS include: Air quality, cultural resources, water quality, environmental justice, floodplains, hazardous materials and solid waste, invasive, and/or non-native species, migratory birds, Native American religious concerns, special status species, wetlands and riparian zones, and wilderness characteristics. Construction and operation of the proposed Cortez Hills Expansion Project is projected to begin in 2008. The life of the mine would include approximately 10 years of active mining and concurrent reclamation as areas become available, as well as an additional three years for ongoing ore processing, final reclamation, and closure.

A range of alternatives (including alternate waste rock facility and heap leach pad locations, underground mining only, and the No Action Alternative) has been developed and analyzed to address the concerns and issues that were identified. Other alternatives under consideration and the rationale for their elimination from detailed analysis also are discussed. Mitigation measures have been identified to minimize potential environmental impacts and to assure that the proposed Project would not result in undue or unnecessary degradation of public lands. In addition, the DEIS includes an analysis of cumulative impacts, including a comprehensive evaluation of potential impacts to Native American religious concerns.

Dated: August 20, 2007.

Gerald M. Smith,

Battle Mountain Field Office Manager.

[FR Doc. E7–19696 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–1610–DP–010J]

Notice of Availability of the Supplement to the Vernal Field Office Draft Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for Non-Wilderness Study Area (WSA) Lands With Wilderness Characteristics

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA, 42 U.S.C. 4321, *et seq.*) and the Federal Land Policy and Management Act of 1976 (FLPMA, 43 U.S.C. 1701, *et seq.*), the Bureau of Land Management (BLM) has prepared the Supplement to the Vernal Field Office DRMP/DEIS to augment the identification and analysis of managing non-WSA lands with wilderness characteristics.

DATES: The 90-day public comment period will begin on the date the Environmental Protection Agency (EPA) publishes its Notice of Availability (NOA) in the **Federal Register**. To assure that public comments will be considered, the BLM must receive written comments on the Supplement to the Vernal Field Office DRMP/DEIS on or before the end of the comment period at the address listed below.

Comments: Comments and information submitted on the Supplement to the Vernal Field Office DRMP/DEIS, including names, e-mail addresses, and street addresses of respondents, will be available for public review and disclosure at the Vernal Field Office address listed below. The BLM will not accept anonymous comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Comments may be submitted by any of the following methods:

- *Mail:* Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, UT 84078.
- *E-mail: UT_Vernal_Comments@blm.gov.*
- *Fax:* (435) 781–4480.

FOR FURTHER INFORMATION CONTACT: Kelly Buckner, RMP Project Manager, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, UT 84078; telephone (435) 781–4400; e-mail *Kelly Buckner@blm.gov.* Copies of the Supplement to the Vernal Field Office DRMP/DEIS are available in the Vernal Field Office and on the Internet at *http://www.blm.gov/ut/st/en/fo/vernal.html.*

Background Information: The planning area includes approximately 1.8 million acres of BLM administered surface lands and 2.1 million acres of federal mineral estate under federal, state, private, and Ute Tribal surface in Duchesne, and Uintah Counties in northeast Utah, and about 3,000 acres in Grand County. The planning area encompasses public lands currently managed under the Book Cliffs and Diamond Mountain RMPs. The decisions of the DRMP/DEIS will only apply to BLM-administered public lands and federal mineral estate. The Vernal Field Office prepared the DRMP/DEIS to reevaluate, with public involvement, existing conditions, resources and uses, and consider the mix of resource allocations and management decisions designed to balance uses and protection of resources pursuant to FLPMA and other applicable laws. The DRMP/DEIS was released for public review January 14, 2005.

Pursuant to FLPMA Sections 201 and 202 (43 U.S.C. 1711, 1712) and the BLM's land use planning handbook (Manual Handbook H–1601–1), BLM has authority to evaluate and manage non-WSA lands with wilderness characteristics through land use planning. These characteristics include the appearance of naturalness, outstanding opportunities for solitude, and outstanding opportunities for primitive and unconfined recreation. The applicable law requires that the BLM consider these lands and resource values in planning, including prescribing measures to manage for their wilderness characteristics. Accordingly, during the planning process, the Vernal Field Office found 25 areas (totaling 277,596 acres), outside of existing WSAs that have wilderness characteristics.

The DRMP/DEIS analyzed five alternatives for the management of public lands in the Vernal Field Office and disclosed the impacts of implementing each alternative to the human environment. To ensure that (1) adequate consideration is given to non-WSA lands with wilderness characteristics, (2) an adequate range of alternatives is considered for these

lands, and (3) an adequate analysis is prepared from which to base land use decisions, the Supplement to the Vernal Field Office DRMP/DEIS will prescribe specific actions to manage for the wilderness characteristics of non-WSA lands with wilderness characteristics in a new alternative.

Dated: September 18, 2007.

Selma Sierra,

Utah State Director.

[FR Doc. E7–19706 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UTU–080–2007–9141–EJ]

Notice of Intent To Prepare an Environmental Impact Statement (EIS) and To Conduct Public Scoping for the Natural Buttes Area Gas Development Project, Uintah County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent (NOI).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, the Bureau of Land Management (BLM), Vernal Field Office, Vernal, Utah, will prepare an EIS on the impacts of efficient and orderly development of the natural gas resources of the Greater Natural Buttes Field area. This notice announces the public scoping period.

DATES: A public scoping period of 30 days will commence on the date this notice is published by the Environmental Protection Agency (EPA) in the **Federal Register**. Comments on issues, potential impacts, or suggestions for alternatives can be submitted in writing to the address listed below within 30 days of the date this Notice is published. A public meeting will be conducted during the scoping period in Vernal. The date, place, and time will be announced through the local news media and the BLM Web site *http://www.blm.gov/utah/vernal/nepa.html* at least 15 days prior to the meeting.

ADDRESSES: Comments may be submitted by any of the following methods:

- *Mail:* Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078.
- *E-mail:* *UT_Vernal_Comments@blm.gov.*
- *Fax:* (435) 781–4410.

Please reference the Greater Natural Buttes Area when submitting your comments. Comments and information submitted, including names, e-mail addresses, and street addresses of respondents, will be available for public review at the address listed above. The BLM will not accept anonymous comments. Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Stephanie Howard, Project Manager, BLM Vernal Field Office, 170 South 500 East, Vernal, UT 84078. Ms. Howard may also be reached at 435–781–4400.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM, Vernal Field Office, Vernal, UT, intends to prepare an EIS, and announces the public scoping period. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis and EIS alternatives. You may submit comments in writing to the BLM at the public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. The public is encouraged to participate during the scoping process to help identify issues of concern related to the proposed action, determine the depth of the analysis needed for issues addressed in the EIS, identify potential mitigation measures, and identify reasonable alternatives to be evaluated in the EIS.

Proposed Project Description: The EIS will encompass 162,911 acres in Townships 8 through 11 South, Ranges 20 through 24 East (Salt Lake Meridian) in Uintah County, Utah. The project is located on lands administered by the BLM (88,565 acres), Northern Ute Tribe as administered by the BIA (39,399 acres), the State of Utah (32,755 acres), and private interests (2,192 acres). Mineral interests are owned by the BLM (79 percent), the State of Utah (20 percent), and private interests (one percent). The Natural Buttes gas field was discovered in the 1950s and has produced around 1.0 trillion cubic feet of natural gas and 5.0 million barrels of crude oil and condensate and is among the top 15 gas fields in the United States in terms of natural gas reserves. As of August 2006, the Greater Natural Buttes Area contained approximately 1,077 producing gas wells and 20 oil wells.

Kerr-McGee Oil & Gas Onshore LP (KMG) a wholly-owned subsidiary of Anadarko Petroleum Corporation proposes to conduct infill drilling to develop the hydrocarbon resources from oil and gas leases within the Greater Natural Buttes Project Area in Uintah County, Utah. KMG's intent is to explore and develop potentially productive subsurface formations underlying the land in the Greater Natural Buttes Project Area. Although actual operations are subject to change as the project proceeds, KMG's plan is to drill 3,496 additional wells over a period of 10 years. It is assumed that up to 179 new wells would be drilled by other operators having leasehold rights in the project area. The productive life of each well is estimated to be approximately 30 to 50 years.

Infill drilling would be performed on 40-acre and 20-acre surface spacing throughout the project area, i.e., with 16 to 32 surface well pads per section. KMG defines a 40-acre well pad as the first well pad located in a governmental 40-acre quarter-quarter section. A 20-acre pad is defined as the second well pad located in a 40-acre quarter-quarter section. Well spacing in the subsurface would be based on the KMG's reservoir engineering evaluation on an on-going basis and will be site-dependent, potentially ranging from 16 wells per section (40-acre spacing) to 64 wells per section (10-acre spacing) or more.

Project development would utilize existing roads and, when necessary, new roads would be constructed. Equipment required by most wells includes a gas gathering line, a separator, gas meter, produced water and liquid hydrocarbon storage tanks, and chemical tanks. Gas would be transported via pipeline to centralized compression and treatment facilities. Produced water would be transported by truck or pipeline to the KMG-operated produced water disposal wells or to KMG-owned or commercially owned evaporation ponds or disposal wells. To minimize new disturbance, KMG would utilize the existing ancillary facility infrastructure within the project area, where possible, including gas compression facilities, power lines, water disposal and treatment facilities, and gas gathering pipelines. Total surface disturbance for the proposed project is estimated to be

7,804 acres, or approximately 5% of the project area.

Relationship to Existing Plans and Documents: The Book Cliffs Resource Management Plan (RMP) Record of Decision (ROD) (May 1985) directs management of BLM-administered public lands within the analysis area. Implementation of oil and gas development in the Greater Natural Buttes Project Area would conform to conditions and requirements mandated in the RMP and ROD. The ROD calls for oil and gas, tar sands, oil shale, and gilsonite to be leased while other resource values will be protected or mitigated (page 7 of the ROD).

Identified Resource Management Issues, Concerns, and Opportunities: The following resources have been identified as potentially impacted by the Vernal Field Office. It is not meant to be an all-inclusive list, but rather a starting point for public input and a means of identifying the resource disciplines needed to conduct the analysis. The potentially impacted resources include: air quality, cultural resources, livestock grazing, paleontological resources, recreation, socioeconomics, soil resources, special designations (potential Area of Critical Environmental Concern and eligible Wild and Scenic River segments), threatened or endangered animal and plant species, vegetation, visual resources, water resources, wilderness characteristics, and wildlife.

Selma Sierra,

Utah State Director.

[FR Doc. E7–19692 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–220–05–1020–JA–VEIS]

Notice of Availability of the Record of Decision for the Final Programmatic Environmental Impact Statement for Vegetation Treatments Using Herbicides on Bureau of Land Management Lands in 17 Western States

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM) hereby gives notice that the Record of Decision for the Final Programmatic Environmental Impact Statement (FPEIS) for vegetation treatments using herbicides on public lands administered by BLM in 17 western states, including Alaska, is available. The BLM is the lead Federal agency for the preparation of this FPEIS, in compliance with the requirements of NEPA. The decision selects for use the four herbicides identified in Alternative B of the FPEIS. These herbicides are: Diquat, diflufenzopyr (in formulation with dicamba), fluridone, and imazapic. The BLM also selects for continued use the following 14 Environmental Protection Agency (EPA) registered active ingredients: 2,4-D, bromacil, chlorsulfuron, clopyralid, dicamba, diuron, glyphosate, hexazinone, imazapyr, metsulfuron methyl, picloram, sulfometuron methyl, tebuthiuron, and triclopyr. The BLM does not select for use the following six-herbicide active ingredients: 2,4-DP, asulam, atrazine, fosamine, mefluidide, and simazine. As part of the Proposed Action and this decision, the BLM also adopts the protocol for identifying, evaluating and approving herbicides. The Record of Decision identifies best management practices, standard operating procedures and mitigation measures for all vegetation treatment projects involving the use of herbicides.

ADDRESSES: Copies of the Record of Decision are available in hard copy or CD upon request from Brian Amme, Nevada State Office, P.O. Box 12000, 1340 Financial Blvd., Reno, NV 89520, or via the Internet at the BLM National Web site *http://www.blm.gov/*. The Record of Decision is available for review in either hard copy or on compact disks (CDs) at all BLM State, District, and Field Office public rooms.

FOR FURTHER INFORMATION CONTACT: Brian Amme, Project Manager at (775) 861–6645 or e-mail: *brian_amme@blm.gov*.

SUPPLEMENTARY INFORMATION: This national, FPEIS provides a comprehensive analysis of BLM's use of chemical herbicides in its various vegetation treatment programs related to hazardous fuels reduction; noxious weed, invasive terrestrial and aquatic plant species management; resource rehabilitation following catastrophic fires, and other disturbances. The FPEIS addresses human health and ecological risk for use of chemical herbicides on public lands and provides a cumulative impact analysis of the use of chemical herbicides in conjunction with other treatment methods. The decision area includes public lands administered by 11 BLM state offices: Alaska, Arizona, California, Colorado, Idaho, Montana (North Dakota/South Dakota), New Mexico (Oklahoma/Texas/Nebraska), Nevada, Oregon (Washington), Utah and Wyoming.

The BLM issued a Notice of Availability November 10, 2005, of BLM's Draft Vegetation Treatments Using Herbicides Programmatic Environmental Impact Statement and Draft Programmatic Environmental Report. The BLM held ten public hearings in late 2005, and extended the public comment period an additional 30 days to February 10, 2006.

The BLM responded to over 5,500 individual public comments during the Draft Programmatic EIS public review period. Comment responses and resultant changes in the impact analysis are documented in this FPEIS and Environmental Report per requirements under 40 CFR 1503.4. Additional information and analysis is included in the FPEIS addressing comments related to degradates, use of Polyoxyethylene-amine (POEA) OEA and R–11 surfactants and risks associated with endocrine disrupting chemicals. In addition, the FPEIS contains Subsistence analysis required under Section 801(a) of the Alaska National Interest Lands Conservation Act (ANILCA). This decision was approved by the Department of the Interior, Assistant Secretary for Land and Minerals Management; therefore, no administrative review through the Interior Board of Land Appeals pursuant to 43 CFR 4.5 will be available on the decisions made by this Record of Decision.

Todd S. Christensen,

Acting Assistant Director, Renewable Resources and Planning.

[FR Doc. E7–19699 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–057–1630–NU; 7–08807]

Shooting Closure on Certain Lands Managed by the Bureau of Land Management, Las Vegas Field Office

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of final decision for establishment of a permanent shooting closure on selected public lands in Nye County, Nevada.

SUMMARY: The Bureau of Land Management (BLM) Las Vegas Field Office announces a target shooting closure on about 11,874 acres of selected public lands in Nye County near the southwest portion of the Town

of Pahrump. The permanent closure is being made for the safety of persons and property adjacent to the selected public lands at the request and concurrence of the Nye County Commissioners, the Nye County Sheriff's Office and the Pahrump Town Board. The rapid increase in population and growth in Pahrump, Nevada has created conflicts between new residential areas and public land areas traditionally used for target shooting. This closure does not apply to hunting under the laws and regulations of the State of Nevada or other recreational activities. The BLM is establishing this shooting closure under the authority of 43 CFR 8364.1 which allows closures for the protection of persons, property, and public lands and resources. This provision allows the BLM to issue closures of less than national effect without codifying the rules in the Code of Federal Regulations.

DATES: *Effective Date:* October 5, 2007.

FOR FURTHER INFORMATION CONTACT: Erika Schumacher, Chief Ranger of Law Enforcement, (702) 515–5000. Maps depicting the area affected by this closure order are available for public inspection at the BLM Las Vegas Field Office, 4701 N. Torrey Pines Drive, Las Vegas, Nevada.

SUPPLEMENTARY INFORMATION: Public lands affected are within the following described area:

Mount Diablo Meridian, Nevada

T. 21, R. 53
Secs 14, 15, 22, 23, 24, 25, 26, 27, 34, 35, 36;
T. 21, R. 54
Secs 21, 22, 27, 28, 29, 30 and 31, 32, 33, 34;
T. 22, R. 53
Secs 1, 2 and 12;
T. 22, R. 54
Secs 5, 6 and 7.

The area described contains 11,874 acres, more or less, in Nye County.

Exceptions to Closure

a. Hunting with a valid state hunting license and in accordance with the laws; and

b. Law Enforcement personnel in the performance of their duties.

Closure Restrictions

Unless otherwise authorized, within the closure area no person shall:

a. Discharge any firearm, unless specifically exempted by closure order; and

b. Unless specifically addressed by regulations set forth in 43 CFR, the laws and regulations of the State of Nevada and Nye County shall govern the use and possession of firearms. Such state and county laws and regulations which are now or may later be in effect are hereby adopted and made part of this closure.

Definitions

Firearm: Any weapon capable of firing a projectile including but not limited to rifle, shotgun, handgun, BB-gun, pellet gun, etc.

Violations of any terms, conditions, or restrictions contained in this closure order, may subject the violator to citation or arrest, with penalty of fine and imprisonment or both as specified by law.

The Las Vegas Field Office sought comments for 60 days regarding the target shooting closure. The majority of comments came from the Pahrump area and Las Vegas Valley. The majority of comments were against the proposed target shooting closure. The BLM is closing the area to target shooting for public health and safety reasons. Residential areas are being impacted by target shooting and two new housing developments were recently approved in the closure area. Other areas nearby remain open to target shooting.

Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This shooting closure is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. This shooting closure will not have an annual effect of $100 million or more on the economy. It is not intended to affect commercial activity, but it contains rules of conduct for public use of certain public lands. It will not adversely affect, in a material way, the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or Tribal governments or communities. This shooting closure will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. This shooting closure does not materially alter the budgetary effects of entitlements, grants, user fees, or loan programs or the right or obligations of their recipients; nor does it raise novel legal or policy issues. It merely imposes certain rules on target shooting use on a limited portion of public lands in Southern Nevada in order to protect human health, and safety.

National Environmental Policy Act

This shooting closure itself does not constitute a major federal action significantly affecting the quality of the human environment under section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act, (RFA) 5 U.S.C. 601–612, to ensure that Government regulations do not unnecessarily or disproportionately burden small entities. The RFA required a regulatory flexibility analysis if a rule would have a significant economic impact, either detrimental or beneficial on a substantial number of small entities. The shooting closure does not pertain specifically to commercial or governmental entities of any size, but to public recreational use of specific lands. Therefore, BLM has determined under the RFA that these interim supplementary rules would not have significant economic impact on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This shooting closure does not constitute a ''major rule'' as defined by U.S.C. 804(2). The shooting closure merely contains rules of conduct for target shooting use of certain public lands. The shooting closure has no effect on business, commercial, or industrial use of the public lands.

Unfunded Mandates Reform Act

The shooting closure does not impose an unfunded mandate on state, local, or Tribal governments in the aggregate, or the private sector, of more than $100 million per year; nor does it have a significant or unique effect on small governments. The shooting closure does not require anything of state, local, or Tribal governments. Therefore, BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1532 *et seq.*).

Executive Order 12630, Governmental Actions and Interference With Constitutionally Protected Property Rights (Takings)

The shooting closure is not a government action capable of interfering with constitutionally protected property rights. The shooting closure does not address property rights in any form, and does not cause the impairment of any property rights. Therefore, the Department of the Interior has determined that this shooting closure would not cause a taking of private property or require further discussion of takings implications under this Executive Order.

Executive Order 13132 Federalism

The shooting closure 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. The shooting closure affects land in only one state, Nevada. Therefore, BLM has determined that the shooting closure does not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Executive Order 12988, Civil Justice Reform

Under Executive Order 12988, the Office of the Solicitor has determined that the shooting closure will not unduly burden the judicial system and that the requirements of sections 3(a) and 3(b)(2) of the Order are met. The shooting closure includes rules of conduct and prohibited acts, but they are straightforward and not confusing, and their enforcement should not unreasonably burden the United States Magistrate who will try any persons cited for violating them.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, the BLM has found that this shooting closure does not include policies having Tribal implications. The shooting closure does not affect lands held for the benefit of Indians, Aleuts or Eskimos.

Paperwork Reduction Action

The shooting closure does not contain information collection requirements that the Office of Management and Budget must approve under the paperwork reduction Act, 44 U.S.C. 3501 *et seq.* Rules requiring special recreation permits for certain recreational users will involve collection of information contained on BLM Special recreation Permit Form 2930–1.

Authority: 43 CFR 8364.1.

Dated: September 11, 2007.

Juan Palma,

Field Manager, Las Vegas Field Office.

[FR Doc. E7–19698 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–090–07–1220–MV]

Notice of Closure of Public Lands to Off-Highway Vehicle (OHV) Use

AGENCY: Department of Interior, Bureau of Land Management.

ACTION: Notice of closure of 1,871 acres of public land to OHV use.

SUMMARY: Notice is hereby given that effective immediately, the Bureau of Land Management (BLM), Monticello Field Office, is closing 1,871 acres of public lands in Recapture Canyon near Blanding, Utah, to Off-Highway Vehicle (OHV) use. The public lands affected by this closure are in the following:

Salt Lake Meridian; Salt Lake Baseline; Township 37 South, Range 23 East, Section 5, SE ¼ of SW ¼; Section 6, NW ¼ of NE ¼, SW ¼ of NE ¼, NW ¼ of SE ¼, SW ¼ of SE ¼, SE ¼ of SE ¼, NE ¼ of NW ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, SE ¼ of SW ¼, SW ¼ of SW ¼; Section 7, NE ¼ of NE ¼, SE ¼ of NE ¼, NW ¼ of NE ¼, SW ¼ of NE ¼, NE ¼ of SE ¼, SE ¼ of SE ¼, NW ¼ of SE ¼, SW ¼ of SE ¼; Section 8, NE ¼ of NW ¼, SE ¼ of NW ¼, NW ¼ of NW ¼, SW ¼ of NW ¼, NE ¼ of SW ¼, SE ¼ of SW ¼, NW ¼ of SW ¼, SW ¼ of SW ¼; Section 17, NE ¼ of NW ¼, SE ¼ of NW ¼, NW ¼ of NW ¼, SW ¼ of NW ¼, NE ¼ of SW ¼, SE ¼ of SW ¼, NW ¼ of SW ¼, SW ¼ of SW ¼; Section 18, NE ¼ of NE ¼, SE ¼ of NE ¼, NW ¼ of NE ¼, SW ¼ of NE ¼, NE ¼ of SE ¼, SE ¼ of SE ¼, NW ¼ of SE ¼, SW ¼ of SE ¼, NE ¼ of SW ¼, SE ¼ of SW ¼; Section 19, W ½ of NE ¼, E ½ of NE ¼, E ½ of SE ¼, NW ¼ of SE ¼, SW ¼ of SE ¼, NE ¼ of NW ¼, SE ¼ of NW ¼; Section 20, W ½ of NW ¼, NE ¼ of NW ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, NW ¼ of SW ¼, SW ¼ of SW ¼; Section 29, N ½ of NW ¼; Section 30, NE ¼ of NE ¼. Township 36 South, Range 23 East, Section 19, NW ¼ of SE ¼, NE ¼ of SW ¼, NW ¼ of SW ¼, SW ¼ of SW ¼; Section 30, SW ¼ of NE ¼, NW ¼ of SE ¼, SW ¼ of SE ¼, NE ¼ of NW ¼, NW ¼ of NW ¼, SE ¼ of NW ¼, NE ¼ of SW ¼, SE ¼ of SW ¼; Section 31, NW ¼ of NE ¼, SW ¼ of NE ¼, NE ¼ of NW ¼, SE ¼ of NW ¼, NW ¼ of SE ¼, SW ¼ of SE ¼, NE ¼ of SW ¼, SE ¼ of SW ¼. Township 36 South, Range 22 East, Section 24, SE ¼ of SE ¼.

The purpose of the closure is to protect cultural resources that have been adversely impacted, or are at risk of being adversely impacted, by unauthorized trail construction and OHV use. The closure will remain in effect until the considerable adverse effects giving rise to the closure are eliminated and measures are implemented to prevent recurrence of these adverse effects.

FOR FURTHER INFORMATION CONTACT: Nick Sandberg, Acting Field Office Manager, Monticello Field Office, Bureau of Land Management, P.O. Box 7, Monticello, Utah, 84535; (435) 587–1500.

SUPPLEMENTARY INFORMATION: BLM is implementing this action on 1,871 acres of public land in San Juan County, in southeast Utah. BLM's Monticello Field Office has observed and documented considerable adverse effects from unauthorized trail construction and OHV use to cultural resources in this area. Based on this information, BLM's authorized officer has determined that OHV use in this area is causing, or will cause, considerable adverse effects upon cultural resources. Consequently, this area is being closed to OHV use. A map showing the closure area is available for public inspection at the Bureau of Land Management, Monticello Field Office at the above address. OHV use on the remainder of the public lands in San Juan County, Utah administered by BLM will be managed according to existing **Federal Register** orders and the 1991 San Juan Resource Management Plan.

This closure order does not apply to:

(1) Any federal, state or local government law enforcement officer engaged in enforcing this closure order or member of an organized rescue or fire fighting force while in the performance of an official duty.

(2) Any BLM employee, agent, or contractor while in the performance of an official duty, or any person expressly authorized by BLM.

This order shall not be construed as a limitation on BLM's future planning efforts and/or management of OHV use on the public lands. BLM will periodically monitor resource conditions and trends in the closure area and may modify or rescind this order as appropriate.

The authority for this order is 43 CFR 8341.2.

Sherwin N. Sandberg,

Acting Field Office Manager.

[FR Doc. E7–19700 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Colorado: Filing of Plats of Survey

September 28, 2007.

Summary: The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10 a.m., September 28, 2007. All inquiries should be sent to the Colorado State Office (CO–956), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat which includes the field notes, and is the entire record of this remonumentation/rehabilitation of certain corners, in duplicate, in Township 13 South, Range 94 West, Sixth Principal Meridian, Colorado was accepted on June 19, 2007.

The plat which includes the field notes, and is the entire record of this resurvey, in duplicate, in Township 34 North, Range 7 West, New Mexico Principal Meridian, Colorado was accepted on July 20, 2007.

The plat, and field notes, in duplicate, of the dependent resurvey in Township 12 South, Range 68 West, Sixth Principal Meridian, Colorado were accepted on July 26, 2007.

The plat which includes the field notes, and is the entire record of this resurvey, in duplicate, of the dependent resurvey and corrective resurvey in Township 48 North, Range 10 East, New Mexico Principal Meridian, Colorado was accepted on July 31, 2007.

The supplemental plat, in duplicate, of section 7, in Township 3 South, Range 72 West, Sixth Principal Meridian, Colorado, was accepted on August 8, 2007.

The plat which includes the field notes, and is the entire record of this remonumentation of certain corners, in duplicate, in Township 16 South, Range 71 West, Sixth Principal Meridian, Colorado was accepted on September 5, 2007.

The plat, and field notes, in duplicate, of the location and remonumentation of certain original corners in, Township 6 North, Range 97 West, Sixth Principal Meridian, Colorado were accepted on September 25, 2007.

The supplemental plat, in duplicate, of section 11, in Township 3 South, Range 73 West, Sixth Principal Meridian, Colorado, was accepted on September 26, 2007.

Randall M. Zanon,

Chief Cadastral Surveyor for Colorado.

[FR Doc. E7–19708 Filed 10–4–07; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1131–1134 (Preliminary)]

Polyethylene Terephthalate Film, Sheet, and Strip From Brazil, China, Thailand, and the United Arab Emirates

AGENCY: United States International Trade Commission.

ACTION: Institution of antidumping duty investigations and scheduling of preliminary phase investigations.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping duty investigations Nos. 731–TA–1131–1134 (Preliminary) under section 733(a) (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, China, Thailand, and the United Arab Emirates of polyethylene terephthalate film, sheet, and strip provided for in subheading 3920.62.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach preliminary determinations in antidumping duty investigations in 45 days, or in this case by November 13, 2007. The Commission's views are due at Commerce within five business days thereafter, or by November 20, 2007.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

DATES: *Effective Date:* September 28, 2007.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. These investigations are being instituted in response to a petition filed on September 28, 2007, by DuPont Teijin Films, Hopewell, VA; Mitsubishi Polyester Film of America, Greer, SC; SKC America, Inc., Covington, GA; and Toray Plastics (America), Inc., North Kingston, RI.

Participation in the investigations and public service list. Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on October 19, 2007, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jim McClure (202–205–3191) not later than October 16, 2007, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written submissions. As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before October 24, 2007, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI,

they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means, except to the extent permitted by section 201.8 of the Commission's rules, as amended, 67 FR 68036 (November 8, 2002). Even where electronic filing of a document is permitted, certain documents must also be filed in paper form, as specified in II (C) of the Commission's Handbook on Electronic Filing Procedures, 67 FR 68168, 68173 (November 8, 2002).

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.12 of the Commission's rules.

Issued: October 1, 2007.

By order of the Commission.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E7–19683 Filed 10–4–07; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Office of Job Corps; Advisory Committee on Job Corps; Meeting

AGENCY: Office of Job Corps, Department of Labor.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: On August 22, 2006, the Advisory Committee on Job Corps (ACJC) was established in accordance with the provisions of the Workforce Investment Act and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. The Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

DATES: The meeting will be held October 18, 2007 from 9 a.m. to 3 p.m.

ADDRESSES: The Advisory Committee meeting will be held at the Washington Hilton Hotel, 1919 Connecticut Avenue, NW., Washington, DC 20009. Telephone: (202) 483–3000.

FOR FURTHER INFORMATION CONTACT: Crystal Woodward, Office of Job Corps, 202–693–3000 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: On August 22, 2006 the Advisory Committee on Job Corps (71 FR 48949) was established in accordance with the provisions of the Workforce Investment Act, and the Federal Advisory Committee Act. The Committee was established to advance Job Corps' new vision for student achievement aimed at 21st century high-growth employment. This Committee will also evaluate Job Corps program characteristics, including its purpose, goals, and effectiveness, efficiency, and performance measures in order to address the critical issues facing the provision of job training and education to the youth population that it serves. The Committee may provide other advice and recommendations with regard to identifying and overcoming problems, planning program or center development or strengthening relations between Job Corps and agencies, institutions, or groups engaged in related activities.

Agenda: The agenda for the meeting is a continuation of report outs from the Committee's three subcommittees—subcommittee on onboard strength/retention; subcommittee on program performance and evaluation and subcommittee on disabilities.

Public Participation: The meeting will be open to the public. Seating will be available to the public on a first-come first-served basis. Seats will be reserved for the media. Individuals with disabilities should contact the Job Corps official listed above, if special accommodations are needed.

Signed at Washington, DC, this first day of October 2007.

Esther R. Johnson,

National Director, Office of Job Corps.

[FR Doc. E7–19645 Filed 10–4–07; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,707]

Dana Corporation, Torque-Traction Manufacturing, Inc., Including On-Site Leased Workers of Diversco Integrated Services, Inc. and Haas Total Chemical Management, Inc., Cape Girardeau, MO; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), and Section 246 of the Trade Act of 1974 (26 U.S.C. 2813), as amended, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on July 23, 2007, applicable to workers of Dana Corporation, Torque-Traction Manufacturing, Inc., Cape Girardeau, Missouri. The notice was published in the **Federal Register** on August 9, 2007 (72 FR 44865).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of a variety of automotive axle components.

New information shows that leased workers of Diversco Integrated Services, Inc. and Haas Total Chemical Management, Inc. were employed on-site at the Cape Girardeau, Missouri location of Dana Corporation, Torque-Traction Manufacturing, Inc. The Department has determined that the Diversco Integrated Services, Inc. and Haas Total Chemical Management, Inc. workers were sufficiently under the control of Dana Corporation, Torque-Traction Manufacturing, Inc. to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Diversco Integrated Services, Inc., and Haas Total Chemical Management, Inc. working on-site at the Cape Girardeau, Missouri location of the subject firm.

The intent of the Department's certification is to include all workers employed at Dana Corporation, Torque-Traction Manufacturing, Inc., Torque-Traction Manufacturing, Inc. Cape Girardeau, Missouri who were adversely affected by a shift in production to Mexico.

The amended notice applicable to TA–W–61,707 is hereby issued as follows:

All workers of Dana Corporation, Torque-Traction Manufacturing, Inc., including on-site leased workers of Diversco Integrated Services, Inc., and Haas Total Chemical Management, Inc., Cape Girardeau, Missouri, who became totally or partially separated from employment on or after July 30, 2007, through July 23, 2009, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed at Washington, DC, this 1st day of October 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19723 Filed 10–4–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,821]

Hanes Brands Incorporated, Forest City, NC; Notice of Negative Determination Regarding Application for Reconsideration

By application of August 27, 2007, a petitioner requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice was signed on July 25, 2007 and published in the **Federal Register** on August 9, 2007 (72 FR 44866).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a mis-interpretation of facts or of the law justified reconsideration of the decision.

The TAA petition filed on behalf of workers at Hanes Brands Incorporated, Forest City, North Carolina engaged in the production of fleece and Jersey fabric, was denied based on the findings that during the relevant time period, the subject company did not separate or threaten to separate a significant number or proportion of workers, as required by Section 222 of the Trade Act of 1974.

In the request for reconsideration, the petitioner states that there was a significant decrease in employment at the subject firm in the past few years and that the subject firm replaces workers who have left the company by temporary labor.

The company official was contacted to verify employment numbers at the subject firm. When assessing eligibility for TAA, the Department exclusively considers the relevant employment data (for one year prior to the date of the petition and any imminent layoffs) for the facility where the petitioning worker group was employed. The company official confirmed what was established during the initial investigation. Production and salaried worker employment at the subject firm has increased from 2005 to 2006 and from January through June of 2007 when compared with the same period in 2006. Furthermore, the company official clarified that the subject firm does hire temporary workers in the times of increased demand. However, the employment numbers provided by the company official in the initial investigation do not reflect temporary workers.

Should conditions change in the future, the petitioner is encouraged to file a new petition on behalf of the worker group which will encompass an investigative period that will include these changing conditions.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 28th day of September 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19726 Filed 10–4–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,760]

Hutchinson Technology, Eau Claire, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application postmarked August 22, 2007, the petitioner requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to workers and former workers of the subject firm. The denial notice was signed on July 10, 2007 and published in the **Federal Register** on July 26, 2007 (72 FR 41088).

The initial investigation resulted in a negative determination based on the finding that imports of suspension assemblies for disk drives did not contribute importantly to worker separations at the subject firm and no shift of production to a foreign source occurred.

In the request for reconsideration, the petitioner provided additional information regarding the subject firm's customers.

The Department has reviewed the workers' request for reconsideration and the existing record, and has determined that an administrative review is appropriate. Therefore, the Department will conduct further investigation to determine if the workers meet the eligibility requirements of the Trade Act of 1974.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed in Washington, DC, this 28th day of September 2007.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19725 Filed 10–4–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,147]

Information Systems Network, Buckhead, GA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 17, 2007 in response to a worker petition filed by a company official on behalf of workers at Information Systems Network, Buckhead, Georgia.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed at Washington, DC, this 28th day of September 2007.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E7–19722 Filed 10–4–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classification; Under Executive Orders 12073 and 10582

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the annual list of labor surplus areas for Fiscal Year (FY) 2008.

DATES: *Effective Date:* The annual list of labor surplus areas is effective October 1, 2007 for all states, the District of Columbia, and Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Anthony D. Dais, Office of Workforce Investment, Employment and Training Administration, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Telephone: (202) 693–2784 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. These regulations require the Assistant Secretary of Labor for the Employment and Training Administration (ETA) to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations, the Assistant Secretary of Labor is hereby publishing the annual list of labor surplus areas.

In addition, the regulations provide exceptional circumstance criteria for classifying labor surplus areas when catastrophic events, such as natural disasters, plant closings, and contract cancellations are expected to have a long-term impact on labor market area conditions, discounting temporary or seasonal factors.

Eligible Labor Surplus Areas

Procedures for Classifying Labor Surplus Areas

Under the labor surplus area classification methodology, areas are classified as having a surplus of labor based on civil jurisdictions rather than on metropolitan statistical areas or labor market areas. Civil jurisdictions are defined as all cities with a population of at least 25,000 and all counties. Townships with a population of 25,000 or more are also considered as civil jurisdictions in four states (Michigan, New Jersey, New York, and Pennsylvania). In Connecticut, Massachusetts, Puerto Rico, and Rhode Island, where counties have very limited or no government functions, the classifications are done for individual towns.

A civil jurisdiction is classified as a labor surplus area when its average unemployment rate was at least 20 percent above the average unemployment rate for all states (including the District of Columbia and Puerto Rico) during the previous two calendar years. During periods of high national unemployment, the 1.20 percent ratio is disregarded and an area is classified as a labor surplus area if its unemployment rate during the previous two calendar years was 10 percent or more. This 10 percent ''ceiling'' comes into effect whenever the two-year average unemployment rate for all states was 8.3 percent or above (i.e., 8.3 percent times the 1.20 ratio equals 10.0 percent). Similarly, a ''floor'' of 6.0 percent is used during periods of low national unemployment in order for an area to qualify as a labor surplus area. The six percent ''floor'' comes into effect whenever the average unemployment rate for all states during the two-year reference period was 5.0 percent or less.

The Department of Labor issues the labor surplus area list on a fiscal year basis. The list becomes effective each October 1 and remains in effect through the following September 30. The reference period used in preparing the current list was January 2005 through December 2006. The national average unemployment rate during this period was 4.9 percent. Applying the ''floor'' concept, the unemployment rate for an area to qualify as having a surplus of labor for FY 2008 is 6.0 percent. Therefore, areas included on the FY 2008 labor surplus area list had an average unemployment rate of 6.0 percent or above during the reference period. The FY 2008 labor surplus area list can be accessed at *http://www.doleta.gov/programs/lsa.cfm.*

Petition for Exceptional Circumstance Consideration

The classification procedures also provide for the designation of labor surplus areas under exceptional circumstance criteria. These procedures permit the regular classification criteria to be waived when an area experiences a significant increase in unemployment which is not temporary or seasonal and which was not reflected in the data for the two-year reference period. Under the program's exceptional circumstance procedures, labor surplus area classifications can be made for civil jurisdictions, Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas. In order for an area to be classified as a labor surplus area under the exceptional circumstance criteria, the state workforce agency must submit a petition requesting such classification to the Department of Labor's Employment and Training Administration. The current criteria for an exceptional circumstance classification are: an area unemployment rate of at least 6.0 percent for each of the three most recent months; a projected unemployment rate of at least 6.0 percent for each of the next 12 months; and documentation that the exceptional circumstance event has already occurred. The state workforce agency may file petitions on behalf of civil jurisdictions, as well as Metropolitan Statistical Areas or Primary Metropolitan Statistical Areas, as defined by the Office of Management and Budget (OMB). The addresses of state workforce agencies are available in this notice and on the ETA Web site at *http://www.doleta.gov/programs/lsa.cfm.* State workforce agencies may submit petitions in electronic format to *dais.anthony@dol.gov,* or in hard copy to the U.S. Department of Labor, Employment and Training Administration, Office of Workforce Investment, 200 Constitution Avenue, NW., Room S–4231, Washington, DC 20210. Data collection for the petition is approved under OMB 1205–0207, dated November 23, 2004.

State Workforce Agencies

Alabama—Department of Industrial Relations, 649 Monroe St., Room 2204, Montgomery 36131.

Alaska—Department of Labor & Workforce Development, P.O. Box 111149, Juneau 99811–1149.

Arizona—Arizona Department of Economic Security, P.O. Box 6123, Site Code 901A, Phoenix 85005.

Arkansas—Employment Security Department, P.O. Box 2981, Little Rock 72203.

California—Employment Development Department, 800 Capitol Mall, Sacramento 95814.

Colorado—Department of Labor and Employment, 633 17th Street, suite 1200, Denver 80202–3660.

Connecticut—Connecticut Department of Labor, 200 Folly Brook Boulevard, Wethersfield 06109.
Delaware—Delaware Department of Labor, Division of Employment & Training, 4425 North Market Street, Wilmington 19802.
District of Columbia—Department of Employment Services, 64 New York Avenue NE., Suite 3000, Washington 20002.
Florida—Agency for Workforce Innovation, 107 E. Madison Street, Suite 212, Caldwell Building, Tallahassee 32399–4120.
Georgia—Georgia Department of Labor, 148 Andrew Young International Boulevard NE., Suite 600, Atlanta 30303.
Hawaii—Department of Labor and Industrial Relations, 830 Punchbowl St., Room 321, Honolulu 96813.
Idaho—Department of Labor, 317 W. Main Street, Boise 83735.
Illinois—Department of Employment Security, 33 S. State Street, Chicago 60602–2802.
Indiana—Department of Workforce Development, 10 North Senate Avenue, Room SE 302, Indianapolis 46204–2277.
Iowa—Iowa Workforce Development, 1000 East Grand Avenue, Des Moines 50319.
Kansas—Kansas Department of Commerce, 1000 SW. Jackson Street, Suite 100, Topeka 66612–1354.
Kentucky—Department of Workforce Investment, 275 East Main Street, Frankfort 40601.
Louisiana—Department of Labor, P.O. Box 94094, 1001 N. 23rd Street, Baton Rouge 70804.
Maine—Department of Labor, 45 Commerce Drive, P.O. Box 259, Augusta 04332–0259.
Maryland—Department of Labor, Licensing and Regulation, 1100 N. Eutaw Street, Room 616, Baltimore 21201.
Massachusetts—Division of Unemployment Insurance, 19 Staniford Street, 3rd Floor, Boston 02114.
Michigan—Department of Labor & Economic Growth, Ottowa Building—4th Floor, 611 W. Ottawa Street, Lansing 48909.
Minnesota—Department of Employment & Economic Development, 332 Minnesota Street, Suite E 200, St. Paul 55101–1351.
Mississippi—Employment Security Commission, 1235 Echelon Parkway, Jackson 39213.
Missouri—Department of Labor and Industrial Relations, P.O. Box 504, 421 East Dunklin, Jefferson City 65102.
Montana—Department of Labor and Industry, 1327 Lockey, P.O. Box 1728, Helena 59624–1728.
Nebraska—Department of Labor, 550 South 16th Street, Lincoln 68509.
Nevada—Department of Employment, Training and Rehabilitation, 500 E. Third Street, Carson City 89713.
New Hampshire—Department of Employment Security, 32 S. Main Street, Concord 03301.
New Jersey—Department of Labor and Workforce Development, P.O. Box 110, John Fitch Plaza, Trenton 08625–0110.
New Mexico—Department of Labor, 401 Broadway, NE., P.O. Box 1928, Albuquerque 87103.
New York—Department of Labor, State Campus-Building 12, Albany 12240.
North Carolina—Employment Security Commission, P.O. Box 25903, Raleigh 27611.
North Dakota—Job Service North Dakota, 1000 E. Divide Ave., P.O. Box 5507, Bismarck 58506–5507.
Ohio—Department of Jobs and Family Services, 30 E. Broad Street, 32nd Floor, Columbus 43215.
Oklahoma—Employment Security Commission, 2401 North Lincoln Boulevard, Oklahoma City 73105.
Oregon—Oregon Employment Department, 875 Union St., NE., Salem 97311.
Pennsylvania—Department of Labor & Industry, 7th and Forster Streets, L&I Building, 17th Floor, Harrisburg 17121.
Puerto Rico—Department of Labor and Human Resources, 505 Munoz Rivera Avenue, P.O. Box 364452, Hato Rey 00936–4452.
Rhode Island—Department of Labor & Training, 1511 Pontiac Avenue, Cranston 02920.
South Carolina—Employment Security Commission, P.O. Box 995, Columbia 29202.
South Dakota—Department of Labor, 700 Governors Drive, Pierre 57501.
Tennessee—Department of Labor and Workforce Development, 710 James Robertson Parkway, 8th Floor—Andrew Johnson Tower, Nashville 37243 .
Texas—Texas Workforce Commission, 101 East 15th Street, Room 618, Austin 78778.
Utah—Department of Workforce Services, 140 East 300 South, Salt Lake City 84145–0249.
Vermont—Department of Labor, 5 Green Mountain Drive, P.O. Box 488, Montpelier 05601–0488.
Virginia—Virginia Employment Commission, 703 East Main Street, Richmond 23219.
Washington—Employment Security Department, P.O. Box 9046, Olympia 98507–9046.
West Virginia—Bureau of Employment Programs, 112 California Ave., Charleston 25305.
Wisconsin—Department of Workforce Development, 201 East Washington Street, Room A400, Madison 53702.
Wyoming—Department of Employment, 1510 E. Pershing Boulevard, 2nd Floor, Cheyenne 82002.

Signed at Washington, DC, this 1 day of October 2007.

Emily Stover DeRocco,

Assistant Secretary, Employment & Training Administration.

[FR Doc. E7–19707 Filed 10–4–07; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2007–0062]

Standard on Powered Platforms for Building Maintenance; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comment.

SUMMARY: OSHA solicits public comment concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Powered Platforms for Building Maintenance (29 CFR 1910.66).

DATES: Comments must be submitted (postmarked, sent, or received) by December 4, 2007.

ADDRESSES: *Electronically:* You may submit comments and attachments electronically at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Facsimile: If your comments, including attachments, are not longer than 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648.

Mail, hand delivery, express mail, messenger, or courier service: When using this method, you must submit three copies of your comments and attachments to the OSHA Docket Office, OSHA Docket No. OSHA–2007–0062, U.S. Department of Labor, Occupational Safety and Health Administration, Room N–2625, 200 Constitution

Avenue, NW., Washington, DC 20210. Deliveries (hand, express mail, messenger, and courier service) are accepted during the Department of Labor's and Docket Office's normal business hours, 8:15 a.m. to 4:45 p.m., EST.

Instructions: All submissions must include the Agency name and OSHA docket number for the ICR (OSHA–2007–0062). All comments, including any personal information you provide, are placed in the public docket without change, and may be made available online at *http://www.regulations.gov.* For further information on submitting comments see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION.**

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov* or the OSHA Docket Office at the address above. All documents in the docket (including this **Federal Register** notice) are listed in the *http://www.regulations.gov* index; however, some information (e.g., copyrighted material) is not publicly available to read or download through the Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. You may also contact Theda Kenney at the address below to obtain a copy of the ICR.

FOR FURTHER INFORMATION CONTACT: Theda Kenney or Todd Owen, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor, Room N–3609, 200 Constitution Avenue, NW., Washington, DC 20210; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent (i.e., employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (the OSH Act) (29 U.S.C. 651, *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of efforts in obtaining information (29 U.S.C. 657).

Paragraph (e)(9) of the Standard requires that employers develop and implement a written emergency action plan for each type of powered platform operation. The plan must explain the emergency procedures that employees are to follow if they encounter a disruption of the power supply, equipment failure, or other emergency. Prior to operating a powered platform, employers must notify employees how they can inform themselves about alarm systems and emergency escape routes, and emergency procedures that pertain to the building on which they will be working. Employers are to review with each employee those parts of the emergency action plan that the employee must know to ensure their protection during an emergency; these reviews must occur when the employee receives an initial assignment involving a powered platform operation and after the employer revises the emergency action plan.

According to paragraph (f)(5)(i)(C), employers must affix a load rating plate to a conspicuous location on each suspended unit that states the unit's weight and its rated load capacity. Paragraph (f)(5)(ii)(N) requires employers to mount each emergency electric operating device in a secured compartment and label the device with instructions for its use. After installing a suspension wire rope, paragraphs (f)(7)(vi) and (f)(7)(vii) mandate that employers attach a corrosion-resistant tag with specified information to one of the wire rope fastenings if the rope is to remain at one location. In addition, paragraph (f)(7)(viii) requires employers who resocket a wire rope to either stamp specified information on the original tag or put that information on a supplemental tag and attach it to the fastening.

Paragraphs (g)(2)(i) and (g)(2)(ii) require that building owners, at least annually, have a competent person: Inspect the supporting structures of their buildings; inspect and, if necessary, test the components of the powered platforms, including control systems; inspect/test components subject to wear (e.g., wire ropes, bearings, gears, and governors); and certify these inspections and tests. Under paragraph (g)(2)(iii), building owners must maintain and, on request, disclose to OSHA a written certification record of these inspections/tests; this record must include the date of the inspection/test, the signature of the competent person who performed it, and the number/identifier of the building support structure and equipment inspected/tested.

Paragraph (g)(3)(i) mandates that building owners use a competent person to inspect and, if necessary, test each powered platform facility according to the manufacturer's recommendations every 30 days, or prior to use if the work cycle is less than 30 days. Under paragraph (g)(3)(ii), building owners must maintain and, on request, disclose to the Agency a written certification record of these inspections/tests; this record is to include the date of the inspection/test, the signature of the competent person who performed it, and the number/identifier of the powered platform facility inspected/tested.

According to paragraph (g)(5)(iii), building owners must use a competent person to thoroughly inspect suspension wire ropes for a number of specified conditions once a month, or before placing the wire ropes into service if the ropes are inactive for 30 days or longer. Paragraph (g)(5)(v) requires building owners to maintain and, on request, disclose to OSHA a written certification record of these monthly inspections; this record must consist of the date of the inspection, the signature of the competent person who performed it, and the number/identifier of the wire rope inspected.

Paragraph (i)(1)(ii) requires that all employees who operate working platforms be trained in the following: (A) Recognition of, and preventive measures for, the safety hazards associated with their individual work tasks; (B) General recognition and prevention of safety hazards associated with the use of working platforms; (C) Emergency action plan procedures required in paragraph (e)(9) of this section; (D) Work procedures required in paragraph (i)(1)((iv) of this section; (E) Personal fall arrest system inspection, care, use and system performance. Paragraph (1)(1)(iii) requires that training of employees in the operation and inspection of working platforms be performed by a competent person. Paragraph (i)(1)(iv) requires that written work procedures for the operation, safe use and inspection of working platforms be provided for employee training.

Upon completion of this training, paragraph (i)(1)(v) specifies that

employers must prepare a written certification that includes the identity of the employee trained, the signature of the employer or the trainer, and the date the employee completed the training. In addition, the employer must maintain an employee's training certificate for the duration of their employment and, on request, make it available to OSHA.

Emergency action plans allow employers and employees to anticipate, and effectively respond to, emergencies that may arise during powered platform operations. Affixing load rating plates to suspended units, instructions to emergency electric operating devices, and tags to wire rope fasteners prevent workplace accidents by providing information to employers and employees regarding the conditions under which they can safely operate these system components. Requiring building owners to establish and maintain written certification of inspections and testing conducted on the supporting structures of buildings, powered platform systems, and suspension wire ropes provides employers and employees with assurance that they can operate safely from the buildings using equipment that is in safe operating condition.

The training requirements increase employee safety by allowing them to develop the skills and knowledge necessary to effectively operate, use, and inspect powered platforms, recognize and prevent safety hazards associated with platform operation, respond appropriately under emergency conditions, and maintain and use their fall protection arrest system. Training certification permits employers to review the training provided to their employees, thereby ensuring that the employees received the necessary training. In addition, the paperwork requirements specified by the Standard provide the most efficient means for an OSHA compliance officer to determine whether or not employers and building owners are providing the required notification, certification, and training.

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information collection and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend its approval of the information collection requirements contained in the Standard on Powered Platforms for Building Maintenance (29 CFR 1910.66). The Agency is requesting to retain its current burden hour total of 135,656 hours associated with this Standard. The Agency will summarize the comments submitted in response to this notice and will include this summary in the request to OMB.

Type of Review: Extension of a currently approved collection.

Title: Standard on Powered Platforms for Building Maintenance (29 CFR 1910.66).

OMB Number: 1218–0121.

Affected Public: Business or other for-profit.

Number of Respondents: 900.

Frequency: On occasion; initially, monthly, annually.

Average Time Per Response: Varies from 2 minutes (.03 hour) to disclose certification records to 10 hours to inspect/test both a powered platform facility and its suspension wire ropes, and to prepare the certification record.

Total Burden Hours Requested: 135,656.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on This Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) Electronically at *http://www.regulations.gov*, which is the Federal eRulemaking Portal; (2) by facsimile (FAX); or (3) by hard copy. All comments, attachments, and other material must identify the Agency name and the OSHA docket number for the ICR (Docket No. OSHA–2007–0062). You may supplement electronic submissions by uploading document files electronically. If you wish to mail additional materials in reference to an electronic or facsimile submission, you must submit them to the OSHA Docket Office (see the section of this notice titled **ADDRESSES**). The additional materials must clearly identify your electronic comments by your name, date, and the docket number so the Agency can attach them to your comments.

Because of security procedures, the use of regular mail may cause a significant delay in the receipt of comments. For information about security procedures concerning the delivery of materials by hand, express delivery, messenger, or courier service, please contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627). Comments and submissions are posted without change at *http://www.regulations.gov*. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and date of birth. Although all submissions are listed in the *http://www.regulations.gov* index, some information (e.g., copyrighted material) is not publicly available to read or download through this Web site. All submissions, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *http://www.regulations.gov* Web site to submit comments and access the docket is available at the Web site's ''User Tips'' link. Contact the OSHA Docket Office for information about materials not available through the Web site, and for assistance in using the Internet to locate docket submissions.

V. Authority and Signature

Edwin G. Foulke, Jr., Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506, *et seq.*) and Secretary of Labor's Order No. 5–2007 (72 FR 31159).

Signed at Washington, DC, on October 2, 2007.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E7–19695 Filed 10–4–07; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Committee on Equal Opportunities in Science and Engineering (CEOSE); Notice of Meeting—Correction

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the meeting of the Committee on Equal Opportunities in Science and Engineering (1173) on October 16 and 17, 2007 at the National Science Foundation. This notice was published on September 21, 2007, on page 54080, FR Doc. E7–18597.

Below is the corrected agenda. It contains the following changes:

- On October 16 the American Community Survey has been removed

and the Planning for the Minority Technical Organization Summit has been added.

- The Report on the NSF Broadening Participation Plan has been moved to October 17.

Contact Person: Dr. Margaret E.M. Tolbert, Senior Advisor and Executive Liaison, CEOSE, Office of Integrative Activities, National Science Foundation, 4201 Wilson Boulevard Arlington, VA 22230, Telephone: (703) 292–8040, *mtolbert@nsf.gov*.

Agenda

Tuesday, October 16, 2007

Welcome and Opening Statement by the CEOSE Chair

Introductions

Presentations and Discussions:

- Experimental Program to Stimulate Competitive Research
- Broadening Participation Briefings on NSF Advisory Committee Meetings
- Planning for the Minority Technical Organization Summit
- Concurrent Planning Meetings of CEOSE *Ad Hoc* Subcommittees
- Reports on Strategic Planning by CEOSE, Mini-Symposium: Institutions Serving Persons with Disabilities Who Are in STEM Fields, and Broadening Participation Efforts of Several Federal Agencies

Wednesday, October 17, 2007

Opening Statement by the New CEOSE Chair

Presentations/Discussions:

- Report on the NSF Broadening Participation Plan
- Broadening Participation Initiatives of the NSF Directorate for Engineering
- Broadening Participation Initiatives of the Chemistry Division of the NSF Directorate for Mathematical and Physical Sciences
- Discussion Topics Pertinent to the CEOSE Mandate with the NSF Director and Deputy Director

Completion of Unfinished Business

Dated: October 1, 2007.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E7–19656 Filed 10–4–07; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has denied a request by Omaha Public Power District (the licensee), for an amendment to Renewed Facility Operating License No. DPR–40 issued to the licensee for operation of the Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Notice of Consideration of Issuance of this amendment was published in the **Federal Register** on April 26, 2005 (70 FR 21459).

By letter dated March 31, 2005, the licensee requested an amendment to revise the Renewed Facility Operating License and Technical Specifications (TSs) to increase the license core power. Fort Calhoun Station, Unit No. 1, is currently licensed for a rated thermal power of 1500 megawatts thermal (MWt). Through the use of more accurate feedwater flow measurement equipment, approval was sought to increase this core power by 1.5 percent to 1522 MWt. The power uprate would be based on the use of the CROSSFLOW™ system for determination of main feedwater flow and the associated determination of reactor power through the performance of the power calorimetric currently required by the Fort Calhoun Station TSs.

The OPPD license amendment request to increase core power is based on Westinghouse topical report CENPD–397–P–A, ''Improved Flow Measurement Accuracy Using Crossflow Ultrasonic Flow Measurement Technology,'' for new and future uses of the CROSSFLOW ultrasonic flow meter. The topical report provided several assessments with respect to that topical report to justify the power increase. Because the licensee's license amendment request is based on CENPD–397–P–A and the NRC staff has suspended its approval, as explained in the NRC staff's letter to Westinghouse dated September 26, 2007, of the use of this topical report in license amendment requests, the NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by a letter dated September 27, 2007.

By 30 days from the date of publication of this notice in the **Federal Register**, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene pursuant to the requirements of 10 CFR 2.309.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A request for hearing or petition for leave to intervene may also be transmitted directly to the Secretary of the Commission by means of facsimile transmission to 301–415–1101 or by e-mail to *hearingdocket@nrc.gov.* A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Copies of petitions may also be transmitted directly to the Office of the General Counsel by means of facsimile transmission to 301–415–3725 or by e-mail to *OGCMailCenter@nrc.gov.* A copy of any petitions should also be sent to James R. Curtiss, Esq., Winston & Strawn, 1700 K Street, NW., Washington, DC 20006–3817, Senior Counsel for the licensee.

For further details with respect to this action, see (1) The application for amendment dated March 31, 2005, and (2) the Commission's letter to the licensee dated September 27, 2007.

Documents may be examined, and/or copied for a fee, at the NRC's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and will be accessible electronically through the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room link at the NRC Web site *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing 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@nrc.gov.*

Dated at Rockville, Maryland, this 27th day of September 2007.

For the Nuclear Regulatory Commission.

Timothy J. McGinty,

Acting Director, Division of Operating Reactor Licensing Office of Nuclear Reactor Regulation.

[FR Doc. 07–4939 Filed 10–4–07; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030–30292]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Amendment to Byproduct, Materials License No. 06–13053–04, for Termination of the License and Unrestricted Release of Bayer Pharmaceuticals Corporation's Facility in West Haven, CT

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 610–337–5393; or by e-mail: *drl1@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. 06–13053–04. This license is held by Bayer Pharmaceuticals Corporation (the Licensee), for its Bayer Pharmaceuticals Corporation Facility located at 400 Morgan Lane in West Haven, Connecticut (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 April 17, 2007, and responded to an information request by letters dated July 9, 2007, and August 6, 2007. 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 April 17, 2007, license amendment request, resulting in release of the Facility for unrestricted use and the termination of its NRC materials license. License No. 06–13053–04 was issued on December 2, 1987, pursuant to 10 CFR part 30, and has been amended periodically since that time. Licensed activities at the Facility were also conducted under the following licenses during the dates indicated: License No. 06–13053–01 (December 17, 1968 through July 15, 1993); License No. 06–20589–01 (April 20, 1983 through February 25, 1988); and License No. 06–20972–01 (March 13, 1986 through February 5, 1988). These licenses were transferred to License No. 06–13053–04 and terminated. These licenses authorized the Licensee to use unsealed byproduct material for purposes of conducting research and development activities typically on laboratory bench tops and in hoods.

The Facility is situated on 137 acres and consists of office space and laboratories. The Facility is located in a mixed commercial industrial and residential area. Use of licensed materials was confined to five buildings within 30 acres and totaling 350,000 square feet of building space.

In January 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, carbon 14, chlorine 36, calcium 45, iodine 129, and gadolinium 153. 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 January 3 through February 2, 2007. The final status survey report was attached to the Licensee's amendment request dated April 17, 2007, and letter dated July 9, 2007. 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 Connecticut Department of Environmental Protection for review on August 24, 2007. On September 18, 2007, State of Connecticut, Department of Environmental Protection 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 Document 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. Bayer Pharmaceuticals Corporation Termination Request Letter dated April 17, 2007 [ML071150450];
6. Bayer Pharmaceuticals Corporation Deficiency Response Letter dated July 9, 2007 [ML072180445]; and
7. Bayer Pharmaceuticals Corporation Deficiency Response Letter dated August 6, 2007 [ML072210116].

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 28th day of September 2007.

For the Nuclear Regulatory Commission.

James P. Dwyer,

Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.

[FR Doc. E7–19688 Filed 10–4–07; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on the Medical Uses of Isotopes: Meeting Notice

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: NRC will convene a meeting of the Advisory Committee on the Medical Uses of Isotopes (ACMUI) October 22–23, 2007. A sample of agenda items to be discussed during the public session includes: (1) NARM legislation, transition plan, and guidance; (2) status of specialty board applications for NRC recognition; (3) Y–90 microspheres guidance; (4) training and experience implementation issues; (4) recent security activities; (5) potential changes to 10 CFR Part 35; (6) licensing guidance for the Leksell Gamma-Knife® Perfexion™; and (7) review of recent medical events. A copy of the agenda will be available at *http://www.nrc.gov/reading-rm/doc-collections/acmui/agenda* or by e-mailing Ms. Ashley M. Tull at the contact information below.

Purpose: Discuss issues related to 10 CFR Part 35 Medical Use of Byproduct Material.

Date and Time for Closed Sessions: October 22, 2007, from 8 a.m. to 10 a.m. This session will be closed so that NRC staff and ACMUI can discuss Committee business, which may include: Ethics training, personnel information, and other internal NRC issues.

Date and Time for Open Sessions: October 22, 2007, from 10 a.m. to 5 p.m. and October 23, 2007, from 8 a.m. to 5 p.m.

Address for Public Meeting: U.S. Nuclear Regulatory Commission, Two White Flint North Building, Room T2B3, 11545 Rockville Pike, Rockville, Maryland 20852.

Public Participation: Any member of the public who wishes to participate in

the meeting should contact Ms. Tull using the information below.

Contact Information: Ashley M. Tull, e-mail: *amt1@nrc.gov,* telephone: (301) 415–5294 or (918) 488–0552.

Conduct of the Meeting

Leon S. Malmud, M.D., will chair the meeting. Dr. Malmud will conduct the meeting in a manner that will facilitate the orderly conduct of business. The following procedures apply to public participation in the meeting:

1. Persons who wish to provide a written statement should submit an electronic copy to Ms. Tull at the contact information listed above. All submittals must be received by October 17, 2007, and must pertain to the topic on the agenda for the meeting.

2. Questions and comments from members of the public will be permitted during the meeting, at the discretion of the Chairman.

3. The transcript and written comments will be available for inspection on NRC's web site (*http://www.nrc.gov*) and at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852–2738, telephone (800) 397–4209, on or about January 23, 2008. Minutes of the meeting will be available on or about December 7, 2007.

4. Persons who require special services, such as those for the hearing impaired, should notify Ms. Tull of their planned attendance.

This meeting will be held in accordance with the Atomic Energy Act of 1954, as amended (primarily Section 161a); the Federal Advisory Committee Act (5 U.S.C. App); and the Commission's regulations in Title 10, *U.S. Code of Federal Regulations,* part 7.

Dated at Rockville, Maryland this 1st day of October 2007.

J. Samuel Walker,

Acting Secretary of the Commission.

[FR Doc. E7–19685 Filed 10–4–07; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Proposed Collection; Comment Request

Summary: In accordance with the requirement of Section 3506 (c)(2)(A) of the Paperwork Reduction Act of 1995 which provides opportunity for public comment on new or revised data collections, the Railroad Retirement Board (RRB) will publish periodic summaries of proposed data collections.

Comments are invited on: (a) Whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the RRB's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden related to the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Title and purpose of information collection: Report of Medicaid State Office on Beneficiary's Buy-In Status; OMB 3220–0185.

Under Section 7(d) of the Railroad Retirement Act, the RRB administers the Medicare program for persons covered by the railroad retirement system. Under Section 1843 of the Social Security Act, states may enter into ''buy-in agreements'' with the Secretary of Health and Human Services for the purpose of enrolling certain groups of low-income individuals under the Medicare medical insurance (Part B) program and paying the premiums for their insurance coverage. Generally, these individuals are categorically needy under Medicaid and meet the eligibility requirements for Medicare Part B. States can also include in their buy-in agreements, individuals who are eligible for medical assistance only. The RRB uses Form RL–380–F, Report to State Medicaid Office, to obtain information needed to determine if certain railroad beneficiaries are entitled to receive Supplementary Medical Insurance program coverage under a state buy-in agreement in states in which they reside. Completion of Form RL–380-F is voluntary. One response is received from each respondent.

At the request of various state Medicaid offices, the RRB proposes revisions to Form RL–380-F to add items requesting a beneficiary's Part A and Part B effective date. The new information will assist them in locating pertinent records of the subject beneficiary. Other minor non-burden impacting editorial changes are proposed. The estimated completion time for Form RL–380-F remains unchanged at 10 minutes per response. The RRB estimates that approximately 600 responses are received annually.

Additional Information or Comments: To request more information or to obtain a copy of the information collection justification, forms, and/or supporting material, please call the RRB Clearance Officer at (312) 751–3363 or send an e-mail request to *Charles.Mierzwa@RRB.GOV.*

Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 or send an e-mail to *Ronald.Hodapp@RRB.GOV.* Written comments should be received within 60 days of this notice.

Charles Mierzwa,

Clearance Officer.

[FR Doc. E7–19709 Filed 10–4–07; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56559; File No. SR–CBOE–2007–103]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change To Trade Shares of the iShares FTSE/Xinhua China 25 Index Fund Pursuant to Unlisted Trading Privileges

September 27, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 6, 2007, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. This order provides notice of the proposed rule change and approves the proposed rule change on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade on the CBOE Stock Exchange (''CBSX'') shares of the iShares FTSE/Xinhua China 25 Index Fund (''Fund'') pursuant to unlisted trading privileges (''UTP''). The text of the proposed rule change is available at CBOE, the Commission's Public Reference Room, and *http://www.cboe.org/legal.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to trade shares of the Fund on CBSX pursuant to UTP. The Fund seeks investment results that correspond generally to the price and yield performance, before fees and expenses, of the FTSE/Xinhua China 25 Index (''Index''). The Index consists of 25 of the largest and most liquid companies in the Chinese equity market that are available to international investors. The Commission previously approved the original listing and trading of the Fund shares on the New York Stock Exchange LLC (''NYSE'').[3] Subsequently, the Commission approved the listing and trading of the Fund shares on the Pacific Exchange, Inc.,[4] which is now known as NYSE Arca, Inc. (''NYSE Arca''), and the trading of the Fund shares pursuant to UTP on the American Stock Exchange LLC (''Amex'').[5]

The Exchange deems the Fund shares to be equity securities, thus rendering trading in the Fund shares subject to the Exchange's existing rules governing the trading of equity securities. The trading hours for the Fund shares on CBSX will be from 8:15 a.m. until 3:15 p.m. Central Time or 9:15 a.m until 4:15 p.m. Eastern Time (''ET'').

Quotations for and last-sale information regarding the Fund shares are disseminated through the Consolidated Quotation System. The value of the Index is updated intraday on a real-time basis as individual component securities of the Index change in price. The intraday value of the Index is disseminated at least every 60 seconds from 8:15 p.m. until 3 a.m. ET.[6] In addition, a value for the Index is disseminated once each trading day, based on closing prices in the relevant exchange market.[7]

To provide updated information relating to the Fund for use by investors, professionals, and persons wishing to create or redeem the shares, NYSE disseminates through the facilities of the Consolidated Tape Association the Intraday Indicative Value (''IIV'') for the Fund, as calculated by a securities information provider. The IIV is disseminated on a per-share basis every 15 seconds during regular NYSE trading hours.[8]

In connection with the trading of the Fund shares, the Exchange will inform members and member organizations in an Information Circular of the special characteristics and risks associated with trading the Fund shares, including how they are created and redeemed, the prospectus or product description delivery requirements applicable to the Fund, applicable Exchange rules, how information about the value of the underlying Index is disseminated, and trading information. In addition, before a member recommends a transaction in the Fund, the member must determine that the Fund is suitable for the customer, as required by CBOE Rule 53.6.

The Exchange intends to utilize its existing surveillance procedures applicable to exchange-traded funds to monitor trading in the Fund shares. CBOE represents that these procedures are adequate to monitor Exchange trading of the Fund shares.

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Fund shares. Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Fund shares inadvisable. These may include: (1) The extent to which trading is not occurring in the securities comprising the Index and/or the financial instruments of the Fund; (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present; or (3) trading of the Fund shares has been halted or suspended in the primary market.[9] In addition, trading in the Fund shares will be subject to trading halts caused by extraordinary market volatility pursuant to the Exchange's ''circuit breaker'' rule.[10] UTP trading in the Fund is also governed by the trading halts provisions of CBOE Rule 52.3 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying Index.

2. Statutory Basis

CBOE believes that the proposed rule change is consistent with the Act, the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b) of the Act.[11] Specifically, CBOE believes that the proposed rule change is consistent with the Section 6(b)(5) of the Act[12] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. In addition, CBOE believes that the proposal is consistent with Rule 12f–5 under the Act[13] because it deems the Fund shares to be equity securities, thus rendering trading in the Fund shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. 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

[3] *See* Securities Exchange Act Release No. 50505 (October 8, 2004), 69 FR 61280 (October 15, 2004) (SR–NYSE–2004–55).

[4] *See* Securities Exchange Act Release No. 50799 (December 6, 2004), 69 FR 72242 (December 13, 2004) (SR–PCX–2004–99).

[5] *See* Securities Exchange Act Release No. 50800 (December 6, 2004), 69 FR 72228 (December 13, 2004) (SR–Amex–2004–85).

[6] E-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Rebekah Goshorn, Division of Market Regulation, Commission, dated September 19, 2007 (correcting the timing of the dissemination of the intraday value of the Index).

[7] *See supra* note 4, 69 FR at 72245 (providing a more detailed discussion of the calculation and dissemination of the Index value).

[8] *See supra* note 4, 69 FR at 72246.

[9] *See* CBOE Rule 6.3(a). E-mail from Angelo Evangelou, Assistant General Counsel, CBOE, to Rebekah Goshorn, Division of Market Regulation, Commission, dated September 27, 2007 (clarification on trading halts).

[10] *See* CBOE Rule 6.3B.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(5).

[13] 17 CFR 240.12f–5.

Number SR–CBOE–2007–103 on the subject line.

Paper Comments

• Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2007–103. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2007–103 and should be submitted on or before October 26, 2007.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[14] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[15] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that this proposal should benefit investors by increasing competition among markets that trade shares of the Fund.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,[16] which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.[17] The Commission notes that it previously approved the listing and trading of the shares on NYSE and NYSE Arca [18] and trading of the Fund shares pursuant to UTP on Amex.[19] The Commission also finds that the proposal is consistent with Rule 12f–5 under the Act,[20] which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Fund shares to be equity securities, thus rendering trading in such shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(1)(C)(iii) of the Act,[21] which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Fund shares are disseminated through the Consolidated Quotation System. The value of the Index is disseminated every 60 seconds from 8:15 p.m. until 3 a.m. ET. In addition, NYSE disseminates through the facilities of the Consolidated Tape Association the IIV for the Fund on a per-share basis every 15 seconds during regular NYSE trading hours.

Moreover, the proposal appears reasonably designed to halt trading in the Fund shares when transparency is impaired. UTP trading in the Fund is also governed by the trading halts provisions of CBOE Rule 52.3 relating to temporary interruptions in the calculation or wide dissemination of the IIV or the value of the underlying Index. If the listing market halts trading in the shares, or the IIV or the Index value is not being calculated or disseminated as required, the Exchange would halt trading in the shares.

The Commission notes that, if the Fund shares should be delisted by the listing exchange, the Exchange would no longer have authority to trade the shares pursuant to this order.

In support of this proposal, the Exchange has made the following representations:

(1) The Exchange represents that its surveillance procedures are adequate to monitor Exchange trading of the Fund shares.

(2) The Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Fund shares, including suitability recommendation requirements.

(3) The Exchange will require its members to deliver a prospectus or product description to investors purchasing shares of the Fund and will note this prospectus delivery requirement in the Information Circular.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposal before the thirtieth day after the publication of notice thereof in the **Federal Register**. As noted above, the Commission previously found that the listing and trading of the Fund shares on NYSE and NYSE Arca is consistent with the Act.[22] In addition, the Commission notes that it previously approved the trading of the Fund shares on Amex pursuant to UTP.[23] The Commission presently is not aware of any regulatory issue that should cause it to revisit these findings or would preclude the trading of the Fund shares on the Exchange pursuant to UTP. Therefore, accelerating approval of this proposal should benefit investors by creating, without undue delay, additional competition in the market for such shares.

[14] In approving this rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 15 U.S.C. 78f(b)(5).

[16] 15 U.S.C. 78*l*(f).

[17] Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange ''extends UTP.'' When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

[18] *See supra* notes 3 and 4.

[19] *See supra* note 5.

[20] 17 CFR 240.12f–5.

[21] 15 U.S.C. 78k–1(a)(1)(C)(iii).

[22] *See supra* notes 3 and 4.

[23] *See supra* note 5.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [24] that the proposed rule change (SR–CBOE–2007–103), be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Nancy M. Morris,

Secretary.

[FR Doc. E7–19670 Filed 10–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56585; File No. SR–FINRA–2007–008]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing of Proposed Rule Change Relating to Amending the Definition of Office of Supervisory Jurisdiction in NASD Rule 3010(g)(1) To Exempt Locations That Solely Conduct Final Approval of Research Reports

October 1, 2007

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 30, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a the National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend the definition of Office of Supervisory Jurisdiction (''OSJ'') in NASD Rule 3010(g)(1) to exempt locations that solely conduct final approval of research reports. The text of the proposed rule change is available at FINRA, the Commission's Public Reference Room, and *http://www.finra.org.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

NASD Rule 3010(g)(1) defines OSJ to mean any office of a member at which any one or more of the following functions takes place: (a) Order execution and/or market making; (b) structuring of public offerings or private placements; (c) maintaining custody of customers' funds and/or securities; (d) final acceptance (approval) of new accounts on behalf of the member; (e) review and endorsement of customer orders, pursuant to paragraph (d) above; (f) final approval of advertising or sales literature for use by persons associated with the member, pursuant to NASD Rule 2210(b)(1); or (g) responsibility for supervising the activities of persons associated with the member at one or more other branch offices of the member.

In July 2006, amendments to the branch office definition under NASD Rule 3010(g)(2) went into effect (''Uniform Branch Office Definition'').[3] The Uniform Branch Office Definition was developed collectively by FINRA (then known as NASD), the New York Stock Exchange (''NYSE'') and the North American Securities Administrators Association (''NASAA'') to establish a broad national standard. In conjunction with the new Uniform Branch Office Definition, a new Form BR was introduced to provide a more efficient, standardized method for members to register branch office locations.

Although FINRA (then NASD) and NYSE sought to adopt consistent interpretations of the new Uniform Branch Office Definition, there are nevertheless different classifications of a location where final approval by a principal of research reports occurs. Under NASD rules, final review of advertising or sales literature (which includes research reports) makes a location an OSJ, and therefore a branch office. The NYSE rules, however, do not include an OSJ definition,[4] and NYSE stated in *Information Memo* 06–13 that it deems a location where a member stations a Series 16 qualified supervisory analyst solely to review research reports as a ''non-sales location,'' which is an express exclusion from the Uniform Branch Office Definition.[5] Because of the definition of OSJ set forth in NASD Rule 3010(g)(1), FINRA cannot classify such locations as ''non-sales locations'' under NASD rules.[6]

This inconsistency led an NYSE/NASD rule harmonization industry committee to recommend that FINRA consider eliminating the OSJ definition to prevent such locations from being treated differently under NASD and NYSE rules. As a result, FINRA published *Notice to Members* 07–12 in February 2007 seeking comment on a rule harmonization proposal to eliminate the definition of OSJ from the NASD manual. In its place, FINRA proposed to adopt express definitions for the terms ''supervisory branch office,'' ''limited supervisory branch office,'' ''non-supervisory branch office,'' and ''non-branch location.'' [7]

FINRA received twenty comments on the original proposal set forth in its *Notice to Members* 07–12. After reviewing the commenters' concerns, FINRA has determined not to move forward with the broad proposal to eliminate the definition of OSJ and adopt new classifications for office locations. Instead, consistent with many commenters' recommendation, FINRA is proposing a more streamlined proposal to amend the definition of OSJ in the NASD rules to exclude locations that solely conduct final approval of research reports, thereby enabling FINRA to deem such locations to be

[24] 15 U.S.C. 78s(b)(2).

[25] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 52403 (September 9, 2005), 70 FR 54782 (September 16, 2005) (SR–NASD–2003–104) (order approving Uniform Branch Office Definition).

[4] *See* NYSE Rule 342 (Offices—Approval, Supervision and Control), which contains the Uniform Branch Office Definition.

[5] *See* NYSE *Information Memo* 06–13 (March 22, 2006) (Joint Interpretive Guidance from NYSE and NASD Relating to the Uniform Branch Office Definition, Question and Answer #5).

[6] The FINRA rulebook currently consists of both NASD rules and certain NYSE rules that FINRA has incorporated, including NYSE Rule 342 (Offices—Approval, Supervision and Control). The incorporated NYSE rules apply solely to members of FINRA that are also members of NYSE on or after July 30, 2007, referred to as ''Dual Members.'' Dual Members also must comply with NASD rules.

[7] FINRA also sought comment in *Notice to Members* 07–12 on a proposal to amend NASD Rule 2711 to define the term ''initial public offering'' consistent with the definition of such term in NYSE Rule 472.

''non-sales locations.'' FINRA believes that the limited nature of such activity does not necessitate supervision of such a location as an OSJ, and that the revised proposal will further accomplish the goals of harmonization while minimizing the potential burdens on firms.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be the date of publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change is consistent with the provisions of the Act noted above in that it will exempt locations that solely conduct final approval of research reports from being designated as OSJs because the limited nature of such activity does not necessitate supervision as an OSJ. Moreover, this would harmonize the designation of such locations under NASD rules with NYSE rules, which permit such locations to be deemed ''non-sales locations'' under the Uniform Branch Office Definition..

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

As discussed above, a broader version of the proposed rule change was published for comment in *Notice to Members* 07–12 (February 2007). Twenty comment letters were received in response. All commenters generally favored consolidation efforts that foster rule simplification and efforts to harmonize the application of the Uniform Branch Office Definition. However, of the 20 comment letters received with respect to the proposal in February of 2007, two supported the specific proposal to eliminate the definition of OSJ, and 18 generally were opposed to the proposal or requested additional exclusions from the Uniform Branch Office Definition.

One commenter supporting the proposed amendments to NASD Rule 3010(g) stated that it viewed the proposed amendments as a critical step in reducing regulatory inefficiency and unnecessary cost burdens to member firms. Moreover, the commenter stated that the proposed OSJ amendments were necessary to realize fully the underlying objectives of the Uniform Branch Office Definition. A second commenter supporting the proposal noted that locations where final approval of research reports occurs do not require the level of oversight of an OSJ.

Those commenters opposing the OSJ proposal raised several key concerns: (1) Commenters were concerned that firms had devoted substantial resources and time in reclassifying locations and registering branch offices pursuant to the adoption of the Uniform Branch Office Definition and that subsequent reclassifications would be unduly burdensome; (2) commenters noted that the proposal would cause widespread and significant changes to the supervisory systems of firms by requiring new forms, training, updating of procedure manuals and other materials, etc.; (3) commenters, including NASAA, recommended that the two conflicting provisions of the NASD and NYSE rules be harmonized in a less cumbersome manner by amending the OSJ definition to exclude locations where final review of research reports occurs; and (4) commenters were concerned about inconsistency with the states that follow NASD's OSJ terminology. Some commenters also urged FINRA to consider additional exclusions from the Uniform Branch Office Definition, for example, for personal residences of certain mutual fund distributors that also are used to supervise the activities of wholesalers (associated persons) at another location.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–FINRA–2007–008 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–FINRA–2007–008. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2007–008 and should be submitted on or before October 26, 2007.

[8] 15 U.S.C. 78o–3(b)(6).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E7–19673 Filed 10–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56581; File No. SR–NASDAQ–2007–068]

Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend the Limited Liability Company Agreement of The NASDAQ Stock Market, LLC

September 28, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on July 20, 2007, The NASDAQ Stock Market, LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by Nasdaq. On September 26, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend its Limited Liability Company Agreement (''LLC Agreement''). Nasdaq will implement the proposed rule change immediately upon approval by the Commission. The text of the proposed rule change is available at Nasdaq's Web site *http://nasdaq.complinet.com,* at Nasdaq, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq is modifying its LLC Agreement (including its By-Laws, which are a part of the LLC Agreement) to adopt a range of enhancements and clarifications. First, Nasdaq is amending the procedures for election of Member Representative Directors. Section 6(b)(3) of the Act[3] requires a national securities exchange to establish rules that assure a fair representation of its members in the selection of its directors. To address this requirement, the LLC Agreement provides that twenty percent of Nasdaq's directors are selected through direct election by Nasdaq's members. Under the current By-Laws, a slate of candidates is nominated by a Member Nominating Committee composed of registered representatives of Nasdaq members. In addition, there is a petition process through which Nasdaq members may nominate alternate candidates. The Nasdaq Board establishes a Record Date[4] and an Election Date,[5] and provides notice of both dates through a communication to members that also includes the List of Candidates[6] developed through the nomination and petition process. After receiving the notice, firms that were Nasdaq members on the Record Date are entitled to cast ballots at any time prior to 5 pm on the Election Date. The candidates receiving the most votes are then elected to the open positions.

Nasdaq held its first election of Member Representative Directors in January 2007, and although the election concluded successfully, Nasdaq faced some difficulty in educating members about the purpose of the election and the desirability of participating. Notably, many members were not interested in voting and therefore Nasdaq had to retain the services of a proxy solicitation firm to obtain a quorum, and only obtained the quorum in the days immediately prior to the Election Date. In reviewing the experience of the first election process, Nasdaq has noted that the New York Stock Exchange, LLC, the primary U.S. exchange subsidiary of NYSE Euronext, has a similar nomination process for a percentage of its directors, but conducts a direct member election only if there is a contested election (*i.e.*, if there is more than one candidate for a particular Board seat).[7] Accordingly, Nasdaq proposes to adopt a comparable limit on the use of the direct member election.

As amended, the election process would work as follows: On an annual basis, the Member Nominating Committee would nominate a slate of candidates. Although the Member Nominating Committee would have authority to nominate a number of candidates in excess of the number of Board seats up for election, the Member Nominating Committee would likely nominate a number of candidates equal to the number of seats. At about the same time, the Nasdaq Board would determine the Election Date and the Record Date.[8] Promptly after selection of the Election Date, Nasdaq would distribute (via regular mail and/or e-mail) and post on its Web site a Notice to Members (i) announcing the Election Date and the List of Candidates, and (ii) describing the procedures for Nasdaq Members to nominate candidates for election at the next annual meeting. The process and timeframes for members to nominate additional candidates for election would be the same as provided under the current By-Laws. If, by the date on which a Nasdaq member may no longer submit a timely nomination, there is only one candidate for each Member Representative Director seat, the Member Representative Directors would be elected by The Nasdaq Stock Market, Inc., Nasdaq's sole ''member'' within the meaning of the Delaware Limited Liability Company Act, directly from the list of candidates nominated by the Member Nominating Committee. If, however, there is more than one candidate for a seat (*i.e.*, if there is a contested election), the full list of candidates will be submitted for a member vote, just as it is under the

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78f(b)(3).

[4] Article I(aa) of Nasdaq's current By-Laws defines ''Record Date'' as a date selected by the Board for the purpose of determining the Nasdaq Members entitled to vote for the election of Member Representative Directors on an Election Date.

[5] Article I(j) of Nasdaq's current By-Laws defines ''Election Date'' as a date selected by the Board for the election of Member Representative Directors.

[6] Article I(o) of Nasdaq's current By-Laws defines ''List of Candidates'' as the list of candidates for Member Representative Director positions to be elected by Nasdaq Members on an Election Date.

[7] *See* Second Amended and Restated Operating Agreement of New York Stock Exchange LLC at *http://www.nyse.com/pdfs/SecondAmendedandRestatedOperatingAgreementofNewYorkStockExchangeLLC.pdf.*

[8] As amended, Article I(aa) of Nasdaq's By-Laws would define ''Record Date'' as a date selected by the Board for the purpose of determining the Nasdaq Members entitled to vote for the election of Member Representative Directors on an Election Date in the event of a Contested Election.

current By-Laws. These proposed changes will be effected through amendments to Articles I and II of the By-Laws of the LLC Agreement.[9] Nasdaq is also amending Article II, Section 2 to provide that in the event of a contested election, votes may be cast until 11:59 p.m. (rather than 5 p.m.) on the Election Date.

Second, Nasdaq proposes to amend the LLC Agreement to remove out-of-date references to its initial directors and officers and to its transition to commencing operations as a national securities exchange. Specifically, Nasdaq is amending Sections 9(a) and 10 of the LLC Agreement and Article I of the By-Laws to remove references to initial officers and directors; deleting Schedules C and D of the LLC Agreement, which listed the initial officers and directors; and deleting Section 29, which governed the transitional period between the formation of Nasdaq and its commencing operations as a national securities exchange.[10] Nasdaq also proposes to amend Section 9(a) of the LLC Agreement to clarify that at least 20% of Nasdaq's directors shall be Member Representative Directors. The change serves to clarify that in a circumstance where the Board opted to reduce its size after the resignation of a Director other than a Member Representative Director, it would not be required to remove previously elected Member Representative Directors in order to maintain the percentage of Member Representative Directors at precisely 20%.

Third, Nasdaq proposes to amend Section 27 of the LLC Agreement and Article VIII, Section 1 of the By-Laws in the LLC Agreement to provide that amendments to the LLC Agreement (including the By-Laws) must be approved by the Nasdaq Board and also reflected in a written agreement executed by The Nasdaq Stock Market, Inc., as sole member of Nasdaq within the meaning of the Delaware Limited Liability Company Act. The former requirement reflects the LLC Agreement's status as a rule of Nasdaq, while the latter requirement reflects Delaware law.[11]

Fourth, Nasdaq proposes to amend the compositional requirements of the Quality of Markets Committee (the ''QMC'') in Article III, Section 6 of the By-Laws to provide that the number of Non-Industry members of the QMC must equal or exceed the number of Industry members. The current By-Law requires that QMC must be equally balanced between Industry and Non-Industry members. This change is consistent with certain undertakings made by Nasdaq with regard to the composition of this committee.[12]

Fifth, Nasdaq proposes to amend the compositional requirements of the Arbitration and Mediation Committee (the ''Arbitration Committee'') in Article III, Section 6 of the By-Laws to provide that the size of the committee shall be between 3 and 10 members (rather than 10 to 25 members, as currently required). Because NASD manages an arbitration and mediation program for use of Nasdaq members pursuant to a regulatory services agreement between Nasdaq and NASD, Nasdaq has appointed the members of NASD's Arbitration and Mediation Committee also to serve on Nasdaq's committee. Because the role of Nasdaq's committee is minimized by the overlap between Nasdaq's and NASD's arbitration rules and the role of NASD in administering the program, Nasdaq believes that a smaller Nasdaq committee would be more appropriate. Nasdaq would still expect to designate members of the NASD committee for service on its committee, and the committee would continue to comply with the balance requirements in the current By-Laws.[13]

Sixth, Nasdaq proposes to amend the compositional requirements of the Nasdaq Review Council (the ''NRC'') in Article VI of the By-Laws to provide that the size of the NRC shall be between 8 and 12 members (rather than 12 to 14). The NRC is an appellate body empowered to review disciplinary decisions under Nasdaq rules. Because Nasdaq and NASD are parties to an agreement under Rule 17d–2 of the Act[14] that allocates responsibility to NASD for enforcing a wide range of common rules with respect to common members, the caseload of the NRC is likely to be considerably lower than that of the NASD's comparable committee, the National Adjudicatory Council. Accordingly, Nasdaq believes that a smaller size for the NRC will be consistent with the efficient discharge of its responsibilities. Nasdaq is also proposing an amendment to allow NRC members to serve two consecutive three-year terms. A comparable provision is in effect for Nasdaq's other appellate review body, the Nasdaq Listing and Hearing Review Council.

Seventh, pursuant to requests made by Commission staff at the end of Nasdaq's exchange registration process, Nasdaq is amending Article IX, Section 1 of the By-Laws (i) to include an explicit reference to the authority of the Nasdaq Board to adopt rules relating to arbitration between members and between members and customers or others, and (ii) to delete a sentence that might be construed to contain an excessively broad description of the authority of the Nasdaq Board with respect to the operation of Nasdaq rules.[15]

Finally, Nasdaq is amending Article III, Sections 2 and 5, and Article VIII, Section 2 of the By-Laws to correct typographical errors.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[16] in general, and with Section 6(b)(3) and (b)(5) of the Act,[17] in particular, in that the proposal is designed to assure a fair representation of Nasdaq members in the selection of its directors, and to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to

[9] A portion of the LLC Agreement is denominated as the ''By-Laws'' because of the similarity of its subject matter to corporate by-laws. Under Delaware law, however, the By-Laws are part of the same governing document as the rest of the LLC Agreement.

[10] Up-to-date information regarding the current directors of Nasdaq and its parent corporation, The Nasdaq Stock Market, Inc., is maintained at *http://ir.nasdaq.com/directors.cfm (with a link provided from www.nasdaq.com*). As provided by Rule 6a–2 under the Act, 17 CFR 240.6a–2, Nasdaq certifies that information regarding the officers of Nasdaq is kept up to date and is available to the Commission and the public upon request, and is filed with the Commission as an amendment to Form 1 every three years.

[11] Changes to the LLC Agreement also require a filing pursuant to Section 19(b) of the Act.

[12] *See* Letter from Edward S. Knight, Executive Vice President, General Counsel, and Chief Regulatory Officer, Nasdaq, to Robert L.D. Colby, Acting Director, Division of Market Regulation, Commission (January 11, 2006) (affirming that Nasdaq shall comply with certain undertakings in a 1996 Order of the Commission); *In the Matter of National Association of Securities Dealers, Inc.,* Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings, and Imposing Remedial Sanctions, Securities Exchange Act Release No. 37538 (August 8, 1996) (the ''NASD Order'') (requiring ''*at least* fifty percent independent public and non-industry membership'' in the QMC) (emphasis added).

[13] *See* NASD Order, *supra* note 12, (requiring ''at least fifty percent independent public and non-industry membership'' in the Arbitration Committee).

[14] 17 CFR 240.17d–2.

[15] Nasdaq notes that the deletion of a reference to the Board's authority to issue exemptions from Nasdaq rules should not be construed to limit Nasdaq's authority under rules that, by their terms, explicitly authorize waivers or exemptions. *See, e.g.*, Nasdaq Rules 1070 and 4510.

[16] 15 U.S.C. 78f.

[17] 15 U.S.C. 78f(b)(3) and (5).

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. Nasdaq believes that the changes will materially enhance the efficiency of its governance processes while continuing to ensure a fair representation of its members in the selection of its directors.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2007–068 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–068. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–068 and should be submitted on or before October 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[18]

Nancy M. Morris,

Secretary.

[FR Doc. E7–19672 Filed 10–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56586; File No. SR–NASDAQ–2007–069]

Self-Regulatory Organizations; The NASDAQ Stock Market, LLC; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Eliminate Its Rule Governing the Relation of a Nasdaq Market Maker's Quotations to the Prevailing Market

October 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 1, 2007, The NASDAQ Stock Market, LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by Nasdaq. On September 19, 2007, Nasdaq filed Amendment No. 1 to the proposed rule change, which replaced the text of the original filing in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to amend Nasdaq Rule 4613(c) to eliminate a requirement governing the relation of a Nasdaq market maker's quotations to the prevailing market.

The text of the proposed rule change is below. Proposed new language is *italicized*; proposed deletions are in brackets.[3]

* * * * *

4613. Character of Quotations

(a)–(b) No change.

(c) **IMPAIRED ABILITY TO ENTER OR UPDATE QUOTATIONS** [Quotations Reasonably Related to the Market]

[A Nasdaq Market Maker shall enter and maintain quotations that are reasonably related to the prevailing market. Should it appear that a market maker's quotations are no longer reasonably related to the prevailing market, Nasdaq may require the market maker to re-enter its quotations. If a Nasdaq Market Maker whose quotations are no longer reasonably related to the prevailing market fails to re-enter its quotations, Nasdaq may suspend the market maker's quotations in one or all securities.]

In the event that a Nasdaq Market Maker's ability to enter or update quotations is impaired, the market maker shall immediately contact Nasdaq Market Operations to request the withdrawal of its quotations.

In the event that a Nasdaq Market Maker's ability to enter or update quotations is impaired and the market maker elects to remain in Nasdaq, the Nasdaq Market Maker shall execute an offer to buy or sell received from another member at its quotations as disseminated through the Nasdaq Market Center.

[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Changes are marked to the rule text that appears in the electronic NASDAQ Manual found at *http://www.nasdaqtrader.com.*

(d)–(e) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend Rule 4613(c) to delete the requirement that a Nasdaq market maker's quotations must be ''reasonably related to the prevailing market.'' The purpose of the amendment is to clarify the obligations of Nasdaq market makers. The proposed amendment would delete the first paragraph of the rule. The remainder of the rule, which addresses a market maker's impaired ability to enter or update quotations, would remain. Additionally, Rule 4613(c) would be revised to read ''Impaired Ability to Enter or Update Quotations.''

Nasdaq is not proposing to amend Rule 4613(a)(1), which contains the long-standing quotation requirements and obligations applicable to market makers. As a result, for each security in which they are registered, market makers will continue to be subject to the requirement to be willing to buy and sell the security for their own account on a continuous basis and maintain at all times a two-sided attributable quotation that is displayed in the Nasdaq Quotation Montage. This basic market maker requirement mirrors the definition of ''market maker'' set forth in Section 3(a)(38) of the Act.[4] Furthermore, this basic market maker obligation is consistent with the market maker obligations contained in the rules of other national securities exchanges, such as NYSE Arca Rule 7.23, which requires continuous two-sided quotations but does not contain a subjective requirement of the quotations' relation to the market.

The rule was first introduced in 1987, at a time when Nasdaq's market structure and the regulatory environment in which it operated were quite different.[5] Nasdaq believes that the requirement is no longer a meaningful means of ensuring market execution quality in the highly competitive and increasingly automated environment in which Nasdaq and other trading venues now operate. Rather, Nasdaq's price/time priority execution algorithm and the obligation to seek favorable prices imposed by Regulation NMS and the duty of best execution ensure that market makers with the most competitive quotations will receive executions and thereby provide incentives to quote at or near the inside where practicable. Moreover, market makers who display a quotation that is not at or near the inside are still ''holding themselves out'' as willing to buy and sell for their own account through an attributable quotation that is disseminated through public data feeds. Regulation NMS and best execution obligations require that customer orders directed to these market makers in response to their publicly-displayed quotations must be executed, at a minimum, at the national best bid or offer. Finally, the quality of a market maker's order executions can be objectively determined by a review of the market execution quality reports required by Rule 605 under Regulation NMS.[6] Therefore, Nasdaq believes it is appropriate to eliminate this requirement.

Deleting the requirement also would have the benefit of eliminating confusion about whether particular market maker behavior constitutes a violation of the rule. For example, market makers sometimes reflect their client's non-marketable limit orders as attributable orders in lieu of entering proprietary quotes. If there are no current client orders in a particular stock, in order to meet its two-sided quotation obligation, the market maker may display ''stub,'' or widely spaced, quotations, such as a bid of $0.01 and an offer of $2,000 in stocks where this is the case.

Because of the current rule's ambiguity, it may be difficult to determine whether a stub quote should be considered ''reasonably related'' to the market. Measured against what another market maker may be quoting, the stub quote may bear little relation to the market, but when measured against the market maker's practice of representing customer orders, the stub quote may be an accurate reflection of the absence of such orders.

Nasdaq does not believe that the change in the rule will have any effect on market quality. However, as is always the case, Nasdaq will carefully monitor the performance of market makers to determine if the change has any impact on the extent to which market makers quote at or near the inside market.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[7] in general, and with Section 6(b)(5) of the Act,[8] in particular, in that 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.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[4] 15 U.S.C. 78c(a)(38) states: ''The term 'market maker' means any specialist permitted to act as a dealer, any dealer acting in the capacity of block positioner, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.''

[5] *See* Securities Exchange Act Release No. 24579 (June 10, 1987), 52 FR 23117 (June 17, 1987) (SR–NASD–87–8).

[6] 17 CFR 242.605. *See also* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

A. By order approve such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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–NASDAQ–2007–069 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2007–069. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 am and 3 pm. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2007–069 and should be submitted on or before October 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Nancy M. Morris,

Secretary.

[FR Doc. E7–19697 Filed 10–4–07; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–56587; File No. SR–NSX–2007–10]

Self-Regulatory Organizations; National Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Extend the Effective Period for Rule 2.12 Regarding Third-Party Routing Services in Respect of Orders Entered into NSX BLADE℠

October 1, 2007.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on September 28, 2007, the National Stock Exchange, Inc. (''NSX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been substantially prepared by NSX. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to extend the effective period for Rule 2.12, which describes the terms under which the Exchange provides routing services procured from a third party with respect to orders entered into its trading system, NSX BLADE℠. The text of the proposed rule change is available at NSX, the Commission's Public Reference Room, and *http://www.nsx.com*.

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend Exchange Rules 2.11 and 2.12 to extend the effective period for Rule 2.12 (relating to the Exchange's use of a third party to provide outbound routing of orders from the Exchange to other trading centers (''Routing Services'') through March 31, 2008, and to delay the effectiveness of Rule 2.11 (relating to the outbound routing function of the Exchange's affiliate, NSX Securities, LLC) until April 1, 2008.

Rule 2.11 provides for certain terms and conditions under which NSX Securities, LLC (''NSX Securities''), an affiliate of the Exchange, will provide Routing Services. Rule 2.11 was approved by the Commission in connection with the approval of the Exchange's new trading rules relating to NSX BLADE on August 31, 2006.[5] The Exchange filed and received approval for the addition of Rule 2.12, which provides for terms and conditions of the Exchange's use of a third party to provide Routing Services.[6] The Exchange subsequently filed to extend the effective period for Rule 2.12.[7]

Rule 2.12 currently provides that it is effective through September 30, 2007, with Rule 2.11 becoming effective on October 1, 2007. In connection with the rule filing adding Rule 2.12,[8] the

[5] *See* Securities Exchange Act Release No. 54391 (August 31, 2006), 71 FR 52836 (September 7, 2006) (SR–NSX–2006–08).

[6] *See* Securities Exchange Act Release No. 54808 (November 21, 2006), 71 FR 69163 (November 29, 2006) (SR–NSX–2006–15).

[7] *See* Securities Exchange Act Release Nos. 55624 (April 12, 2007), 72 FR 19732 (April 19, 2007) (SR–NSX–2007–04) and 56067 (July 13, 2007), 72 FR 39650 (July 19, 2007) (SR–NSX–2007–08).

[8] *See* Securities Exchange Act Release No. 54808 (November 21, 2006), 71 FR 69163 (November 29, 2006) (SR–NSX–2006–15).

Exchange requested this finite period of effectiveness so that the Exchange could offer routing services through NSX BLADE while NSX Securities completed its registration process as a broker-dealer with the National Association of Securities Dealers, Inc. (and thus became available to provide routing services),[9] and while the Exchange evaluated its options for providing routing services to ETP Holders.

In the instant rule filing, the Exchange is proposing to extend the effectiveness of Rule 2.12 through March 31, 2008, and to delay the effectiveness of Rule 2.11 until April 1, 2008, in order to allow the Exchange more time to evaluate its options for providing routing services to ETP Holders. The ability to route orders entered into NSX BLADE to away markets for execution at the best available prices is a key feature of NSX's new system.

The Exchange intends to provide routing services in accordance with Rule 2.12 until March 31, 2008, unless the Exchange, with the Commission's approval, amends Rule 2.12 before such date. During such time period, the Exchange intends to evaluate its options for providing routing services. At the conclusion of such time period, the Exchange may decide to (i) continue the approach provided for in Rule 2.12 on a permanent basis, and not use NSX Securities as the outbound router (by filing a proposed rule change to delete Rule 2.11 and renumbering Rule 2.12); (ii) use the Exchange's original approach of NSX Securities as an outbound router and discontinue the approach provided for in Rule 2.12 (by filing a proposed rule change to delete Rule 2.12) or (iii) file a proposed rule change to allow ETP Holders to use either NSX Securities or the approach provided for in proposed Rule 2.12 for outbound routing.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[10] in general, and Section 6(b)(5) of the Act,[11] in particular, which requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, it has become effective pursuant to Section 19(b)(3)(A) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

Normally, a proposed rule change filed under 19b–4(f)(6) may not become operative prior to 30 days after the date of 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.[15] The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would permit the Exchange to immediately update the effective dates for NSX Rules 2.11 and 2.12. For this reason, the Commission designates the proposed rule change to be operative upon filing with the Commission.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–NSX–2007–10 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. SR–NSX–2007–10. This file number should be included in the subject line if e-mail is used. To help the Commission process and review comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at

[9] In January 2007, NSX Securities' application for registration as a broker-dealer was approved by the National Association of Securities Dealers, Inc. (n/k/a the Financial Industry Regulatory Authority, Inc. (''FINRA'')). To date, the Exchange has not used NSX Securities for routing services.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6).

[14] 17 CFR 240.19b–4(f)(6)(iii).

[15] In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Commission is exercising its authority to designate a shorter time, and notes that the Exchange provided the Commission with written notice of its intention to file the proposed rule change on September 25, 2007.

[16] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

the principal office of NSX. 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–NSX–2007–10 and should be submitted on or before October 26, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Nancy M. Morris,

Secretary.

[FR Doc. E7–19671 Filed 10–4–07; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 5952]

Bureau of Consular Affairs; Registration for the Diversity Immigrant (DV–2009) Visa Program

Action: Notice of registration for the Diversity Immigrant Visa Program.

This public notice provides information on how to apply for the DV–2009 Program. This notice is issued pursuant to 22 CFR 42.33(b)(3) which implements sections 201(a)(3), 201(e), 203(c) and 204(a)(1)(I) of the Immigration and Nationality Act, as amended, (8 U.S.C. 1151, 1153, and 1154(a)(1)(I)).

Instructions for the 2009 Diversity Immigrant Visa Program (DV–2009)

The congressionally mandated Diversity Immigrant Visa Program is administered on an annual basis by the Department of State and conducted under the terms of Section 203(c) of the Immigration and Nationality Act (INA). Section 131 of the Immigration Act of 1990 (Pub. L. 101–649) that amended INA 203 provides for a class of immigrants known as ''diversity immigrants.'' Section 203(c) of the INA provides a maximum of up to 55,000 Diversity Visas (DV) each fiscal year to be made available to persons from countries with low rates of immigration to the United States.

The annual DV program makes permanent residence visas available to persons meeting the simple, but strict, eligibility requirements. A computer-generated random lottery drawing chooses selectees for diversity visas. The visas are distributed among six geographic regions with a greater number of visas going to regions with lower rates of immigration, and with no visas going to nationals of countries sending more than 50,000 immigrants to the U.S. over the period of the past five years. Within each region, no one country may receive more than seven percent of the available Diversity Visas in any one year.

For DV–2009, natives of the following countries are not eligible to apply because the countries sent a total of more than 50,000 immigrants to the U.S. in the previous five years (the term ''country'' in this notice includes countries, economies and other jurisdictions explicitly listed in this notice):

Brazil, Canada, China (mainland-born), Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, India, Jamaica, Mexico, Pakistan, Peru, Philippines, Poland, Russia, South Korea, United Kingdom (except Northern Ireland) and its dependent territories, and Vietnam.

Persons born in Hong Kong SAR, Macau SAR and Taiwan are eligible.

The Department of State implemented the electronic registration system beginning with DV–2005 in order to make the Diversity Visa process more efficient and secure. The Department utilizes special technology and other means to identify those who commit fraud for the purposes of illegal immigration or who submit multiple entries.

Diversity Visa Registration Period

Entries for the DV–2009 Diversity Visa Lottery must be submitted electronically between noon, Eastern Daylight Time (EDT) (GMT–4), Wednesday, October 3, 2007 and noon, Eastern Standard Time (EST) (GMT–5) Sunday, December 2, 2007. Applicants may access the Electronic Diversity Visa Entry Form (E–DV) at *http://www.dvlottery.state.gov* during the registration period. Paper entries will not be accepted. Applicants are strongly encouraged not to wait until the last week of the registration period to enter. Heavy demand may result in website delays. No entries will be accepted after noon, EST, on December 2, 2007.

Requirements for Entry

To enter the DV lottery, you must be a native of one of the listed countries. See ''List of Countries by Region Whose Natives Qualify.'' In most cases this means the country in which you were born. However, there are two other ways you may be able to qualify. First, if you were born in a country whose natives are ineligible but your spouse was born in a country whose natives are eligible, you can claim your spouse's country of birth provided both you and your spouse are on the selected entry, are issued visas and enter the U.S. simultaneously. Second, if you were born in a country whose natives are ineligible, but neither of your parents was born there or resided there at the time of your birth, you may claim nativity in one of your parents' country of birth if it is a country whose natives qualify for the DV–2009 program.

To enter the lottery, you must meet either the education or work experience requirement of the DV program. You must have either a high school education or its equivalent, defined as successful completion of a 12-year course of elementary and secondary education; OR two years of work experience within the past five years in an occupation requiring at least two years of training or experience to perform. The U.S. Department of Labor's *O*Net OnLine* database will be used to determine qualifying work experience. For more information about qualifying work experience, see Frequently Asked Question #13.

If you cannot meet these requirements, you should NOT submit an entry to the DV program.

Procedures for Submitting an Entry to DV–2009

The Department of State will only accept completed Electronic Diversity Visa Entry Forms submitted electronically at *http://www.dvlottery.state.gov* during the registration period between noon, Eastern Daylight Time (EDT) (GMT–4), Wednesday, October 3, 2007 and noon, Eastern Standard Time (EST) (GMT–5) Sunday, December 2, 2007.

All entries by an individual will be disqualified if more than ONE entry for that individual is received, regardless of who submitted the entry. You may prepare and submit your own entry, or have someone submit the entry for you.

A successfully registered entry will result in the display of a confirmation screen containing your name, date of birth, country of chargeability, and a date/time stamp. You may print this confirmation screen for your records using the print function of your web browser.

Paper entries will not be accepted.

Your entry will be disqualified if all required photographs are not submitted. Recent photographs of the following people must be submitted electronically with the Electronic Diversity Visa Entry Form: You; your spouse; each unmarried child under 21 years of age, including all natural children as well as all legally-adopted children and

[17] 17 CFR 200.30–3(a)(12).

stepchildren, even if a child no longer resides with you or you do not intend for a child to immigrate under the DV program. You do not need to submit a photo for a child who is already a U.S. citizen or a Legal Permanent Resident.

Group or family photographs will not be accepted; there must be a separate photograph for each family member. Failure to submit the required photographs for your spouse and each child will result in an incomplete entry to the E–DV system. The entry will not be accepted and must be resubmitted. Failure to enter the correct photograph of each individual in the case into the E–DV system will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview.

A digital photograph (image) of you, your spouse, and each child must be submitted on-line with the E–DV Entry Form. The image file can be produced either by taking a new digital photograph or by scanning a photographic print with a digital scanner.

Entries are subject to disqualification and visa refusal for cases in which the photographs are not recent or have been manipulated or fail to meet the specifications explained below.

Instructions for Submitting a Digital Photograph (Image)

The image file must adhere to the following compositional specifications and technical specifications and can be produced in one of the following ways: taking a new digital image or using a digital scanner to scan a submitted photograph.

Compositional Specifications

The submitted digital image must conform to the following compositional specifications or the entry will be disqualified: The person being photographed must directly face the camera; the head of the person should not be tilted up, down, or to the side; the head of the person should cover about 50% of the area of the photo; the photograph should be taken with the person in front of a neutral, light-colored background; dark or patterned backgrounds are not acceptable; the photo must be in focus; photos in which the person being photographed is wearing sunglasses or other items that detract from the face will not be accepted; photos of applicants wearing head coverings or hats are only acceptable due to religious beliefs, and even then, may not obscure any portion of the face of the applicant; photographs of applicants with tribal or other headgear not specifically religious in nature will not be accepted; photographs of military, airline, or other personnel wearing hats will not be accepted.

Colored photographs in 24-bit color depth are preferred to black and white or gray scale pictures in 24-bit color depth. Photographs may be down loaded from a camera into a file in the computer or they may be scanned into a file in the computer. If you are using a scanner, the settings must be for True Color or 24-bit color mode. Colored photographs or black and white (or gray scale) must be scanned at this setting for the requirements of the DV program. For black and white or grey scale photographs scanned in 24-bit color mode, only three colors or image bands are used, and the results will still be black, white and gray. See additional scanning requirements below.

Technical Specifications

The submitted digital photograph must conform to the following specifications or the system will automatically reject the E–DV Entry Form and notify the sender.

When taking a new digital image: the image file format must be in the Joint Photographic Experts Group (JPEG) format; it must have a maximum image file size of sixty-two thousand five hundred (62,500) bytes; the image resolution must be 320 pixels high by 240 pixels wide; the image color depth must be 24-bit color [**Note:** Colored photographs are preferred, but black and white or grayscale photographs, if used, must be scanned in 24-bit color mode]. Monochrome images (2-bit color depth), 8-bit color or 8-bit grayscale will not be accepted.

Before a photographic print is scanned it must meet the following specifications: The print size must be 2 inches by 2 inches (50mm x 50mm) square; a color image is preferred, however, a black and white or grayscale image may be used only with the 24-bit setting mode.

The photographic print must also meet the compositional specifications. If the photographic print meets the print size, print color and compositional specifications, scan the print using the following scanner specifications: Scanner resolution must be 150 dots per inch (dpi); the image file formant in Joint Photographic Experts Group (JPEG) format; the maximum image file size will be sixty-two thousand five hundred (62,500) bytes; the image resolution at 300 by 300 pixels; the image color depth 24-bit color. Note that black and white or grayscale images must be used with 24-bit color depth. Monochrome images (2-bit color depth), 8-bit color or 8-bit grayscale will not be accepted.

Information required for the Electronic Entry

There is only one way to enter the DV–2009 lottery. You must submit an Electronic Diversity Visa Entry Form (E–DV Entry Form), which is accessible only at *http://www.dvlottery.state.gov.* Failure to complete the form in its entirety will disqualify the entry. Those who submit the E–DV entry will be asked to include the following information on the E–DV Entry Form.

1. Full name—Last/family name, first name, middle name.
2. Date of Birth—day, month, year.
3. Gender—male or female.
4. City where you were born.
5. Country where you were born—The name of the country should be that which is currently in use for the place where you were born.
6. Country of eligibility or chargeability for the DV Program—Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. If you were born in a country that is not eligible for the DV program, please review the instructions to see if there is another option for country of chargeability available for you. For additional information on chargeability, please review ''Frequently Asked Question #1'' of these instructions.
7. Entry photograph(s)—See the technical information on photograph specifications. Make sure you include photographs of your spouse and all your children, if applicable. *See:* Frequently Asked Question #11.
8. Mailing address—In care of, address line 1, address line 2, city/town, district/country/province/state, postal code/zip code, country.
9. Country where you live today.
10. Phone number (optional).
11. E-mail address (optional).
12. What is the highest level of education you have achieved, as of today?

You must indicate which one of the following represents your own highest level of educational achievement: (1) Primary school only, (2) High school, no degree, (3) High school degree, (4) Vocational school, (5) Some university courses, (6) University degree, (7) Some graduate level courses, (8) Master degree, (9) Some doctorate level courses, and (10) Doctorate degree.

13. Marital status—Unmarried, Married, Divorced, Widowed, Legally Separated
14. Number of children: Entries must include the name, date and place of

birth of your spouse and all natural children, as well as all legally-adopted children and stepchildren, who are unmarried and under the age of 21 (do not include children who are already U.S. citizens or Legal Permanent Residents), even if you are no longer legally married to the child's parent, and even if the spouse or child does not currently reside with you and/or will not immigrate with you. Note that married children and children 21 years or older are not eligible for the diversity visa. Failure to list all children, who are eligible, will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview. See: Frequently Asked Question #11.

15. Spouse information—Name, date of birth, gender, city/town of birth, country of birth, photograph. Failure to list your spouse will result in disqualification of the principal applicant and refusal of all visas in the case at the time of the visa interview.

16. Children information—Name, Date of Birth, Gender, City/Town of Birth, Country of Birth, and Photograph: Include all children declared in question #14 above.

Selection of Applicants

The computer will select at random individuals from among all qualified entries. They will be notified by mail between May and July 2008 and will be provided further instructions, including information on fees connected with immigration to the U.S. Those selected in the random drawing are not notified by e-mail. Those individuals not selected will not receive any notification. U.S. embassies and consulates will not be able to provide a list of successful entrants. Spouses and unmarried children under age 21 of successful entrants may also apply for visas to accompany or follow to join the principal applicant. DV–2009 visas will be issued between October 1, 2008 and September 30, 2009.

Processing of entries and issuance of diversity visas to successful individuals and their eligible family members must occur by midnight on September 30, 2009. Under no circumstances can diversity visas be issued or adjustments approved after this date, nor can family members obtain diversity visas to follow to join the principal applicant in their case in the U.S. after this date.

In order to receive a Diversity Visa to immigrate to the United States, those chosen in the random drawing must meet all eligibility requirements under U.S. law. These requirements may significantly increase the level of scrutiny required and time necessary for processing of applicants for natives of some countries listed in this notice, including, but not limited to, countries identified as state sponsors of terrorism.

Important Notice

No fee is charged for the electronic lottery entry in the annual DV program. The U.S. Government employs no outside consultants or private services to operate the DV program. Any intermediaries or others who offer assistance to prepare DV entries do so without the authority or consent of the U.S. Government. Use of any outside intermediary or assistance to prepare a DV entry is entirely at the entrant's discretion.

A qualified entry submitted electronically directly by an applicant has an equal chance of being selected by the computer at the Kentucky Consular Center, as does an entry submitted electronically through a paid intermediary who completes the entry for the applicant. Every entry received during the lottery registration period will have an equal random chance of being selected within its region. However, receipt of more than one entry per person will disqualify the person from registration, regardless of the source of the entry.

Frequently Asked Questions About E–DV Registration

1. What Do the Terms ''Eligibility'', ''Native'' and ''Chargeability'' Mean? Are There Any Situations in Which Persons Who Were Not Born in a Qualifying Country May Apply?

Your country of eligibility will normally be the same as your country of birth. Your country of eligibility is not related to where you live. ''Native'' ordinarily means someone born in a particular country, regardless of the individual's current country of residence or nationality. For immigration purposes ''native'' can also mean someone who is entitled to be ''charged'' to a country other than the one in which he/she was born under the provisions of Section 202(b) of the Immigration and Nationality Act. For example, if you were born in a country that is not eligible for this year's DV program, you may claim chargeability to the country where your derivative spouse was born, but you will not be issued a DV–1 unless your spouse is also eligible for and issued a DV–2, and both of you must enter the United States together with the diversity visas. In a similar manner, a minor dependent child can be ''charged'' to a parent's country of birth.

Finally, if you were born in a country not eligible to participate in this year's DV program, you can be ''charged'' to the country of birth of either of your parents as long as neither parent was a resident of the ineligible country at the time of the your birth. In general, people are not considered residents of a country in which they were not born or legally naturalized if they are only visiting the country, studying in the country temporarily, or stationed in the country for business or professional reasons on behalf of a company or government. If you claim alternate chargeability, you must indicate such information on the E–DV electronic online entry form, question #6. Please be aware that listing an incorrect country of eligibility or chargeability (i.e. one to which you cannot establish a valid claim) may disqualify your entry.

2. Are There Any Changes or New Requirements in the Application Procedures for This Diversity Visa Registration?

All DV–2009 lottery entries must be submitted electronically at *www.dvlottery.state.gov* during the registration period. No paper entries will be accepted.

Several questions and options for answers have been added to DV–2009 to gather additional information, including: ''What is the name of the country where you live today? And ''What is the highest level of education you have achieved, as of today?'' You must choose one of the ten options indicating the highest level of education you have achieved: (1) Primary school only, (2) High school, no degree, (3) High school degree, (4) Vocational school, (5) Some university courses, (6) University degree, (7) Some graduate level courses, (8) Master degree, (9) Some doctorate level courses, and (10) Doctorate degree. ''Legally Separated'' replaces the term ''Separated'' used in previous DV programs as an option under the question ''What is your marital status?'' Legal separation means that a court has formally declared that you and your spouse are legally separated. Legal separation means that your spouse would not be eligible to immigrate as your derivative.

3. Are Signatures and Photographs Required for Each Family Member, or Only for the Principal Entrant?

Signatures are not required on the Electronic Diversity Visa Entry Form. Recent and individual photographs of you, your spouse and all children under 21 years of age are required. Family or group photographs are not accepted.

Refer to information on the photograph requirements located in this notice.

4. Why Do Natives of Certain Countries Not Qualify for the Diversity Program?

Diversity visas are intended to provide an immigration opportunity for persons from countries other than the countries that send large numbers of immigrants to the U.S. The law states that no diversity visas shall be provided for natives of ''high admission'' countries. The law defines this to mean countries from which a total of 50,000 persons in the Family-Sponsored and Employment-Based visa categories immigrated to the United States during the period of the previous five years. Each year, the USCIS adds the family and employment immigrant admission figures for the previous five years in order to identify the countries whose natives will be ineligible for the annual diversity lottery. Because there is a separate determination made before each annual E–DV entry period, the list of countries whose natives are not eligible may change from one year to the next.

5. What Is the Numerical Limit for DV–2009?

By law, the U.S. diversity immigration program makes available a maximum of 55,000 permanent residence visas each year to eligible persons. However, the Nicaraguan Adjustment and Central American Relief Act (NACARA) passed by Congress in November 1997 stipulates that beginning as early as DV–1999, and for as long as necessary, up to 5,000 of the 55,000 annually-allocated diversity visas will be made available for use under the NACARA program. The actual reduction of the limit by up to 5,000 diversity visas began with DV–2000 and is likely to remain in effect through the DV–2009 program.

6. What Are the Regional Diversity Visa (DV) Limits for DV–2009?

The U.S. Citizenship and Immigration Services (USCIS) determines the DV regional limits for each year according to a formula specified in Section 203(c) of the Immigration and Nationality Act (INA). Once the USCIS has completed the calculations, the regional visa limits will be announced.

7. When Will Entries for the DV–2009 Program Be Accepted?

The DV–2009 entry period will run through the registration period. Each year millions of people apply for the program during the registration period. The massive volume of entries creates an enormous amount of work in selecting and processing successful individuals. Holding the entry period during October, November, and December will ensure that selectees are notified in a timely manner, and gives both the visa applicants and our embassies and consulates time to prepare and complete cases for visa issuance. You are strongly encouraged to enter early in the registration period. Excessive demand at end of the registration period may slow the system down. No entries whatsoever will be accepted after noon EST Sunday, December 2, 2007.

8. May Persons Who Are in the U.S. Apply for the Program?

Yes, an applicant may be in the U.S. or in another country, and the entry may be submitted from the United States or from abroad.

9. Is Each Applicant Limited to Only One Entry During the Annual E–DV Registration Period?

Yes, the law allows only one entry by or for each person during each registration period. Individuals for whom more than one entry is submitted will be disqualified. The Department of State will employ sophisticated technology and other means to identify individuals who submit multiple entries during the registration period. People submitting more than one entry will be disqualified and an electronic record will be permanently maintained by the Department of State. Individuals may apply for the program each year during the regular registration period.

10. May a Husband and a Wife Each Submit a Separate Entry?

Yes, a husband and a wife may each submit one entry if each meets the eligibility requirements. If either were selected, the other would be entitled to derivative status.

11. What Family Members Must I Include on My E–DV Entry?

On your entry you must list your spouse (husband or wife), and all unmarried children under 21 years of age, with the exception of children who are already U.S. citizens or Legal Permanent Residents. You must list your spouse even if you are currently separated from him/her, unless you are legally separated (i.e. there is a written agreement recognized by a court or a court order). If you are legally separated or divorced, you do not need to list your former spouse. you must list all your children who are unmarried and under 21 years of age, whether they are your natural children, your spouse's children, or children you have formally adopted in accordance with the laws of your country, unless such child is already a U.S. citizen or Legal Permanent Resident. List all children under 21 years of age even if they no longer reside with you or you do not intend for them to immigrate under the DV program.

The fact that you have listed family members on your entry does not mean that they later must travel with you. They may choose to remain behind. However, if you include an eligible dependent on your visa application forms that you failed to include on your original entry, your case will be disqualified. This only applies to those who were family members at the time the original application was submitted, not those acquired at a later date. Your spouse may still submit a separate entry, even though he or she is listed on your entry, as long as both entries include details on all dependents in your family. See question #10 above.

12. Must I Submit My Own Entry, or May Someone Act on My Behalf?

You may prepare and submit your own entry, or have someone submit the entry for you. Regardless of whether an entry is submitted by the individual directly, or assistance is provided by an attorney, friend, relative, etc., only one entry may be submitted in the name of each person and the entrant remains responsible for insuring that information in the entry is correct and complete. If the entry is selected, the notification letter will be sent only to the mailing address provided on the entry.

13. What Are the Requirements for Education or Work Experience?

The law and regulations require that every entrant must have at least a high school education or its equivalent or, within the past five years, have two years of work experience in an occupation requiring at least two years training or experience. A ''high school education or equivalent'' is defined as successful completion of a twelve-year course of elementary and secondary education in the United States or successful completion in another country of a formal course of elementary and secondary education comparable to a high school education in the United States. Documentary proof of education or work experience must be presented to the consular officer at the time of the visa interview. To determine eligibility based on work experience, definitions from the Department of Labor's *O*Net OnLine Database* will be used.

What Occupations qualify for the Diversity Visa Program? The

Department of Labor (DOL) *O*Net Online Database* groups job experience into five ''job zones.'' While many occupations are listed on the DOL Web site, only certain specified occupations qualify for the Diversity Visa Program. To qualify for a Diversity Visa on the basis of your work experience, you must, within the past five years, have two years of experience in an occupation that is designated as Job Zone 4 or 5, classified in a Specific Vocational Preparation (SVP) range of 7.0 or higher.

How Do I Find the Qualifying Occupations on the Department of Labor Web site? Qualifying DV Occupations are shown on the Department of Labor *O*Net Online Database*. Follow these steps to find out if your occupation qualifies: Select ''Find Occupations'' and then select a specific ''Job Family.'' For example, select Architecture and Engineering and click ''GO.'' Then click on the link for the specific Occupation. Following the same example, click Aerospace Engineers. After selecting a specific Occupation link, select the tab ''Job Zone'' to find out the designated Job Zone number and Specific Vocational Preparation (SVP) rating range.

14. How Will Successful Entrants Be Selected?

At the Kentucky Consular Center, all entries received from each region will be individually numbered. After the end of the registration period, a computer will randomly select entries from among all the entries received for each geographic region. Within each region, the first entry randomly selected will be the first case registered, the second entry selected the second registration, etc. All entries received during the registration period will have an equal chance of being selected within each region. When an entry has been selected, the entrant will be sent a notification letter by the Kentucky Consular Center, which will provide visa application instructions. The Kentucky Consular Center will continue to process the case until those selected to be visa applicants are instructed to appear for visa interviews at a U.S. consular office, or until those qualifying to change status in the United States apply at a domestic USCIS office.

Important Note: Notifications to those selected in the random lottery are not sent by e-mail. Should you receive an e-mail notification about your E–DV selection, be aware that the message is not legitimate.

15. May Selectees Adjust Their Status With USCIS?

Yes, provided they are otherwise eligible to adjust status under the terms of Section 245 of the INA, selected individuals who are physically present in the United States may apply to the USCIS for adjustment of status to permanent resident. Applicants must ensure that USCIS can complete action on their cases, including processing of any overseas derivatives, before September 30, 2009, since on that date registrations for the DV–2009 program expire. No visa numbers for the DV–2009 program will be available after midnight on September 30, 2009 under any circumstances.

16. Will Entrants Who Are Not Selected Be Informed?

No, entrants who are not selected will receive no response to their entry. Only those who are selected will be informed. All notification letters are sent within five to seven months from the end of the application period to the address indicated on the entry. Since there is no notification provided to those not selected, anyone who does not receive a letter five to seven months from the end of the registration period should assume that his/her application has not been selected.

17. How Many Individuals Will Be Selected?

There are 50,000 DV visas available for DV–2009, but more than that number of individuals will be selected. Because it is likely that some of the first 50,000 persons who are selected will not qualify for visas or pursue their cases to visa issuance, more than 50,000 entries will be selected by the Kentucky Consular Center to ensure that all of the available DV visas are issued. However, this also means that there will not be a sufficient number of visas for all those who are initially selected. All applicants who are selected will be informed promptly of their place on the list. Interviews for the DV–2009 program will begin in October 2008. The Kentucky Consular Center will send appointment letters to selected applicants four to six weeks before the scheduled interviews with U.S. consular officers at overseas posts. Each month visas will be issued, visa number availability permitting, to those applicants who are ready for issuance during that month. Once all of the 50,000 DV visas have been issued, the program for the year will end. In principle, visa numbers could be finished before September 2009. Selected applicants who wish to receive visas must be prepared to act promptly on their cases. Random selection by the Kentucky Consular Center computer as a selectee does not automatically guarantee that you will receive a visa.

18. Is There a Minimum Age for Applicants To Apply for the E–DV Program?

There is no minimum age to apply for the program, but the requirement of a high school education or work experience for each principal applicant at the time of application will effectively disqualify most persons who are under age 18.

19. Are There Any Fees for the E–DV Program?

There is no fee for submitting an electronic lottery entry. DV applicants must pay all required visa fees at the time of visa application directly to the consular cashier at the embassy or consulate. Details of required diversity visa and immigration visa application fees will be included with the instructions sent by the Kentucky Consular Center to applicants who are selected.

20. Do DV Applicants Receive Waivers of Any Grounds of Visa Ineligibility or Receive Special Processing for a Waiver Application?

No. Applicants are subject to all grounds of ineligibility for immigrant visas specified in the Immigration and Nationality Act. There are neither special provisions for the waiver of any ground of visa ineligibility other than those ordinarily provided in the Act nor special processing for waiver requests.

21. May Persons Who Are Already Registered for an Immigrant Visa in Another Category Apply for the DV Program?

Yes, such persons may apply for the DV program.

22. How Long Do Applicants Who Are Selected Remain Entitled To Apply for Visas in the DV Category?

Persons selected in the DV–2009 lottery are entitled to apply for visa issuance only during fiscal year 2009, from October 1, 2008 through September 30, 2009. Applicants must obtain the DV visa or adjust status by the end of the fiscal year. There is no carry-over of DV benefits into the next year for persons who are selected but who do not obtain visas during FY–2009. Also, spouses and children who derive status from a DV–2009 registration can only obtain visas in the DV category between October 2008 and September 2009. Applicants who apply

overseas will receive an appointment letter from the Kentucky Consular Center four to six weeks before the scheduled appointment.

23. If an E–DV Selectee Dies, What Happens to the DV Case?

The death of an individual selected in the lottery results in automatic revocation of the DV case. Any eligible spouse and/or children are no longer entitled to the DV visa, for that entry.

24. When Will E–DV Online Be Available?

Online entry will be available during the registration period beginning at noon EDT (GMT–4) on October 3, 2007 and ending at noon EST (GMT–5) on December 2, 2007.

25. Will I be Able to Download and Save the E–DV Entry Form to a Microsoft Word Program (or Other Suitable Program) and Then Fill it Out?

No, you will not be able to save the form into another program for completion and submission later. The E–DV Entry Form is a Web form only. This makes it more ''universal'' than a proprietary word processor format. Additionally, it does require that the information be filled in and submitted while on-line.

26. If I Don't Have Access to a Scanner, Can I Send Photographs to My Relative in the U.S. To Scan the Photographs, Save the Photographs to a Diskette, and then Mail the Diskette Back to Me To Apply?

Yes, this can be done as long as the photograph meets the photograph requirements in the instructions, and the photograph is electronically submitted with, and at the same time the E–DV online entry is submitted. The applicants must already have the scanned photograph file when they submit the entry on-line. The photograph cannot be submitted separate from the online application. Only one on-line entry can be submitted for each person. Multiple submissions will disqualify the entry for that person for DV–2009. The entire entry (photograph and application together) can be submitted electronically from the United States or from overseas.

27. Can I Save the Form On-line so That I Can Fill Out Part and Then Come Back Later and Complete the Remainder?

No, this cannot be done. The E–DV Entry Form is designed to be completed and submitted at one time. However, because the form is in two parts, and because of possible network interruptions and delays, the E–DV system is designed to permit up to sixty (60) minutes between the downloading of the form and when the entry is received at the E–DV web site after being submitted online. If more than sixty minutes elapses and the entry has not been electronically received, the information already received is discarded. This is done so that there is no possibility that a full entry could accidentally be interpreted as a duplicate of a previous partial entry. For example, suppose an applicant with a wife and child sends a filled in E–DV Entry Form Part One and then receives Form Part Two, but there is a delay before sending Part Two because of trouble finding the file that holds the child's photograph. If the filled in Form Part Two is sent by the applicant and received by the E–DV website within sixty (60) minutes, there is no problem. However, if the Form Part Two is received after sixty (60) minutes have elapsed, then the applicant will be informed that he or she must start the entire entry over from the beginning. The DV–2009 instructions explain clearly and completely what information is required to fill in the form. This way you can be fully prepared, making sure you have all of the information needed, before you start to complete the form on-line.

28. If the Submitted Digital Images Do Not Conform to the Specifications, the Procedures State That the System Will Automatically Reject the E–DV Entry Form and Notify the Sender. Does This Mean I Will Be Able to Re-Submit My Entry?

Yes, the entry can be resubmitted. Since the entry was automatically rejected, it was not actually considered as submitted to the E–DV Web site. It does not count as a submitted E–DV entry, and no confirmation notice of receipt is sent. If there are problems with the digital photograph sent, because it does not conform to the requirements, it is automatically rejected by the E–DV Web site. However, the amount of time it takes the rejection message to reach the sender is unpredictable due to the nature of the Internet. If the problem can be fixed by the applicant, and the Form Part One or Two is re-sent within sixty (60) minutes, there is no problem. Otherwise the submission process will have to be started over. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent.

29. Will the Electronic Confirmation Notice That the Completed E–DV Entry Form Has Been Received Through the Online System Be Sent Immediately After Submission?

The response from the E–DV Web site which contains confirmation of the receipt of an acceptable E–DV Entry Form is sent by the E–DV website immediately. However, how long it takes the response to reach the sender is unpredictable due to the nature of the Internet. If many minutes have elapsed since pressing the 'Submit' button, there is no harm in pressing the 'Submit' button a second time. The E–DV system will not be confused by a situation where the 'Submit' button is hit a second time, because no confirmation response has been received. An applicant can try to submit an application as many times as is necessary until a complete application is received and the confirmation notice sent.

30. How Will I Know if the Notification of Selection That I Have Received Is Authentic? How Can I Confirm That I Have in Fact Been Chosen in the Random DV Lottery?

After the individuals have been selected at random from among all qualified entries through the State Department E–DV lottery computer program, they will not be notified by e-mail. Those selected will be notified only by letter through the mail between May and July 2008 at the addresses listed on their E–DV entry. Only the randomly selected individuals will be notified. Persons not selected will not receive any notification. U.S. embassies and consulates will not be able to provide a list of those selected to continue the visa process.

Kentucky Consular Center (KCC) will send the letters notifying those selected. These letters will contain instructions for the visa application process. The instructions say the selected applicants will pay all diversity and immigrant visa fees in person only at the U.S. Embassy or Consulate at the time of the visa application. The Consular Cashier or Consular Officer immediately gives the visa applicant a U.S. Government receipt for payment. You should never send money for DV fees through the mail, through Western Union, or any other delivery service.

The E–DV lottery entries are made on the Internet, on the official U.S. Government E–DV Web site at *http://www.dvlottery.state.gov.* KCC sends only letters to the selected applicants. KCC, consular offices, or the U.S. Government have never sent e-mails to

notify selected individuals, and there are no plans to use e-mail for this purpose for the DV–2009 program.

The Department of State, Visa Services advises the public that only internet sites including the ''.gov'' indicator are official government Web sites. Many other non-governmental Web sites (e.g., using the suffixes ''.com'' or ''.org'' or ''.net'') provide legitimate and useful immigration and visa related information and services. Regardless of the content of non-governmental Web sites, the Department of State does not endorse, recommend or sponsor any information or material shown at these other Web sites.

Some Web sites may try to mislead customers and members of the public into thinking they are official Web sites and may contact you by e-mail to lure you to their offers. These Web sites may attempt to require you to pay for services such as forms and information about immigration procedures, which are otherwise free on the Department of State Visa Services website, or overseas through the Embassy Consular Section Web sites. Additionally, these other Web sites may require you to pay for services you will not receive, often including diversity immigration application and visa fees in an effort to outright steal your money. Once you send money in one of these scams, you will never see it again. Also, you should be wary of sending any personal information that might be used for identity fraud/theft to these Web sites.

31. How Do I Report Internet Fraud or Unsolicited E-mail?

If you wish to file a complaint about Internet fraud, please see the *econsumer.gov* Web site, hosted by the Federal Trade Commission, which is a joint effort of consumer protection agencies from 17 nations at *http://www.econsumer.gov/english/* or go to the Federal Bureau of Investigation (FBI) *Internet Crime Complaint Center or IC3*. To file a complaint about unsolicited e-mail, contact the *Department of Justice Contact Us page*.

32. If I Am Successful in Obtaining a Visa Through the DV Program Will the U.S. Government Assist With My Airfare to the U.S., Provide Assistance To Locate Housing and Employment, Provide Healthcare or Provide Any Subsidies Until I Am Fully Settled?

No, applicants who obtain a DV visa are not provided any type of assistance such as airfare, housing assistance, or subsidies. If you are selected to apply for a DV visa, before you can be issued a visa, you will be required to provide evidence that you will not become a public charge in the U.S. This evidence may be in the form of a combination of your personal assets, an Affidavit of Support, Form I–134 from a relative or friend residing in the U.S. and/or an offer of employment from an employer in the U.S.

List of Countries by Region Whose Natives Are Eligible for DV–2009

The lists below show the countries whose natives are eligible for DV–2009 within each geographic region for this diversity program. The countries whose natives are not eligible for the DV–2009 program were identified by the U.S. Citizenship and Immigration Services (USCIS) according to the formula in Section 203(c) of the Immigration and Nationality Act. Dependent areas overseas are included within the region of the governing country. The countries whose natives are not eligible for this diversity program (because they are the principal source countries of Family-Sponsored and Employment-Based immigration, or ''high admission'' countries) are noted after the respective regional lists.

Africa

Algeria, Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad;
Comoros, Congo, Congo, Democratic Republic of the, Cote D'Ivoire (Ivory Coast), Djibouti, Egypt, Equatorial Guinea, Eritrea, Ethiopia, Gabon, Gambia, The;
Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Libya, Madagascar, Malawi, Mali, Mauritania;
Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone;
Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Tunisia, Uganda, Zambia, Zimbabwe.

List of Countries by Region Whose Natives Are Eligible for DV–2009

Asia

Afghanistan, Bahrain, Bangladesh, Bhutan, Brunei, Burma, Cambodia, East Timor, Hong Kong Special Administrative Region, Indonesia, Iran, Iraq, Israel;
Japan, Jordan, Kuwait, Laos, Lebanon, Malaysia, Maldives, Mongolia, Nepal;
North Korea, Oman, Qatar, Saudi Arabia, Singapore, Sri Lanka, Syria, Taiwan, Thailand, United Arab Emirates, Yemen.

Natives of the following Asian countries are not eligible for this year's diversity program: China [mainland-born], India, Pakistan, South Korea, Philippines, and Vietnam. The Hong Kong S.A.R. and Taiwan do qualify and are listed above. Macau S.A.R. also qualifies and is listed below.

List of Countries by Region Whose Natives Are Eligible for DV–2009

Europe

Albania, Andorra, Armenia, Austria, Azerbaijan, Belarus, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus;
Czech Republic, Denmark (including components and dependent areas overseas), Estonia, Finland, France (including components and dependent areas overseas), Georgia, Germany, Greece, Hungary, Iceland, Ireland;
Italy, Kazakhstan, Kyrgyzstan, Latvia, Liechtenstein, Lithuania, Luxembourg, Macau Special Administrative Region, Macedonia, the Former Yugoslav Republic, Malta, Moldova;
Monaco, Montenegro, Netherlands (including components and dependent areas overseas), Northern Ireland, Norway, Portugal (including components and dependent areas overseas), Romania;
San Marino, Serbia, Slovakia, Slovenia, Spain, Sweden, Switzerland, Tajikistan, Turkey, Turkmenistan, Ukraine, Uzbekistan, Vatican City.

Natives of the following European countries are not eligible for this year's diversity program: Great Britain, Poland and Russia. Great Britain (United Kingdom) includes the following dependent areas: Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Falkland Islands, Gibraltar, Montserrat, Pitcairn, St. Helena, Turks and Caicos Islands. Note that for purposes of the diversity program only, Northern Ireland is treated separately; Northern Ireland does qualify and is listed among the qualifying areas.

List of Countries by Region Whose Natives Are Eligible for DV–2009

North America

The Bahamas

In North America, natives of Canada and Mexico are not eligible for this year's diversity program.

Oceania

Australia (including components and dependent areas overseas), Fiji, Kiribati, Marshall Islands, Micronesia, Federated States of, Nauru, New Zealand (including components and dependent areas overseas), Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu.

South America, Central America, And The Caribbean

Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Chile, Costa Rica, Cuba, Dominica, Grenada, Guyana;

Honduras, Nicaragua, Panama, Paraguay, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Uruguay, Venezuela.

Countries in this region whose natives are not eligible for this year's diversity program:

Brazil, Colombia, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Jamaica, Mexico, and Peru.

Dated: September 28, 2007.

Maura Harty,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. E7–19730 Filed 10–4–07; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2007–35]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received.

SUMMARY: This notice contains a summary of certain petitions seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before October 25, 2007.

ADDRESSES: You may send comments identified by Docket Number FAA–2007–29293 using any of the following methods:

- *Governmentwide rulemaking web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Docket:* To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

FOR FURTHER INFORMATION CONTACT: Tyneka Thomas (202) 267–7626 or Frances Shaver (202) 267–9681, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on October 1, 2007.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petitions for Exemption

Docket No.: FAA–2007–29293.

Petitioner: Amerijet International, Inc.

Section of 14 CFR Affected: 14 CFR 63.37(b)(1) of part 63, appendix C, paragraph (a)(3)(iv)(a).

Description of Relief Sought: To allow Amerijet to train its airframe and powerplant mechanics in accordance with a flight time standard through the use of a Level C or D simulator.

[FR Doc. E7–19669 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Solicitation of Applications for FY 2008 Border Enforcement Grant (BEG) Funding

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice.

SUMMARY: FMCSA announces that it has published an opportunity to apply for FY2008 BEG funding on the grants.gov Web site (*http://www.grants.gov*). Section 4110 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy For Users (Pub. L. 109–59) established the BEG program. The program is a discretionary grant program that provides funding for border commercial motor vehicle (CMV) safety programs and related enforcement activities and projects. An entity or a State that shares a land border with another country is eligible to receive grant funding. To apply for funding, applicants must register with the grants.gov Web site (*http://www.grants.gov/applicants/get_registered.jsp*) and submit an application in accordance with instructions provided. Applications for grant funding must be submitted electronically to the FMCSA through the grants.gov Web site.

DATES: FMCSA will initially consider funding of applications submitted by November 1, 2007 by qualified applicants. If additional funding remains available, applications submitted after November 1, 2007 will be considered on a case-by-case basis. Funds will not be available for allocation until such time as FY2008 appropriations legislation is passed and signed into law.

FOR FURTHER INFORMATION CONTACT: Mr. Milt Schmidt, Federal Motor Carrier Safety Administration, Office of Safety Programs, North American Borders Division (MC–ESB), 202–366–4049, 1200 New Jersey Ave., SE., Washington, DC 20590. Office hours are from 7:30 a.m. to 4 p.m., e.t., Monday through Friday, except Federal holidays.

Issued on: September 28, 2007.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. E7–19677 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, the Federal Railroad Administration (FRA) hereby announces that it is seeking renewal of the following currently approved information collection activities. Before submitting these information collection requirements for clearance by the Office of Management and Budget (OMB), FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Comments must be received no later than December 4, 2007.

ADDRESSES: Submit written comments on any or all of the following proposed activities by mail to either: Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590, or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, ''Comments on OMB control number 2130–0500.'' Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or via e-mail to Mr. Brogan at *robert.brogan@dot.gov,* or to Ms. Christodoulou at *gina.christodoulou@dot.gov.* Please refer to the assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 25, Washington, DC 20590 (telephone: (202) 493–6292) or Ms. Gina Christodoulou, Office of Support Systems Staff, RAD–43, Federal Railroad Administration, 1120 Vermont Ave., NW., Mail Stop 35, Washington, DC 20590 (telephone: (202) 493–6139). (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. 104–13, section 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1), 1320.10(e)(1), 1320.12(a). Specifically, FRA invites interested respondents to comment on the following summary of proposed information collection activities regarding (i) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (ii) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (iii) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (iv) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). *See* 44 U.S.C. 3506(c)(2)(A)(i)-(iv); 5 CFR 1320.8(d)(1)(i)-(iv). FRA believes that soliciting public comment will promote its efforts to reduce the administrative and paperwork burdens associated with the collection of information mandated by Federal regulations. In summary, FRA reasons that comments received will advance three objectives: (i) Reduce reporting burdens; (ii) ensure that it organizes information collection requirements in a ''user friendly'' format to improve the use of such information; and (iii) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

Below is a brief summary of currently approved information collection activities that FRA will submit for clearance by OMB as required under the PRA:

Title: Accident/Incident Reporting and Recordkeeping.

OMB Control Number: 2130–0500.

Abstract: The collection of information is due to the railroad accident reporting regulations set forth in 49 CFR Part 225 which require railroads to submit monthly reports summarizing collisions, derailments, and certain other accidents/incidents involving damages above a periodically revised dollar threshold, as well as certain injuries to passengers, employees, and other persons on railroad property. Because the reporting requirements and the information needed regarding each category of accident/incident are unique, a different form is used for each category.

Form Number(s): FRA F 6180.54; 55; 55A; 56; 57; 78; 81; 97; 98; 99; 107.

Affected Public: Businesses.

Respondent Universe: 685 railroads.

Frequency of Submission: On occasion.

Reporting Burden:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
225.9—Telephone Reports of Certain Accidents/Incidents and Other Events.	685 railroads	500 phone reports	15 minutes	125	$5,000
225.11—Reporting of Rail Equipment Accidents/Incidents—Form FRA F 6180.54.	685 railroads	3,000 forms	2 hours	6,000	240,000
225.12—Rail Equipment Accident/Incident Reports Alleging Human Factor as Cause—Form FRA F 6180.81.	685 railroads	1,400 forms	15 minutes	350	14,000
—Part I Form FRA F 6180.78 (Notices)	685 railroads	1,000 notices + 4,100 copies	10 minutes + 3 minutes	372	14,880
—Joint Operations	685 railroads	100 requests	20 minutes	33	1,320
—Late Identification	685 railroads	20 attachments + 20 notices	15 minutes	10	400
—Employee Statement Supplementing Railroad Accident Report (Part II Form FRA 6180.78).	Railroad employees	75 statements	1.5 hours	113	5,198
—Employee Confidential Letter	Railroad employees	10 letters	2 hours	20	920
225.13—Late Reports	685 railroads	50 amended rpts. + 40 copies.	1 hour + 3 minutes	52	2,080
225.17—Doubtful Cases; Alcohol or Drug Involvement: Narrative Reports to FRA.	685 railroads	80 reports	30 minutes	40	1,600
—Appended reports required by § 219.209(b)	685 railroads	5 reports	30 minutes	3	120
225.19—Rail-Highway Grade Crossing Accident/Incident Report—Form FRA F 6180.57.	685 railroads	3,000 forms	2 hours	6,000	240,000
—Death, Injury, or Occupational Illness (Form FRA F 6180.55a).	685 railroads	12,000 forms	20 minutes	4,000	160,000
225.21—Railroad Injury and Illness Summary: Form FRA F 6180.55.	685 railroads	8,220 forms	10 minutes	1,370	54,800
225.21—Annual Railroad Report of Employee Hours and Casualties, By State—Form FRA F 6180.56.	685 railroads	685 forms	15 minutes	171	6,840
225.21/25—Railroad Employee Injury and/or Illness Record—Form FRA F 6180.98.	685 railroads	18,000 forms	60 minutes	18,000	828,000
—Copies of Forms to Employees	685 railroads	540 form copies	2 minutes	18	828
225.21—Initial Rail Equipment Accident/Incident Record—Form FRA F 6180.97.	685 railroads	13,000 forms	30 minutes	6,500	299,000
225.21—Alternative Record for Illnesses Claimed to Be Work Related—Form FRA F 6180.107.	685 railroads	300 forms	15 minutes	75	3,000
225.25 (h)—Posting of Monthly Summary	685 railroads	8,220 lists	16 minutes	2,192	87,680
225.27—Retention of Records	685 railroads	1,900 records	2 minutes	63	2,520
225.33—Internal Control Plans—Amendments	685 railroads	25 amendments	14 hours	350	14,000
225.35—Access to Records and Reports	15 railroads	400 lists	20 minutes	133	5,320
—Subsequent Years	4 railroads	16 lists	20 minutes	5	200
225.37—Magnetic Media Transfer and Electronic Submission.	8 railroads	96 transfers	10 minutes	16	640
—Electronic Submission: Batch Control Forms (6180.99) and Form FRA F 6180.55.	685 railroads	200 forms	3 minutes	10	400

Total Responses: 77,002.

Estimated Total Annual Burden: 46,021 hours.

Status: Regular Review.

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, DC on September 28, 2007.

D.J. Stadtler,

Director, Office of Financial Management, Federal Railroad Administration.

[FR Doc. E7–19678 Filed 10–4–07; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35062]

Finger Lakes Railway Corp.—Control Exemption—Ontario Central Railroad Corp.; Notice of Exemption

AGENCY: Surface Transportation Board, DoT.

ACTION: Notice of exemption.

SUMMARY: The Board grants an exemption, under 49 U.S.C. 10502, from the prior approval requirements of 49 U.S.C. 11323, *et seq.*, for Finger Lakes Railway Corp. (FGLK), a Class III rail carrier, to acquire control by purchase of 81.05% of the issued and outstanding stock of Ontario Central Railroad Corp. (ONCT) from Livonia, Avon & Lakeville Railroad Corp. The rail line consists of 14 miles of the rail line in New York.

DATES: The exemption will be effective on October 15, 2007. Petitions to stay must be filed by October 10, 2007. Petitions to reopen must be filed by October 22, 2007.

ADDRESSES: An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35062, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. In addition, one copy of all pleadings must be served on FGLK's representative, Eric M. Hocky, Gollatz, Griffin & Ewing, P.C., Four Penn Center, Suite 200, 1600 John F. Kennedy Blvd., Philadelphia, PA 19103–2808.

FOR FURTHER INFORMATION CONTACT: Julia Farr, (202) 245–0359. [Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, e-mail, or call: ASAP Document Solutions, 9332 Annapolis Rd., Suite 103, Lanham, MD 20706; e-mail: *asapdc@verizon.net;* telephone: (202) 306–4004. [Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.]

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: October 1, 2007.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey.

Vernon A. Williams,

Secretary.

[FR Doc. E7–19714 Filed 10–4–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35083]

SMS Rail Lines of New York, LLC—Lease and Operation Exemption—Delaware and Hudson Railway Company, Inc. Line in Albany County, NY

SMS Rail Lines of New York, LLC (SMS), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to lease from Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway, and operate the Voorheesville Running Track, approximately 15 miles of rail line extending between milepost 11.00 in Voorheesville 12085 and a point 50 feet south of the centerline of the bridge at milepost 26.14 (or engineering station 6136+/−) in Delanson 12053, including the use of wye track and any track leading to the Northeast Industrial Park at milepost 12.1 and 12.29, in Albany County, NY.

SMS certifies that its projected revenues as a result of the transaction will not result in the creation of a Class II or Class I rail carrier and will not exceed $5 million.

The earliest this transaction may be consummated is October 19, 2007, the effective date of the exemption (30 days after the exemption was filed).

If the verified 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 transaction.

Petitions for stay must be filed no later than October 12, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35083, must be filed with the Surface Transportation Board, 395 E Street, SW., Washington, DC 20423–0001. Also, a copy of each pleading must be served on Fritz R. Kahn, Fritz R. Kahn, P.C., 1920 N Street, NW., 8th floor, Washington, DC 20036.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov.*

Decided: September 28, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–19601 Filed 10–4–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 35086]

Ogeechee Railroad Company—Acquisition and Operation Exemption—Georgia Midland Railroad, Inc.

Ogeechee Railroad Company (ORC), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by lease assignment) Georgia Midland Railroad, Inc.'s (GMR) lease from the Georgia Department of Transportation (GADOT) of a 21.1-mile rail line between milepost SA–36.4 at or near Ardmore, GA, and milepost SA–57.5 at or near Sylvania, GA (the Sylvania line), and to operate over it.

ORC indicates that, with the consent of GADOT, GMR acquired its lease of the Sylvania line by assignment from Ogeechee Railway Company.[1] ORC states that an agreement has been reached between ORC and GMR for the assignment of GMR's lease to ORC and for ORC's operation of the line. According to ORC, GADOT has indicated that it will consent to the assignment of GMR's lease to ORC upon ORC's becoming a rail carrier.

ORC certifies that its projected revenues do not exceed those that would qualify it as a Class III rail carrier and further certifies that its projected annual revenues as a result of this transaction will not exceed $5 million.

[1] *See Georgia Midland Railroad, Inc.—Acquisition and Operation Exemption—Ogeechee Railway Company*, STB Finance Docket No. 34466 (STB served Mar. 12, 2004).

The earliest this transaction may be consummated is October 24, 2007, the effective date of the exemption (30 days after the exemption was filed). ORC indicates that the transaction will be consummated no sooner than 30 days after the September 24, 2007 filing date of the notice of exemption.

If the verified 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 transaction. Petitions for stay must be filed no later than October 17, 2007 (at least 7 days before the exemption becomes effective).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 35086, 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 F. McFarland, Thomas F. McFarland, P.C., 208 South LaSalle Street, Suite 1890, Chicago, IL 60604–1112.

Board decisions and notices are available on our Web site at *http://www.stb.dot.gov*.

Decided: September 28, 2007.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. E7–19491 Filed 10–4–07; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

NetBank, Alpharetta, GA; Notice of Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) of the Home Owner's Loan Act, the Office of Thrift Supervision has duly appointed the Federal Deposit Insurance Corporation as sole Receiver for the NetBank, Alpharetta, Georgia (OTS No. 8475), on September 28, 2007.

Dated: October 2, 2007.

By the Office of Thrift Supervision.

Sandra E. Evans,

Legal Information Assistant.

[FR Doc. 07–4957 Filed 10–4–07; 8:45 am]

BILLING CODE 6720–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on Women Veterans will meet October 29–31, 2007 in Room 230, VA Central Office, 810 Vermont Avenue, NW., Washington, DC, from 8:30 a.m. to 4:30 p.m. each day. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by VA designed to meet such needs. The Committee will make recommendations to the Secretary regarding such programs and activities.

On October 29, the agenda will include overviews of the Veterans Health Administration, the Veterans Benefits Administration, the National Cemetery Administration, updates on activities of the Center for Women Veterans, the 2006 Advisory Committee on Women Veterans' report, an overview of the Women Veterans Health Strategic Healthcare Group, a briefing on women's mental health and military sexual trauma, an annual ethics briefing, and presentation of Certificates of Appointment to new Committee members. On October 30, the Committee will receive briefings from the Center for Veterans Enterprise, VA Homeless Program, the Office of Congressional & Legislative Affairs, and VHA Research. On October 31, the Committee will receive briefings and updates on genomic medicine, the Defense Advisory Committee on Women in the Service (DACOWITS), and the Veterans Disability Benefits Commission's final report. The agenda will also include any new issues that the Committee members may introduce, as well as planning for the 2008 Report.

Any member of the public wishing to attend should contact Ms. Desiree Long, at the Department of Veterans Affairs, Center for Women Veterans (00W), 810 Vermont Avenue, NW., Washington, DC 20420. Ms. Long may be contacted either by phone at (202) 461–6193, fax at (202) 273–7092, or e-mail at *00W@mail.va.gov*. Interested persons may attend, appear before, or file statements with the Committee. Written statements must be filed before the meeting, or within 10 days after the meeting.

Dated: October 1, 2007.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer,

[FR Doc. 07–4944 Filed 10–4–07; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 72, No. 193

Friday, October 5, 2007

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

LIBRARY OF CONGRESS

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37 CFR Part 381

[Docket No. 2006–2 CRB NCBRA]

Noncommercial Educational Broadcasting Statutory License

Correction

In proposed rule document E7–18939 beginning on page 54622 in the issue of Wednesday, September 26, 2007 make the following correction:

§ 381.7 [Corrected]

On page 54623, in § 381.7(b)(1)(i)(C), in the third column, in the table, in the second column, in the second entry ''$457.66'' should read ''$57.66''.

[FR Doc. Z7–18939 Filed 10–4–07; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,

October 5, 2007

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 229, 635, and 648

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 229, 635, and 648

[Docket No. 0612242977–7216–01; I.D. 120304D]

RIN 0648–AS01

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to amend the regulations implementing the Atlantic Large Whale Take Reduction Plan (ALWTRP). This final rule revises the management measures for reducing the incidental mortality and serious injury to the Northern right whale (*Eubalaena glacialis*), humpback whale (*Megaptera novaeangliae*), and fin whale (*Balaenoptera physalus*) in commercial fisheries to meet the goals of the Marine Mammal Protection Act (MMPA) and the Endangered Species Act (ESA). The measures identified in the ALWTRP are also intended to benefit minke whales (*Balaenoptera acutorostrata*), which are not strategic, but are known to be taken incidentally in commercial fisheries. This final rule implements additional regulations for the fisheries currently covered by the ALWTRP (the Northeast sink gillnet, Northeast/Mid-Atlantic American lobster trap/pot, Mid-Atlantic gillnet, Southeast Atlantic gillnet, and Southeastern U.S. Atlantic shark gillnet fisheries) and regulates several fisheries from the MMPA List of Fisheries for the first time under the ALWTRP, including the following: Northeast anchored float gillnet, Northeast drift gillnet, Atlantic blue crab, and Atlantic mixed species trap/pot fisheries targeting crab (red, Jonah, and rock), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.

DATES: The amendments to §§ 229.2, 229.3, and 648.264(a)(6)(i) are effective April 5, 2008 and the amendment to § 635.69(a)(3) is effective November 5, 2007.

As specified in the regulatory text section of this document, amendments to § 229.32 are effective as follows:

- Paragraphs (f) introductory text, (f)(2), and (f)(3) are revised effective November 5, 2007;
- Amendments to § 229.32(f)(1)(iii) and (g)(4)(i)(B)(*1*)(*vi*) are added effective November 5, 2007 to April 5, 2008;
- Paragraphs (f)(1)(ii) and (g)(4)(i)(B)(*1*)(*iii*) are removed and reserved effective November 5, 2007;
- Subsequent revision of § 229.32 is effective April 5, 2008 except for paragraphs (c)(5)(ii)(B), (c)(6)(ii)(B), (c)(7)(ii)(C), (c)(8)(ii)(B), (c)(9)(ii)(B), (d)(6)(ii)(D), and (d)(7)(ii)(D), which will be effective October 5, 2008.

ADDRESSES: Copies of the Final Environmental Impact Statement/ Regulatory Impact Review for this action can be obtained from the ALWTRP Web site listed under the Electronic Access portion of this document. Atlantic Large Whale Take Reduction Team (ALWTRT) meeting summaries, progress reports on implementation of the ALWTRP, and the small entity compliance guide may be obtained by writing Diane Borggaard, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930. For additional **ADDRESSES** and Web sites for document availability see **SUPPLEMENTARY INFORMATION** section.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in this final rule may be submitted to Mary Colligan, Assistant Regional Administrator for Protected Resources, National Marine Fisheries Service, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930 and by e-mail to *David_Rostker@omb.eop.gov*, or fax to 202–395–7285.

FOR FURTHER INFORMATION CONTACT: Diane Borggaard, NMFS, Northeast Region, 978–281–9300 Ext. 6503, *diane.borggaard@noaa.gov*; Kristy Long, NMFS, Office of Protected Resources, 301–713–2322, *kristy.long@noaa.gov;* or Barb Zoodsma, NMFS, Southeast Region, 904–321–2806, *barb.zoodsma@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Electronic Access

Several of the background documents for the ALWTRP and the take reduction planning process can be downloaded from the ALWTRP Web site at *http://www.nero.noaa.gov/whaletrp/*. Copies of the most recent marine mammal stock assessment reports may be obtained by writing to Dr. Richard Merrick, NMFS, 166 Water Street, Woods Hole, MA 02543 or can be downloaded from the Internet at *http://www.nefsc.noaa.gov/psb/assesspdfs.htm.* The complete text of the regulations implementing the ALWTRP can be found either in the Code of Federal Regulations (CFR) at 50 CFR 229.32 or downloaded from the Web site, along with a guide to the regulations.

Background

This final rule implements modifications to the ALWTRP as suggested by the ALWTRT, as well as modifications deemed necessary by NMFS to meet the goals of the MMPA and ESA. Details concerning the development and justification of this final rule were provided in the preamble to the proposed rule (70 FR 35894, June 21, 2005) and are not repeated here. This final rule also incorporates a recent amendment to the ALWTRP (72 FR 34632, June 25, 2007) that implemented, with revisions, previous ALWTRP regulations by expanding the Southeast U.S. Restricted Area to include waters within 35 nm (64.82 km) of the South Carolina coast, dividing the Southeast U.S. Restricted Area into Southeast U.S. Restricted Areas North and South, and modified regulations pertaining to gillnetting within the Southeast U.S. Restricted Area.

Changes to the Boundaries and Seasons

The ALWTRP gear modifications for regulated areas of the east coast will extend out to the eastern edge of the exclusive economic zone (EEZ) (effective April 7, 2008) (See Figures 1 and 2). The ALWTRP will also modify seasonal requirements along the east coast (effective April 7, 2008). Broad-based gear modifications will be required on a year-round basis from Maine to 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), south to 40°00′ N. lat., and east to the eastern edge of the EEZ. NMFS will require gear modifications in the Mid and South Atlantic (called ''Mid/South Atlantic'' from this point) on a seasonal basis, from September 1 to May 31, when more sightings are reported and the risk of entanglement with commercial fishing gear is greater. Under this final rule, a line drawn from 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), south to 40°00′ N. lat., and east to the eastern edge of the EEZ, will serve as the northern boundary for seasonal gear modifications in the Mid/South Atlantic and 32°00′ N. lat. (near Savannah, GA) east to the eastern edge of the EEZ will serve as the southern boundary. Portions of the Mid/South Atlantic Gillnet Waters (i.e., waters within 35 nm (64.82 km) of the South Carolina coast) will be included in the Southeast U.S. Restricted Area (a gillnet management area) during the restricted periods associated with the right whale calving season (i.e. November 15 to April 15).

NMFS is revising the seasons and boundaries for the southeast from November 15 to April 15 for all ALWTRP regulated fisheries, except for the gillnet fisheries modified through the recent amendment to the ALWTRP (72 FR 34632, June 25, 2007), between 32°00′ N. lat. (near Savannah, GA) and 29°00′ N. lat. (near New Smyrna Beach, FL) east to the eastern edge of the EEZ. From December 1 to March 31, restrictions will be required for the Atlantic blue crab and Atlantic mixed species trap/pot fisheries and the Southeast Atlantic gillnet fishery between 29°00′ N. lat. and 27°51′ N. lat. (near Sebastian Inlet, FL) east to the eastern edge of the EEZ, and for the Southeastern U.S. Atlantic shark gillnet fishery between 29°00′ N. lat. and 26°46.50′ N. lat. (near West Palm Beach, FL) east to the eastern edge of the EEZ. The Southeastern U.S. shark gillnet fishery as regulated in this final rule includes shark gillnetting with 5-inch (12.7-cm) or greater stretched mesh south of the South Carolina/Georgia border.

Changes to the Lobster Trap/Pot Gear Requirements

Northern Inshore State and Nearshore Trap/Pot Waters, Cape Cod Bay Restricted Area (May 16–December 31), Stellwagen Bank/Jeffreys Ledge Restricted Area, and Great South Channel Restricted Area (Nearshore Portion)

The regulations for Northern Nearshore Trap/Pot Waters, Stellwagen Bank/Jeffreys Ledge Restricted Area, and the Federal portion of the Cape Cod Bay Restricted Area (May 16–December 31) will continue to require one buoy line on trawls of 5 or fewer traps.

For Northern Inshore State Trap/Pot Waters and the state portion of the Cape Cod Bay Restricted Area (May 16–December 31), this final rule will eliminate the Lobster Take Reduction Technology List (i.e., a list of gear modification options) and require a 600-lb (272.2-kg) weak link on all flotation devices and/or weighted devices (except traps/pots, anchors, and leadline woven into the buoy line) attached to the buoy line (effective April 7, 2008).

This final rule will also lower the weak link breaking strength on all flotation devices and/or weighted devices attached to the buoy line in the nearshore portion of the Great South Channel Restricted Area that overlaps with Lobster Management Area (LMA) 2 and the Outer Cape (July 1–March 31) from 2,000 lb (907.2 kg) to 600 lb (272.2 kg) (effective April 7, 2008). All fishermen in the nearshore portion of the Great South Channel Restricted Area will then be required to have a 600-lb (272.2-kg) weak link on all flotation devices and/or weighted devices (except traps/pots, anchors, and leadline woven into the buoy line) attached to the buoy line.

Offshore Trap/Pot Waters Area and Great South Channel Restricted Area (Offshore Portion)

This final rule will extend the southern boundary of the Offshore Trap/Pot Waters Area by following the 100-fathom (600-ft or 182.9-m) line from 35°30′ N. lat. (just north of Cape Hatteras, NC) to 27°51′ N. lat. and then extending out to the eastern edge of the EEZ (effective April 7, 2008). In addition to the current requirements, this final rule will lower the maximum breaking strength of weak links and require weak links with appropriate breaking strength on all flotation devices and/or weighted devices (except traps/pots, anchors, and leadline woven into the buoy line) attached to the buoy line in Offshore Trap/Pot Waters that overlaps with the LMA 3 (including the area known as the Area 2/3 Overlap and Area 3/5 Overlap) and the offshore portion of the Great South Channel Restricted Area that overlaps with the LMA 2/3 overlap and LMA 3 Areas from 2,000 lb (907.2 kg) to 1,500 lb (680.4 kg) (effective April 7, 2008).

Southern Nearshore Trap/Pot Waters Area

This final rule will extend the southern boundary of the Southern Nearshore Trap/Pot Waters Area by following the 100-fathom (600-ft or 182.9-m) line from 35°30′ N. lat. to 27°51′ N. lat. and then extending the boundary inshore to the shoreline or exempted areas. The Southern Nearshore Trap/Pot Waters is defined by LMAs 4, 5, and 6 (except for the exempted areas) north of 35°30′ N. lat. and by the 100-fathom (600-ft or 182.9-m) line west to the shoreline or exempted areas south of 35°30′ N. lat. In addition to the current requirements, this final rule will implement the regulations currently required in the Southern Nearshore Trap/Pot Waters in the portion of LMA 6 that is neither exempted under the ALWTRP waters (i.e., mouth of Long Island Sound) nor currently regulated by the ALWTRP (effective April 7, 2008). This final rule will also require a 600-lb (272.2-kg) weak link on all flotation devices and/or weighted devices (except traps/pots, anchors, and leadline woven into the buoy line) attached to the buoy line.

Changes to the Other Trap/Pot Gear Requirements

Effective April 7, 2008, NMFS will regulate the following trap/pot fisheries under the ALWTRP (designated as ''Other Trap/Pot Fisheries''): Crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp. Through this final rule, these Other Trap/Pot fisheries will be required to comply with current ALWTRP regulations, including the universal gear modifications, and will follow the same area designations and requirements (e.g., weak links, Seasonal Area Management (SAM) program requirements as modified in this final rule, and Cape Cod Bay and Great South Channel Area restrictions) currently required and revised for the lobster trap/pot fisheries covered by the ALWTRP. Where applicable, these fisheries will also be regulated under the ALWTRP within the portion of LMA 6 that is not exempted by the ALWTRP (i.e., mouth of Long Island Sound). In addition to complying with the current ALWTRP requirements, the Other Trap/Pot Fisheries will be required to comply with the modifications for the lobster trap/pot fishery specified in this final rule (effective April 7, 2008) except for the groundline requirements where applicable as noted under the ''Broad-Based Gear Modifications'' section below.

Red Crab Trap/Pot Gear

Through this final rule, the maximum weak link breaking strength will be lowered from 3,780 lb (1,714.6 kg) to 2,000 lb (907.2 kg). A 2,000-lb (907.2-kg) weak link will be required on all flotation devices and/or weighted devices (except traps/pots, anchors, and leadline woven into the buoy line) attached to the buoy line in the red crab fishery (effective April 7, 2008).

Changes to the All Trap/Pot Gear Requirements

Broad-Based Gear Modifications

The majority of the broad-based gear modifications identified in this final rule for trap/pot gear will become effective six months after publication of this final rule, April 7, 2008, except for the groundline requirement that will be phased-in and effective October 6, 2008, except in SAM and Cape Cod Bay Restricted Areas. When the majority of the broad-based gear modifications become effective on April 7, 2008, the Dynamic Area Management (DAM) program will be eliminated. When the sinking/neutrally buoyant groundline

requirement becomes fully effective, October 6, 2008, this final rule will eliminate the Seasonal Area Management (SAM) program. However, until October 6, 2008, the Other Trap/Pot Fisheries will be subject to SAM program requirements (see modifications to area and gear requirements as noted in this final rule).

ALWTRP-Regulated Trap/Pot Waters

Due to the addition of new trap/pot fisheries, ALWTRP-Regulated Lobster Waters will be re-designated as ALWTRP-Regulated Trap/Pot Waters to reflect the broader application of ALWTRP requirements. Accordingly, under the final rule, the term ''lobster trap/pot'' will be replaced with ''trap/pot'' where it appears in the regulations implementing the ALWTRP.

Boundaries and Seasons

Under this final rule, the areas will be created by establishing a line that is bounded on the west by a line running from 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), south to 40°00′ N. lat., and east to the eastern edge of the EEZ. The gear fished in the area north of this line will be required to incorporate current and revised broad-based gear modifications year-round; the gear fished in the area south of this line to 32°00′ N. lat. and east to the eastern edge of the EEZ will require gear modifications from September 1 to May 31 (effective April 7, 2008). Areas south of 32°00′ N. lat. will require gear modifications in the following areas and during the following seasonal time periods: between the 32°00′ N. lat. and 29°00′ N. lat. east to the eastern edge of the EEZ from November 15–April 15; between 29°00′ N. lat. and 27°51′ N. lat. east to the eastern edge of the EEZ from December 1 through March 31 (effective April 7, 2008).

Sinking/Neutrally Buoyant Groundlines

Under this final rule, the lobster trap/pot fishery currently regulated by the ALWTRP, as well as the other trap/pot fisheries added through this final rule, will be required to use groundline composed entirely of sinking and/or neutrally buoyant line in the applicable areas and time periods effective twelve months after publication of this final rule (unless otherwise required in the Cape Cod Bay Restricted Area for trap/pots [January 1–May 15]). The sinking and/or neutrally buoyant groundline requirement will be effective in expanded SAM areas effective 6 months after publication of this final rule.

Based on public comments received regarding the line between traps and anchors, and a review of the groundline definition, NMFS finds that the definition does not cover this portion of the gear. (The groundline definition ''with reference to trap/pot gear, means a line connecting traps in a trap trawl, and with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.'') NMFS did not specifically seek nor receive public comment on the groundline definition related to the line between traps and anchors, and accordingly cannot make any adjustments to the definition at this time. NMFS will be conducting further investigations of this gear configuration through contact with fishermen and states to determine how common a practice it is in trap/pot fisheries, determine the type of line used in this portion of the gear, quantify potential risk if floating line is used, determine any new issues that may be raised by requiring sinking and/or neutrally buoyant line in this area of the gear, and discuss the appropriate management response with the ALWTRT at the next meeting.

Weak Links

Through this final rule, weak links of the appropriate breaking strength will be required on all flotation devices and/or weighted devices (except traps/pots, anchors, and leadline woven into the buoy line) attached to the buoy line (effective April 7, 2008) for all ALWTRP-regulated areas and fisheries during the time periods when ALWTRP restrictions apply. The Other Trap/Pot Fisheries added to the ALWTRP by this final rule will also be subject to the weak link requirements.

Changes to the Gillnet Gear Requirements

Other Northeast Gillnet Waters, Stellwagen Bank/Jeffreys Ledge Restricted Area, Cape Cod Bay Restricted Area (May 16–December 31), Great South Channel Restricted Area (July 1–March 31), and Great South Channel Sliver Restricted Area

Anchored Gillnets

Under this final rule, NMFS will require an 1,100-lb (499.0-kg) weak link on all flotation devices and/or weighted devices (except gillnets, anchors, and leadline woven into the buoy line) attached to the buoy line (effective April 7, 2008). For anchored gillnets in the Northeast sink gillnet fishery, NMFS will also require an increase in the number of weak links per gillnet net panel from one weak link with a maximum breaking strength of 1,100 lb (499.0 kg) to five or more weak links with a maximum breaking strength of 1,100 lb (499.0 kg), depending on the length of the gillnet net panel (effective April 7, 2008). The weak link requirement will apply to all variations in panel size. For example, gillnet net panels of 50 fathoms (300 ft or 91.4 m) or less in length, will be required to have one weak link in the floatline at the center of the gillnet net panel. For gillnet net panels greater than 50 fathoms (300 ft or 91.4 m), weak links will be placed continuously along the floatline separated by a maximum distance of 25 fathoms (150 ft or 45.7 m). For all variations in panel size, the following weak link requirements will apply: (1) Weak links will be placed in the center of each of the up and down lines at each end of each gillnet net panel, and (2) one floatline weak link will be placed as close as possible to each end of the gillnet net panel just before the floatline meets the up and down line. Up and down line means the line that connects the floatline and leadline at the end of each gillnet net panel.

In addition to the above configuration for gillnet net panel weak links, NMFS will allow the following option for all variations in panel size: (1) Weak links will be placed in the center of each of the up and down lines at each end of each gillnet net panel, (2) weak links will be placed between the floatline tie loops between gillnet net panels, and (3) weak links will be placed between the floatline tie loop and bridle or buoy line at each end of a net string (depending on how the gear is configured) (see Figure 3). Tie loops mean the loops on a gillnet net panel used to connect gillnet net panels to the buoy line, groundline, bridle, or each other. NMFS will also be allowing the optional configuration in the current SAM areas, as well as in established DAM zones when a gear modification option is selected (effective November 5, 2007). See the *Changes from Proposed Rule* section (6) below for further information on the rationale for this optional configuration, as well as for allowing it in the current SAM areas and established DAM zones.

For the above configuration options, weak links must be chosen from the following combinations approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. In addition, all anchored gillnets, regardless of the number of gillnet net panels, will be required to be securely anchored with the holding

capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor at each end of the net string (effective April 7, 2008). Dead weights and heavy leadline will not be available as an optional anchoring system. The same configuration option would be required for all gillnet net panels in a string.

Mid/South Atlantic Gillnet Waters

Under this final rule, the Mid-Atlantic Coastal Waters Area will be expanded and renamed to include waters currently unregulated by the ALWTRP that include a component of the U.S. Mid-Atlantic gillnet fishery and Southeast Atlantic gillnet fishery. Specifically, gillnet fisheries in the waters from 72°30′ W. long., south to the Virginia/North Carolina border, east to the eastern edge of the EEZ, and extending south to 32°00′ N. lat. and out to the eastern edge of the EEZ will be referred to as Mid/South Atlantic Gillnet Waters (effective April 7, 2008). Portions of the Mid/South Atlantic Gillnet Waters (i.e., waters within 35 nm (64.82 km) of the South Carolina coast) are also included in the Southeast U.S. Restricted Area during the November 15 to April 15 right whale calving season.

Anchored Gillnets

Under this final rule, all anchored gillnets in the Mid/South Atlantic Gillnet Waters must have an 1,100-lb (499.0-kg) weak link on all flotation devices and/or weighted devices (except gillnets, anchors, and leadline woven into the buoy line) attached to the buoy line (effective April 7, 2008). Additionally, if gillnets are not returned to port with the vessel they must contain five or more weak links depending on the length of the gillnet net panel, with a maximum breaking strength no greater than 1,100 lb (499.0 kg) for each gillnet net panel; and be anchored at each end with an anchor capable of the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor (effective April 7, 2008). The configuration options for gillnet net panel weak links and anchoring are similar to that specified for anchored gillnets in the Other Northeast Gillnet Waters section of this rule. The same configuration option would be required for all gillnet net panels in a string. All gillnets, even if returned to port with the vessel, must also contain one weak link with a maximum breaking strength no greater than 1,100 lb (499.0 kg) in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels in previously unregulated waters (effective April 7, 2008).

Gillnets within 300 yards (900 ft or 274.3 m) of the shoreline of North Carolina that are not returned to port with the vessel will have an additional option for setting their gear. Gillnets set in this area may configure their gear as follows: five or more weak links per gillnet net panel (depending on the length of the gillnet net panel) with a maximum breaking strength of 600 lb (272.2 kg) must be deployed, and be anchored with the holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor on the offshore end of the net string and with a dead weight equal to or greater than 31-lb (14.1-kg) on the inshore end of the net string (effective April 7, 2008). The entire net string must be set within 300 yards (900 ft or 274.3 m) of the beach in North Carolina for this optional anchoring system and gillnet net panel weak link configuration. This configuration is in addition to the final configuration of five or more weak links per gillnet net panel (depending on the length of the gillnet net panel) with a maximum breaking strength of 1,100-lb (499.0-kg), and anchored with the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor on each end of the net string. Specifics on the configuration options for the placement of gillnet net panel weak links can be found in the Other Northeast Gillnet Waters section of this rule.

At this time, NMFS is not regulating gillnets that are anchored to the beach and subsequently hauled onto the beach to retrieve the catch. This fishing technique is known to occur on the beaches of North Carolina. NMFS will be discussing the appropriate management measures for this unique fishery with the ALWTRT at a future meeting. In the meantime, NMFS will be conducting outreach and research on this fishery to support future discussions with the ALWTRT. NMFS will be coordinating with the North Carolina Department of Marine Fisheries to revise the definition for beach -based gear to help ensure landings are reported accurately for beach-based gear versus gillnets, among other issues.

Drift Gillnets

Under this final rule, current requirements for drift gillnet gear in Mid/South Atlantic Gillnet Waters are expanded in time and space as noted in the Boundaries and Seasons section above (effective April 7, 2008).

Other Southeast Gillnet Waters

Under this final rule, the management area for the Southeast Atlantic gillnet and Southeastern U.S. Atlantic shark gillnet fisheries off Georgia and Florida will be expanded and renamed (effective April 7, 2008). Specifically, this final rule will define the waters east of 80°00′ W. long. from 32°00′ N. lat. south to 26°46.5′ N. lat. and out to the eastern edge of the EEZ as one ALWTRP management area named ''Other Southeast Gillnet Waters''. The expansion of this area east to the eastern edge of the EEZ will be consistent with the ALWTRP area boundary expansion in the Mid-Atlantic.

Under this final rule, NMFS will establish the seasonal restricted time period in Other Southeast Gillnet Waters (effective April 7, 2008). ALWTRP regulations for the Southeast Atlantic gillnet fishery operating in the Other Southeast Gillnet Waters between 32°00′ N. lat. to 29°00′ N. lat. (near New Smyrna Beach, FL) will be effective from November 15 to April 15, and between 29°00′ N. lat. and 27°51′ N. lat. will be effective from December 1 to March 31. For the Southeastern U.S. Atlantic shark gillnet fishery, ALWTRP regulations in the Other Southeast Gillnet Waters between 32°00′ N. lat. to 29°00′ N. lat. will be effective from November 15 to April 15, and between 29°00′ N. lat. and 26°46.5′ N. lat. will be effective from December 1 to March 31.

Southeast Atlantic Gillnet Fishery

All gillnet gear in Other Southeast Gillnet Waters will be regulated in the same manner as the Mid/South Atlantic anchored gillnet fishery (effective April 7, 2008). The regulated waters for the Southeast Atlantic gillnet fishery south of 32°00′ N. lat. to 27°51′ N. lat. and east from 80°00′ W. long. to the eastern edge of the EEZ will be required to comply with the ALWTRP universal gear requirements (e.g., no buoy line floating at the surface and no wet storage of gear), as well as the following: gillnets must have all flotation devices and/or weighted devices (except gillnets, anchors, and leadline woven into the buoy line) attached to the buoy line with a weak link having a maximum breaking strength no greater than 1,100 lb (499.0 kg); and have all gillnet net panels containing weak links with a maximum breaking strength no greater than 1,100 lb (499.0 kg) in the center of each floatline of each 50 fathom (300 ft or 91.4m) gillnet net panel or every 25 fathoms (150 ft or 45.7 m) for longer panels (effective April 7, 2008).

In addition, under this final rule, all gillnets in the Other Southeast Gillnet

Waters that are not returned to port with the vessel will be required to contain five or more weak links, depending on the length of the gillnet net panel, with a maximum breaking strength no greater than 1,100 lb (499.0 kg) for each gillnet net panel; and be anchored at each end with an anchor with the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor (effective April 7, 2008). The configuration options for gillnet net panel weak links and anchoring are similar to that specified for anchored gillnets in the Other Northeast Gillnet Waters section of this final rule. The same configuration option would be required for all gillnet net panels in a string.

Southeastern U.S. Atlantic Shark Gillnet Fishery

For the Southeastern U.S. Atlantic Shark gillnet fishery operating in Other Southeast Gillnet Waters, the following requirements will be in effect: (1) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and (2) If a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water (effective April 7, 2008).

Southeast U.S. Restricted Area (N and S) and Southeast U.S. Monitoring Area

Under this final rule, the management areas for the Southeastern U.S. Atlantic shark gillnet and Southeast Atlantic gillnet fishery management areas will be redefined (effective April 7, 2008). Specifically, for the Southeastern U.S. Atlantic shark gillnet fishery, the regulated waters landward of 80°00′ W. long. from 27°51′ N. lat. to 26°46.5′ N. lat. will be designated as the Southeast U.S. Monitoring Area (rather than the Southeast U.S. Observer Area). For both the Southeastern U.S. Atlantic shark gillnet and Southeast Atlantic gillnet fisheries, the regulated waters landward of 80°00′ W. long. from 32°00′ N. lat. to 27°51′ N. lat. will be designated as the Southeast U.S. Restricted Area, consisting of a northern area ''N'' between 32°00′ N. lat. and 29°00′ N. lat. and a southern area ''S'' between 29°00′ N. lat. and 27°51′ N. lat.

Under this final rule, the management areas for gillnet fisheries will be regulated with rolling restrictions (effective April 7, 2008). The Southeastern U.S. Atlantic shark gillnet and Southeast Atlantic gillnet fisheries will be regulated in waters from 32°00′ N. lat. to 29°00′ N. lat. (near New Smyrna Beach, FL) from November 15 through April 15. The Southeastern U.S. Atlantic shark gillnet fishery will be regulated in waters from 29°00′ N. lat. to 26°46.5′ N. from December 1 through March 31, and the Southeast Atlantic gillnet fishery will be regulated in waters from 29°00′ N. lat. to 27°51′ N. lat. from December 1 through March 31.

NMFS is also allowing the use of vessel monitoring system (VMS) in lieu of the 100-percent observer coverage requirement for the Southeastern U.S. Atlantic shark gillnets in the newly defined Southeast U.S. Monitoring Area (27°51′ N. lat. to 26°46.5′ N.) under the ALWTRP (effective November 5, 2007). Although 100-percent observer coverage will no longer be required in this area, NMFS will retain observer coverage sufficient to produce statistically reliable results for evaluating the impact of the fishery on protected resources. In light of the revised change from 100-percent observer coverage to VMS, NMFS is changing the name of the ''Southeast U.S. Observer Area'' to the ''Southeast U.S. Monitoring Area.''

Amendment 1 to the FMP for Atlantic Tunas, Swordfish, and Sharks (68 FR 74746, December 24, 2003; 69 FR 19979, April 15, 2004; and 69 FR 28106, May 18, 2004) requires gillnet vessels issued directed shark limited access permits that have gillnet gear on board, regardless of their location, to employ a NMFS approved VMS during the right whale calving season specified in the ALWTRP regulations. Currently, as stated in the August 17, 2004, final rule (69 FR 51010, August 17, 2004) specifying November 15, 2004, as the effective date of this requirement, the applicable right whale calving season is identified as November 15 through March 31. This final rule will change the right whale season specified in those regulations for the Southeast U.S. Monitoring Area to December 1 through March 31 and amend the regulatory text in 50 CFR 635.69(a)(3) regarding the Highly Migratory Species (HMS) VMS requirement for Southeastern U.S. Atlantic shark gillnet vessels.

Changes to the Other Gillnet Gear Requirements

Northeast Anchored Float Gillnet Fishery

This final rule will regulate the Northeast anchored float gillnet fishery (gillnets anchored to the ocean floor with lines running from the anchors to the nets at the surface) according to the requirements for the Northeast anchored gillnet fishery requirements (effective April 7, 2008). The Northeast anchored float gillnet fishery will be subject to the SAM program as modified in this final rule until twelve months after publication of this final rule, and to seasonal closures in right whale restricted areas. Specifically, fishermen using Northeast anchored float gillnets will be prohibited from fishing inside the Cape Cod Bay Restricted Area annually from January 1 through May 15, and inside the Great South Channel Restricted Area annually from April 1 through June 30.

Northeast Drift Gillnet Fishery

This final rule will regulate the Northeast drift gillnet fishery (i.e., nets that are present at the ocean surface and are not anchored to the ocean floor on either end) according to the requirements for the Mid-Atlantic drift gillnet fishery (effective April 7, 2008). The Northeast drift gillnet fishery will not be subject to the SAM program, but drift gillnets will be prohibited from Cape Cod Bay Restricted Area from January 1 through May 15 and from the Great South Channel Restricted Area from April 1 through June 30 (similar to the requirements for anchored gillnet), except for the Sliver Area, where restricted drift gillnet fishing will be allowed.

Changes to the All Gillnet Gear Requirements

Broad-Based Gear Modifications

Most of the broad-based gear modifications for gillnet gear identified in this final rule will become effective six months after publication of this final rule, April 7, 2008, except for the groundline requirement discussed below, which will be phased-in and effective twelve months after publication of this final rule (except in SAM areas), October 6, 2008. When the majority of the broad-based gear modifications become effective on April 7, 2008, the DAM program will be eliminated. When the sinking/neutrally buoyant groundline requirement becomes fully effective, October 6, 2008, this final rule will eliminate the SAM program. However, until this occurs, some of the other gillnet fisheries that will be added to the ALWTRP will be subject to the SAM program (see modifications to area and gear requirements as noted in this final rule).

Boundaries and Seasons

Under this final rule, an area bounded on the west by a line running from 41°18.2′ N. lat. and 71°51.5′ W. long. (Watch Hill, RI), south to 40°00′ N. lat., and east to the eastern edge of the EEZ will be created. The gillnet gear fished in the area north of this line will be required to incorporate current and revised broad-based gear modifications year-round. Gillnet gear fished in the

area south of this line to 32°00′ N. lat. and east to the eastern edge of the EEZ will be required to comply with the broad-based gear modifications detailed above in Mid/South Atlantic Gillnet Waters from September 1 to May 31. However, portions of the Mid/South Atlantic Gillnet Waters (i.e., waters within 35 nm (64.82 km) of the South Carolina coast) will be included in the Southeast U.S. Restricted Area during the November 15 to April 15 right whale calving season. Gillnet fishing in the area south of 32°00′ N. lat. will be required to comply with the broad-based gear modifications in the following areas and seasonal time periods: All gillnet fisheries (Southeast Atlantic and Southeastern U.S. Atlantic shark) between 32°00′ N. lat. and 29°00′ N. lat. from November 15–April 15; Southeast Atlantic gillnet fishery between 29°00′ N. lat. and 27°51′ N. lat. east to the eastern edge of the EEZ from December 1–March 31; and Southeastern U.S. Atlantic shark gillnet fisheries between 29°00′ N. lat. and 26°46.5′ N. lat. east to the eastern edge of the EEZ from December 1–March 31.

Sinking/Neutrally Buoyant Groundlines

Under this final rule, the Northeast anchored gillnet, Mid-Atlantic anchored gillnet, and Southeast Atlantic gillnet fisheries currently regulated by the ALWTRP, and the Northeast anchored float gillnet fishery, which will be added by this final rule, will be required to use groundline composed entirely of sinking and/or neutrally buoyant line in the areas and time periods covered under the ALWTRP effective on October 6, 2008. The sinking and/or neutrally buoyant groundline requirement will be effective in expanded SAM areas effective on April 7, 2008.

Weak Links

Under this final rule, to further reduce the risk of serious injury and mortality from entanglement in gillnet gear, weak links having a maximum breaking strength of 1,100 lb (499.0 kg) will be required on all flotation devices and/or weighted devices (except gillnets, anchors, and leadline woven into the buoy line) attached to the buoy line (effective April 7, 2008). This requirement will apply to all current and revised ALWTRP regulated areas and gillnet fisheries. The weak link requirement is intended to reduce the risk of entanglement and serious injury or mortality due to entanglements in buoy lines and surface systems.

Revised SAM Program

The final rule will amend the SAM program by establishing new boundaries for the SAM areas and revising the gear modifications required for fishing within these areas. The changes to the SAM program described in this final rule will become effective on April 7, 2008, to protect right whales. The SAM program will be eliminated October 6, 2008, when all of the broad-based gear modifications are effective.

This final rule will modify the existing coordinates for the SAM areas. Specifically, the western boundary of SAM West will be extended westward to encompass seasonal aggregations of right whales that occur north of the Cape Cod Bay Restricted Area. Similarly, the southern boundary of SAM West will be extended further south, adjoining the Great South Channel Restricted Sliver Area, to encompass seasonal aggregations of right whales that occur south of the current SAM West and west of the Great South Channel Restricted Area. Finally, the southern boundary of SAM East would be revised to include the Great South Channel Restricted Area including the Sliver Area, but will exclude the southeast corner of the existing SAM East area where there have been very few right whale sightings. The western boundary of SAM East will be extended west to 69° 45′W. long. to encompass right whales that might remain in SAM West in May (after the SAM West area restrictions have expired) (Table 1; Figure 8).

TABLE 1.—SEASONAL AREA MANAGEMENT

Point	Latitude (North)	Longitude (West)
SAM West Polygon—in Effect From March 1–April 30		
1W	42°30′	70°30′ (NW Corner)
2W	42°30′	69°24′
3W	41°48.9′	69°24′
4W	41°40′	69°45′
5W	41°40′	69°57′ along the eastern shoreline of Cape Cod to
6W	42°04.8′	70°10′
7W	42°12′	70°15′
8W	42°12′	70°30′
1W	42°30′	70°30′ (NW Corner)
SAM East Polygon—in Effect From May 1–July 31		
1E	42°30′	69°45′ (NW Corner)
2E	42°30′	67°27′
3E	42°09′	67°08.4′
4E	41°00′	69°05′
5E	41°40′	69°45′
1E	42°30′	69°45′ (NW Corner)

Revised SAM Gear Modifications

In addition to the changes discussed above, this final rule will revise the gear modifications required for fishing within the SAM areas during the applicable time periods. Under this final rule, NMFS will allow the use of two buoy lines per trap/pot trawl or per net string, allow the use of floating line on the bottom one-third or less of the buoy line, and allow two configuration options for gillnet net panel weak links. The same configuration option would be required for all gillnet net panels in a string.

Changes to the SAM Program for All Trap/Pot Gear

Under this final rule, in addition to the measures revised for trap/pot fisheries, the following requirements specific to the SAM and DAM programs would apply. The SAM areas will be

expanded and all lobster trap/pot fisheries operating within these areas during the restricted time periods would be subject to the current SAM restrictions, plus the following: A second buoy line will be allowed and the bottom one-third of the buoy line may consist of floating line. In addition, the trap/pot fisheries subject to the SAM program will be expanded to include: hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock redfish, and white hake), conch/whelk, shrimp, red, blue, rock, and Jonah crab. The expanded SAM area will include the Great South Channel Restricted Area; therefore, trap/pot gear will be subject to the SAM program inside right whale restricted areas during time periods when the requirements for fishing inside these areas are no more conservative than the surrounding waters (i.e., when the protections of right whale restricted areas disappear). However, the more restrictive Great South Channel Restricted Trap/Pot Area closure (April 1 through June 30) will supercede the SAM program. As a result, gear modifications for fishing with trap/pot gear in the SAM area will apply in the Great South Channel Restricted Trap/Pot Area from July 1 through July 31. The DAM program will be eliminated, and replaced with the expanded SAM areas (effective April 7, 2008).

Changes to the SAM Program for Gillnet Gear

Under this final rule, in addition to the measures revised for gillnet fisheries, the following requirements specific to the SAM and DAM programs would apply. The SAM areas will be expanded, and all gillnet fisheries operating within these areas during the restricted time periods will be subject to the current SAM restrictions, plus the following: A second buoy line will be allowed and the bottom one-third of the buoy line may be composed of floating line. In addition, gillnet fisheries would be allowed two configuration options for gillnet net panel weak links as noted in the Other Northeast Gillnet Waters section of this rule. The gillnet fisheries regulated under the SAM program will be expanded to include Northeast anchored float gillnets. The expanded SAM area will include the Great South Channel Restricted Area; therefore, gillnet gear will be subject to the SAM program inside right whale restricted areas during time periods when the requirements for fishing inside these areas are no more conservative than the surrounding waters (i.e., when the protections of right whale restricted areas disappear). However, the more restrictive Great South Channel Restricted Gillnet Area closure (April 1 through June 30) will supercede the SAM program. As a result, gear modifications for fishing with gillnet gear in the SAM area will apply in the Great South Channel Restricted Gillnet Area from July 1 through July 31, and in the Great South Channel Sliver Restricted Area from May 1 through July 31. The DAM program will be eliminated, and replaced with the expanded SAM areas (effective April 7, 2008).

Other Changes for All Trap/Pot and Gillnet Gear

DAM Program

The majority of the modifications in this final rule will become effective on April 7, 2008, including the replacement of the DAM program. Consequently, on April 7, 2008, when the SAM areas are expanded, the expanded SAM program will replace the DAM program. However, until April 7, 2008, the currently regulated trap/pot and gillnet fisheries, will be subject to both the SAM and DAM programs. After April 7, 2008, the currently regulated trap/pot and gillnet fisheries, as well as those added to the ALWTRP, will be subject to the expanded SAM program.

Groundlines

Under this final rule, for both trap/pot and gillnet fisheries, the SAM program will be eliminated and replaced with broad-based gear modifications, including a requirement that all groundlines must be composed of sinking and/or neutrally buoyant line, effective on October 6, 2008 (unless otherwise required in the Cape Cod Bay Restricted Area for trap/pot (January 1–May 15) or SAM areas).

Gear Marking

Under this final rule, NMFS will expand requirements to fisheries and areas not previously regulated under the ALWTRP or required to mark gear such as the following: Northeast drift gillnet; Northeast anchored float gillnet; Northern Inshore State Trap/Pot Waters; LMA 6 portion of Southern Nearshore Trap/Pot Waters; Mid/South Atlantic Gillnet Waters; and Other Southeast Gillnet Waters (effective April 7, 2008). The gear marking scheme will require one 4-inch (10.2 cm) colored mark midway along the buoy line. Additionally, the gear marking scheme will require all surface buoys to identify the vessel registration number, vessel documentation number, Federal permit number, or whatever positive identification marking is required by the vessel's home-port state (effective April 7, 2008). Under this final rule, the color and marking scheme for nets used in the Southeastern U.S. Atlantic shark gillnet fishery will remain status quo and only buoy lines greater than 4 feet (1.2 m) in length would need to be marked for this fishery.

Trap/Pot Gear Marking Colors

The ALWTRP will require fishermen to mark their trap/pot buoy lines with one red 4-inch (10.2 cm) mark while they fish in the following management areas: Cape Cod Bay Restricted Area, Northern Nearshore Trap/Pot Waters, and Stellwagen Bank/Jeffreys Ledge. To remain consistent with the gear marking color scheme in the North Atlantic, under this final rule, NMFS will require red marking on the buoy lines of trap/pot gear fished in Northern Inshore State Trap/Pot Waters. The trap/pot gear marking color in the Great South Channel Restricted Area is black. However, under this final rule, for consistency with nearby management areas, the Great South Channel Restricted Area gear marking color will be either black or red, depending on the area of overlap with offshore (i.e., LMA 2/3 Overlap and LMA 3) and nearshore areas (i.e., LMA 2 and the Outer Cape), respectively. The gear marking colors for trap/pot gear in the Southern Nearshore Trap/Pot Waters and Offshore Trap/Pot Waters will remain orange and black, respectively.

Gillnet Gear Marking Colors

Under this final rule, for consistency with the current gillnet gear marking scheme in the Northeast Atlantic, NMFS will require one 4-inch (10.2-cm) green mark midway along the buoy line for the two new fisheries that will be added to the ALWTRP: Northeast drift gillnet and Northeast anchored float gillnet.

Prior to this final rule, there were no gear marking requirements for the two gillnet fisheries operating in the Mid/South Atlantic: the Mid/South Atlantic anchored gillnet and Mid/South Atlantic drift gillnet fisheries. Under this final rule, NMFS will require that these fisheries mark their buoy lines with one 4-inch (10.2-cm) blue mark midway along the buoy line.

Under this final rule, the Southeast Atlantic gillnet fishery will be required to mark their buoy lines with one 4-inch (10.2-cm) yellow mark midway on the buoy line in the same manner as the Mid/South Atlantic gillnet fisheries. As mentioned above, the color and marking scheme for nets used in the Southeastern U.S. Atlantic shark gillnet fishery would remain status quo and only buoy lines greater than 4 feet (1.2 m) in length will need to be marked.

Exempted Waters

Modifications to the exempted waters are effective on April 7, 2008.

Coastal Exempted Waters

To be consistent throughout the east coast, under this final rule, with the exceptions detailed below, NMFS will exempt all marine and tidal waters landward of the 72 COLREGS demarcation lines. The 72 COLREGS lines are well known and widely published lines of demarcation. In four areas, Casco Bay (Maine), Portsmouth Harbor (New Hampshire), the state of Massachusetts, and Long Island Sound and Gardiners Bay (New York), NMFS will not use the 72 COLREGS lines and will instead create different exemption lines. Any exemption lines for these areas, as well as areas where the 72 COLREGS lines do not exist, are explained in the *Changes From the Proposed Rule* sections (2) through (4) below.

Based on the public comments received and an analysis of the available data, NMFS will use an exemption line for the coast of Maine that is largely based on the line suggested by the Maine Department of Marine Resources (Maine DMR). The final exemption line for Maine will begin at the Maine-Canada border and extend south and west along the Maine coastline to Odiornes Point, New Hampshire. The line will be connected using a series of 25 buoys and islands along the Maine coast (Figure 4). See the regulations in this final rule for the coordinates of the Maine exemption line. See *Changes From the Proposed Rule* section (2) below for further information on the rationale for the final Maine exemption line.

Through this final rule, NMFS is modifying the exempted waters for New Hampshire's three harbors, two as proposed and one slightly modified. As proposed, NMFS will exempt Rye and Hampton Harbors according to the lines drawn across the headlands which mark their entrances to the sea. Portsmouth Harbor will not be exempted according to the 72 COLREGS demarcation line (the only 72 COLREGS line found in the state) because it will be exempted through the final exemption line for Maine, as this line's final coordinate is located at Odiornes Point, New Hampshire.

The exempted waters for Massachusetts will continue to include state waters landward of the first bridge over any embayment, harbor, or inlet. See the *Changes From the Proposed Rule* section (3) below for further information on the rationale for the final Massachusetts exemption line. This final rule will not modify the current exemption lines for Massachusetts or Rhode Island, except for minor refinement of the exemption line coordinates for Point Judith Pond and Quonochontaug Pond Inlets in Rhode Island. However, under this final rule, NMFS will clarify that the exemption line coordinates drawn for Narragansett Bay and the Sakonnet River match the 72 COLREGS lines for these waters (Figure 5).

In New York, with the exception of New York Harbor, all embayments, harbors, and inlets are currently exempted under the ALWTRP. Under this final rule, these exempted waters will remain unchanged with the exception of the Long Island Sound and Gardiners Bay area. However, NMFS will clarify that the exemption lines for Shinnecock Bay Inlet, Moriches Bay Inlet, Fire Island Inlet, and Jones Inlet match the 72 COLREGS demarcation lines. In addition, NMFS will create an exemption line for New York Harbor based on the 72 COLREGS line. This is a line drawn from East Rockaway Inlet Breakwater Light to Sandy Hook Light. Under this final rule, NMFS will exempt a portion of Block Island Sound landward of the territorial sea baseline which extends from Watch Hill Point, Rhode Island, to Montauk Point, New York (Figure 5). See the *Changes From the Proposed Rule* section (4) below for further information on the rationale for creating the Block Island Sound exemption line.

NMFS clarifies that the entire shoreline of New Jersey would be exempted landward of the 72 COLREGS demarcation lines. In doing this, the exemption line for Barnegat Inlet will be relocated slightly east of the current exemption line to make it consistent with the 72 COLREGS demarcation line.

NMFS redefines the exemption line for Delaware Bay as the 72 COLREGS demarcation line. This is a line drawn from Cape May Light to Harbor of Refuge Light; thence to the northernmost extremity of Cape Henlopen (Figure 6). Along the Maryland and Virginia shorelines, two of the four existing exemption lines match the 72 COLREGS lines. However, the exemption line from Chincoteague to Ship Shoal Inlet crosses the 3-nautical mile (5.6-km) state waters line, which is not consistent with the 72 COLREGS lines. Under this final rule, NMFS clarifies that the shoreline of Maryland and Virginia would be exempted landward of the 72 COLREGS lines. This includes using the 72 COLREGS line to exempt Chesapeake Bay. This is a line drawn from Cape Charles Light to Cape Henry Light (Figure 7). In addition, the existing exemption line for Smith Island Inlet will be removed from the exempted waters section of the regulations because the 72 COLREGS line for Chesapeake Bay includes the entrance to this inlet.

The existing exemption lines in the Southeast (North Carolina to Florida) will remain unchanged. However, Captain Sam's Inlet (South Carolina) will be added to the exempted waters section of the regulations because it does not have a 72 COLREGS line.

NMFS believes that the exemption lines contained in this final rule are appropriate in light of the analysis of the most recent sightings data from available sources, and will not create a substantial increase in risk to large whales from fishing gear. NMFS will continue to work in collaboration with state partners to monitor all exemption areas and should new information become available regarding the exemption areas, NMFS will share this information with the ALWTRT to determine if changes to the exemption areas are warranted.

Offshore Exempted Areas

Based on a review of the best available scientific information, NMFS has determined that exempting waters at depths greater than 275 fathoms (1,650 ft or 502.9 m) will not increase the risk of large whale entanglement in groundlines, as most large whales are not known to dive to these depths. To account for variations in groundline profiles, NMFS added 5 fathoms (30 ft or 9.1 m) to achieve an offshore exemption depth of 280 fathoms (1,680 ft or 512.1 m). Therefore, this final rule exempts trap/pot and gillnet fishermen from the requirement to use sinking and/or neutrally buoyant groundlines in waters deeper than 280 fathoms (1,680 ft or 512.1 m). Additionally, this final rule exempts gillnet net panel weak link and anchoring requirements if the depth of the float-line is in waters deeper than 280 fathoms (1,680 ft or 512.1 m).

Regulatory Language Changes

Changes listed below are effective on April 7, 2008 unless otherwise noted.

Weak Links

The ALWTRT recommended that, for consistency, NMFS should change all headings for weak links in the ALWTRP regulations from ''Weak Links on all Buoy Lines,'' ''Buoy Weak Links,'' and ''Buoy Line Weak Links'' to simply ''Weak Links.'' Under the ALWTRP final rule, ''Buoy Line Weak Links,'' or ''Net Panel Weak Links'' will be used for

clarification. NMFS also clarifies that weak links must be placed on all floatation and/or weighted devices, etc. that are attached to the buoy line, and not just the main buoy. This final rule adds to the regulatory text that weak links must be designed such that the bitter end (the loose end of the line that detaches from the weak link) of the line is clean and free of any knots when the link breaks, and that splices are not considered to be knots for the purposes of this provision. The final rule clarifies that gillnets, traps/pots, anchors, and leadline woven into the buoy line are not considered weighted devices attached to the buoy line. Therefore, under this final rule, when referring to the techniques for meeting the weak link requirements, the wording will read, ''All buoys, flotation devices and/or weights (except traps/pots [or gillnets], anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc. must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications''.

In a final rule published on January 10, 2002, the use of line 7/16 inch (1.11 cm) in diameter or less for all buoy lines was removed as an option from the ALWTRP's Take Reduction Technology Lists, as the breaking strength of 7/16 inch (1.11 cm) line can vary dramatically (67 FR 1300, January 10, 2002). Therefore, because the diameter of line is not appropriate to use for risk reduction, NMFS will also change the text that describes the list of approved weak links. Specifically, the regulatory text referring to ''rope of appropriate diameter'' will be changed to ''rope of appropriate breaking strength''.

Where the gear modification requirements are referred to, this final rule includes reference to a brochure that describes techniques for complying with these requirements and provide information about how to obtain a copy.

This final rule amends the current regulatory text describing the placement of weak links in the floatline of gillnet net panels. Specifically, the text will be modified to change the requirements for the placement of one weak link in gillnet net panels that are shorter than 50 fathoms (300 ft or 91.4 m). This final rule modifies the requirements in the Mid/South Atlantic Gillnet Waters (for anchored gillnets) and adds requirements for the Other Southeast Gillnet Waters as follows: ''Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m), or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.'' This final rule also amends the requirements for the placement of weak links in the SAM areas and other applicable areas where more than one weak link is required for gillnet net panels of lengths up to and including 50 fathoms, (300 ft or 91.4 m) as well as those greater than 50 fathoms (300 ft or 91.4 m). Additionally, this final rule specifies two configuration options for gillnet net panel weak links for anchored gillnet fisheries in the Northeast (effective April 7, 2008, including SAM areas April 7, 2008, and Mid/South Atlantic (that is not returned to port with the vessel), as well as gillnet fisheries in the Southeast that are not returned to port with the vessel (effective April 7, 2008). See the requirements for anchored gillnets in the *Other Northeast Gillnet Waters* section of this rule for the specifics on these configurations for gillnet net panel weak links. The same configuration option would be required for all gillnet net panels in a string.

Groundlines

This final rule clarifies that fishermen may use sinking and/or neutrally buoyant line for their groundlines and buoy lines. Under this final rule, from January 1 through May 15 fishermen will be allowed to use sinking and/or neutrally buoyant groundlines in the Cape Cod Bay Restricted Area. Similarly, for the SAM gear modifications, this final rule will allow the use of sinking and/or neutrally buoyant groundlines.

Where sinking and/or neutrally buoyant line is required for groundlines, this final rule prohibits the attachment of flotation devices, such as buoys and toggles. This clarifies the prohibition on floating groundlines by expanding the prohibition to the attachment of any devices that cause groundlines to float into the water column, to reduce the risk of entangling large whales.

Other Regulatory Language Changes

The following changes to the current ALWTRP regulations are revised to improve consistency and clarity (effective April 7, 2008).

Gillnet Take Reduction Technology List

In 2002, NMFS published a final rule (67 FR 1300, January 10, 2002) that replaced the Gillnet Take Reduction Technology List with specific requirements for gillnet gear in the Mid-Atlantic; however, the list was inadvertantly left in the regulations. This final rule will delete the Gillnet Take Reduction Technology List.

Anchoring Clarification

This final rule amends the regulatory text to clarify how to comply with the holding power of a 22-lb (10.0-kg) Danforth-style anchoring requirement for anchored gillnet fishing gear in the Northeast, including SAM areas, and Mid/South Atlantic (that is not returned to port with the vessel), as well as gillnet gear in the Southeast that is not returned to port with the vessel.

SAM Clarification

This final rule clarifies that for gillnet and trap/pot fisheries, the Stellwagen Bank/Jeffreys Ledge Restricted Area overlaps with SAM West boundaries. Thus, the Stellwagen Bank/Jeffreys Ledge Restricted Area will be added to the list of ALWTRP management areas under the SAM section of the regulations.

Terminology

For consistency, in the ''Other Provisions'' section of the ALWTRP regulations, this final rule will change the term ''Cape Cod Bay Critical Habitat'' to ''Cape Cod Bay Restricted Area.'' In addition, this final rule will change the name of the ''Southeast U.S. Restricted Area'' to ''Southern U.S. Restricted Area (N and S)'' (using 29°00′ N. lat. as the dividing line for ''N'' and ''S''), and change the name of the Southeast U.S. Observer Area to the ''Southeast U.S. Monitoring Area.''

Definitions

The final rule adds definitions to § 229.2 for ''bitter end'' and ''bottom portion of the line.'' The ''bottom portion of the line'' definition is revised to clarify the regulatory requirements for allowing, where applicable, floating line in a section of the buoy line not to exceed one-third the overall length of the buoy line.

The final rule also revises the terms ''Lobster trap'' and ''Lobster trap trawl'' to ''Trap/pot'' and ''Trap/pot trawl'' to reflect the broader scope of the ALWTRP once the new trap/pot fisheries are included under the management regime. These definitions will apply to the trap/pot fisheries that will be regulated under the ALWTRP.

Prohibitions

The final rule revises the language in § 229.3 and § 229.32 regarding the activities prohibited under the ALWTRP. Specifically, in paragraphs (h) through (l) of § 229.3, and where applicable in § 229.32, NMFS clarifies that where it is prohibited to fish with certain gear types, it is also prohibited to have the gear available for immediate use. This added language is intended to

clarify the activities prohibited under the ALWTRP and improve enforcement. Also, the phrase ''lobster trap'' has been changed to ''trap/pot.''

Criteria for Establishing a Density Standard for Neutrally Buoyant and Sinking Line and Procedure for Determining the Specific Gravity of Line

In response to requests from the fishing industry and line manufacturers for a clearer definition of neutrally buoyant and sinking line, NMFS has developed criteria for establishing a density standard for neutrally buoyant and sinking line and used these criteria to develop definitions. In addition, NMFS finalizes a procedure for assessing the specific gravity of line, which NMFS will use in the future to determine whether a manufactured line meets the accepted density standard. NMFS' criteria for establishing the density standard and procedure to determine specific gravity of line are included in the FEIS and available to the public upon request (see **ADDRESSES** for contact information).

This final rule amends the definitions of ''Neutrally buoyant line'' and ''Sinking line'' and clarifies each definition in relation to groundlines and buoy lines. Under this final rule, neutrally buoyant and sinking line will share the same definition; however, a distinction will be made to clarify that sinking and/or neutrally buoyant groundline could not float in the water column. Therefore, in this final rule, the current definition of ''neutrally buoyant line'' is amended to mean, ''for both groundlines and buoy lines, line that has a specific gravity of 1.030 or greater, and, for groundlines only, does not float at any point in the water column (See also *Sinking line*).'' NMFS will keep the ''neutrally buoyant'' and ''sinking line'' terms based on industry's comment that these are familiar terms that have been used for a number of years. Accordingly, the current definition of ''Sinking line'' is amended to mean, ''for both groundlines and buoy lines, line that has a specific gravity of 1.030 or greater, and, for groundlines only, does not float at any point in the water column (See also *Neutrally buoyant line*).''

Comments and Responses

NMFS received 81 letters from commenters on the Draft Environmental Impact Statement (DEIS) via letter, fax, or email. Additionally, approximately 25,000 of one type of form letter and 73 of another type of form letter of similar content were received on the DEIS via letter and email. NMFS also solicited comments on the DEIS during 13 public hearings held in Virginia, North Carolina, New Jersey, Maryland, Florida, Massachusetts, Rhode Island, and Maine. NMFS received 37 letters from commenters on the proposed rule via mail, fax, or email. The comments are summarized and grouped below by major subject headings. NMFS response follows each comment. NMFS received comments on FEIS technical changes that were not substantive, and made changes to the FEIS as appropriate. These technical comments are not listed.

General Comments

Comment 1: Some commenters asked for a more balanced representation of stakeholders on the ALWTRT. Specifically, commenters believed that there should be more seats for conservationists on the ALWTRT.

Response: The ALWTRT is composed of Federal agencies, each coastal state that has fisheries that interact with large whale species or stocks protected under the ALWTRP, Regional Fishery Management Councils, interstate fisheries commissions, academic and scientific organizations, environmental groups, and all commercial fisheries groups and gear types which incidentally take large whale species or stocks. The Marine Mammal Protection Act (MMPA) states that take reduction teams shall, to the maximum extent practicable, consist of an equitable balance among representatives of resource user interests and nonuser interests. The MMPA does not provide a fixed number or percentage for each stakeholder group. NMFS believes that it has an adequate representation of stakeholders including conservationists.

Comment 2: One commenter suggested that better results would be produced by the ALWTRT if issues were addressed regionally.

Response: At its 2004 meeting, NMFS provided detailed information on organizational issues specific to the ALWTRT. NMFS presented several options for restructuring the ALWTRT and the pros and cons of each option. One option included a regional component whereby the ALWTRT would split into two regional teams (Northeast and Mid/South Atlantic). However, the ALWTRT did not develop a consensus recommendation on formally dividing the ALWTRT into separate teams by region or other affiliation. Currently, the ALWTRT is continuing to meet as a full team, but NMFS has allocated resources to conduct small scale regional sub-group meetings when necessary. In addition, NMFS has allocated time in its full ALWTRT meetings for smaller groups according to region, gear type, or other affiliation.

Comment 3: Several comments were received in support of, as well as in opposition to, the proposed elimination of the Lobster Take Reduction Technology List in Northern Inshore waters.

Response: As proposed, NMFS has eliminated the Lobster Take Reduction Technology List in Northern Inshore waters and other areas. Eliminating the Lobster Take Reduction Technology List in Northern Inshore waters will enable NMFS to utilize broad-based management measures in the Inshore waters. However, NMFS acknowledges that the elimination of the Technology List does not preclude NMFS from using a similar management scheme in the future if warranted.

Comment 4: Two commenters requested that all information used in formulating proposed alternatives and effectiveness of existing programs be provided to the public. NMFS should develop and implement a statistically reliable methodology for measuring and reporting serious injury and mortality rates of all species of marine mammals, as required by the MMPA.

Response: In support of the proposed action, NMFS prepared a DEIS. In accordance with the National Environmental Policy Act (NEPA), the DEIS disclosed the purpose and need for the action; a description of the proposed alternatives, including a No Action Alternative; a description of the affected environment; and a description of the environmental consequences of each alternative including any adverse environmental effects that will be unavoidable if the proposed action is implemented. As required by NEPA, NMFS made all of the information and analysis contained in the DEIS available to the public for an 81-day written comment period and conducted 13 public hearings from Maine to Florida to receive oral testimony regarding this action and its supporting information and analysis. All comments received during the public comment period and public hearings were considered in the FEIS and final rule.

NMFS has developed protocols for determining large whale serious injuries and human-caused mortalities. Such information is contained in mortality and serious injury determinations issued by the Northeast Fisheries Science Center (NEFSC). Human-caused mortality and serious injury rates presented in these reports represent the minimum levels of impact to Atlantic large whale stocks from 1999–2003 (Waring *et al.*, 2006). Confirmed human-caused mortalities and serious injury

records from 2000–2004 are also presented in Cole *et al.* (2006). Both reports are available to the public through the NEFSC publications office and can also be located online. NMFS does not attempt to expand data beyond that which was observed, and at this time, there is no reliable methodology that enables NMFS to extrapolate further from this data.

Comment 5: Two commenters suggested implementing a ghost gear removal program.

Response: NMFS does not currently have the resources to administer and/or implement such a program. However, NMFS has supported ghost gear removal initiatives in the past through its Right Whale State Cooperative Program, which is administered through its partnership with the National Fish and Wildlife Federation (NFWF), and will continue to consider future support for ghost gear removal through this competitive funding initiative.

Comment 6: Two commenters suggested that the observer program is not being used to its fullest potential. Specifically, one commenter urged NMFS to prioritize observer coverage for ALWTRP fisheries. The commenter believes this would assist in assessing the effectiveness of gear modifications and seasonal closures.

Response: Based on the limited observer resources available and the competing needs for observer coverage in many other fisheries, NMFS believes that the observer program is being used to the fullest extent practicable given the resources available and competing observer needs in other fisheries. Although NMFS agrees in principle with the commenter's suggestion that increased observer coverage could assist in assessing the effectiveness of gear modifications and seasonal closures, the NMFS observer program is not intended to be an extension of law enforcement resources. The National Observer Program is intended and designed to collect fisheries dependent physical, biological, and economic data to assist NMFS in making management decisions.

Comment 7: Many commenters questioned why the Federal Government is making regulations and not individual states. Specifically, some commenters stated that Federal mandates are not going to work for the State of Maine while others stated that there are already state fishery management plans (FMPs) (e.g., the State of Florida's Spanish Mackerel Plan) that impose rules that are more protective of whales than the alternatives proposed by the ALWTRP.

Response: The MMPA gives NMFS the authority to administer the provisions of the MMPA within state waters. To protect the large whale stocks included under the ALWTRP from serious injury or mortality incidental to commercial fishing interactions, NMFS convenes the ALWTRT to help develop appropriate management actions. The ALWTRT includes each coastal state that has fisheries that interact with large whale species or stocks protected under the ALWTRP. Each state also has industry representatives who serve on the ALWTRT. State officials and state industry representatives have input into the development of regulations within state waters. NMFS considered all comments regarding state fisheries and areas; this final rule modified certain provisions within state waters as a result of these comments.

Comment 8: One commenter stated concern that more fishermen may fish in the state exempted areas, which would create increased gear concentrations in inshore areas.

Response: In determining the state exemption lines, NMFS analyzed data from available sources, including data that are more current than the data analyzed for the DEIS. Large whale sightings distribution data from 1960 to mid-September 2005 were obtained from the North Atlantic Right Whale Consortium (NARWC) Sightings Database containing dedicated survey effort and opportunistic sightings data, which is curated by the University of Rhode Island (URI), and supplemented by additional data on humpback and fin whale sightings. In addition, NMFS analyzed large whale sightings data from 2002 through 2006 that were collected through the NEFSC's systematic aerial surveys, as well as through the Northeast U.S. Right Whale Sighting Advisory System (SAS). NMFS also analyzed a right, humpback, and fin whale sightings database compiled by the Maine Department of Marine Resources (Maine DMR), which includes sightings reported by the Maine Marine Patrol, whale watch vessels, etc. Based on this analysis, NMFS believes that the final exemption line will provide large whales with an adequate level of protection. For example, sightings data along the east coast indicated that endangered large whales rarely venture into bays, harbors, and inlets. Therefore, although gear may increase in the state exemption areas, the risk to large whales would be minimal.

Comment 9: One commenter stated that NMFS should not regulate Rhode Island fishermen the same as Cape Cod Bay fishermen.

Response: Assuming the commenter is fishing entirely in Rhode Island northern inshore waters and comparing their requirements to fishermen who fish in Cape Cod Bay during the restricted period, there are differences between how Rhode Island and Cape Cod Bay fishermen are being regulated under the ALWTRP. Specifically, the trap/pot gear restrictions and weak link requirement are different for these areas and more restrictive in Cape Cod Bay from January 1–May 15. Also, the provision to prohibit floating groundline does not take effect in Rhode Island until 12 months after publication of the final rule while the floating groundline prohibition is already in effect in Cape Cod Bay for trap/pot fishermen. Regarding gillnet gear, Cape Cod Bay is closed to all gillnet gear during the restricted season while Rhode Island inshore waters may use gillnets provided they comply with the specified gear requirements.

Comment 10: Numerous commenters believe NMFS should not regulate fishermen in the Mid-Atlantic/Southeast the same as those in New England and believe NMFS should justify new gear requirements in the Mid-Atlantic and provide a rationale of why impacts of new requirements are necessary to achieve the goals of the ALWTRP. The commenters believe that regional management areas should be managed differently for the following reasons: (1) Year-round closures are unnecessary in the Mid-Atlantic area; (2) there are relatively few right whale sightings; (3) there is less gear and fewer fishing vessels; (4) no critical habitat has been designated in the Mid-Atlantic; and (5) there are different regional and seasonal fishing practices in the New England, Mid-Atlantic, and Southeast fisheries.

Response: The ALWTRP was developed to reduce the level of serious injury and mortality of North Atlantic right, humpback, and fin whales. Although right whales and humpback whales are more common in New England throughout the year, they are also present in the Mid-Atlantic. Further, fin whales are common year-round north of Cape Hatteras. Therefore, NMFS believes all fisheries in these areas should be subject to similar gear modification requirements. However, based on sightings data and comments received on the proposed rule, NMFS chose an alternative that allows seasonal gear restrictions in the Mid-Atlantic as opposed to year round requirements in New England. Further, NMFS allowed small changes to some of these gear modifications to account for how local fisheries operate in the Mid-Atlantic

(see Changes from the Proposed Rule section of the preamble).

Comment 11: One commenter calls for a set of regional alternatives rather than one national alternative for all East Coast fisheries.

Response: The alternatives examined in the EIS were the product of extensive outreach conducted by NMFS. NMFS reconvened the ALWTRT on April 28–30, 2003. Proposals from the April 2003 ALWTRT meeting and subsequent subgroup meetings were used to develop an issues and options document, which NMFS made available to the public during the scoping process. The scoping document described the major issues, current management and legal requirements, and potential management measures to address fisheries that may frequently or occasionally interact with large whales. During the summer of 2003, NMFS conducted six public scoping meetings at locations from Maine to Florida along the east coast. Based on this outreach effort NMFS developed a suite of alternatives that best reflected the comments from the ALWTRT and public while at the same time afforded protection to large whales. The alternative ultimately selected by NMFS does include regional measures.

Comment 12: One commenter believes NMFS needs to look at gear and effort in different areas. The commenter believed that regulations are in place due to problems in Massachusetts, and if that is where the problem is then that is where the regulations should be, not for the entire coast.

Response: Large whale entanglements are not solely a Massachusetts issue. Atlantic large whales are at risk of becoming entangled in fishing gear because the whales feed, travel, and breed in many of the same ocean areas utilized for commercial fishing. Fishermen typically leave fishing gear, such as gillnets and traps/pots in the water for specific periods of time. While the gear is in the water, whales may become incidentally entangled in the lines and nets that comprise trap/pot and gillnet fishing gear. The number of entanglements for which gear type can be identified is too small to detect any trends in the type of gear involved in lethal entanglements. However, trap/pot and gillnet gear are the most common. NMFS believes that floating groundlines pose the biggest risk for large whales, but acknowledges that any type and part of fixed gear is capable of entangling a whale throughout its entire range. NMFS, in consultation with the ALWTRT, has developed a coast-wide strategy with regional components to address entanglements.

Comment 13: One commenter asked how many whale entanglements occurred in traps/pots in 2004.

Response: There were 16 known entanglements that were first reported in 2004. However, for most of these, the actual year of entanglement is not known. Gear was recovered from seven of these entanglements. Of the seven entanglements from which gear was recovered, five were identified to a specific gear type. Trap/pot gear accounted for four entanglements and gillnet gear accounted for one.

Comment 14: One commenter believed that it is important that NMFS listen to the Maine DMR because they do a good job communicating with fishermen.

Response: NMFS views all state representatives serving on the ALWTRT as valued partners in making sound management decisions.

Comment 15: Several commenters believe that fishermen are unlikely to modify their gear for 9 months, and then switch to unmodified gear for 3 months. The commenter believes the economic burden on the industry would be relatively the same as year-round requirements.

Response: Many commenters asked NMFS to choose seasonal windows based on large whale distribution. Some commenters also supported seasonal requirements due to the occurrence of seasonal fisheries in some areas. However, the economic analysis in Chapter 6 of the EIS assumes that vessel operators that would be subject to seasonal ALWTRP requirements would switch to compliant gear year-round. Therefore, the implications of seasonal requirements are accounted for in the discussion of costs and socioeconomic impacts. Because the difference in costs between seasonal and year-round requirements is low, and the differences in biological impacts is also low, NMFS chose seasonal requirements.

Comment 16: One commenter believes that gillnets should be prohibited from the Stellwagen Bank National Marine Sanctuary and the number of lobster traps and lines should be limited.

Response: The regulations implementing the Northeast Multispecies FMP contain a closure provision named the Western Gulf of Maine Closure Area. The closure area encompasses the vast majority of the Stellwagen Bank National Marine Sanctuary. Accordingly, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, including gillnet gear, may be in, or on board a vessel in, the Western Gulf of Maine Closure Area. The Interstate FMP for American Lobster has also implemented an effort reduction strategy that limits the volume of trap/pot gear targeting lobsters. In addition to the management efforts in specific FMPs, through this final action the ALWTRP is implementing measures that significantly reduce the risk of an entanglement and serious injury and mortality of large whales should an entanglement occur, such as implementing a prohibition on floating groundline for trap/pot and gillnet gear and an increase in the number of break away links in the net panels of gillnet gear. Floating rope between traps/pots, and the gillnets and anchor systems gear serves as the greatest risk to large whale entanglements.

Comment 17: Some commenters believe that NMFS needs a better international strategy, otherwise Maine fishermen are shouldering the burden of whale conservation. The commenter believes Maine fishermen take on more compliance costs than are necessary, while their counterparts in other industries and in Canada operate free of whale take reduction measures.

Response: Since the implementation of Canada's Species at Risk Act (SARA), NMFS has established a strong relationship with Canada's Department of Fisheries and Oceans (DFO) regarding right whale management. In recent years, NMFS staff from the Northeast Regional Office and DFO's Maritime Regional Office have met to coordinate on several critical right whale management and science issues. Of particular importance is the development of a collaborative approach to managing both gear and vessel interactions with large whales.

Because of the geographic concentration of the lobster fishery in Maine, it is true that Maine vessels bear a large share of the overall estimated costs of the ALWTRP modifications. However, the social impact analysis suggests that under Alternative 6 Final (Preferred) only a limited subset of smaller vessels are likely to experience costs that represent a large share of fishing revenues. As reviewed in the cumulative effects analysis in the FEIS, fishing gear entanglement and ship strikes are the two largest contributors to human-caused whale mortality. NMFS is currently working on implementing a ship strike strategy that will seek to reduce injuries and mortalities associated with this source. Chapter 9 of the EIS also reviews a variety of measures implemented by the Canadian government. In 2000, DFO, in cooperation with the World Wildlife

Fund Canada, developed Canada's first Right Whale Recovery Plan and recovery implementation team. The recovery plan, which is intended as a ''blueprint'' for action, includes a number of recommendations related to gear entanglement, whale research, and regulatory and enforcement actions.

Comment 18: One commenter believes that it is too difficult to determine what gear modifications will save right whales. The commenter believes that there is no one specific gear modification that we can point to and say that it is going to save right whales.

Response: NMFS agrees that currently there is no one gear modification that can save right whales. NMFS believes that the success of the ALWTRP and right whale conservation depends on a combination of conservation measures designed to reduce entanglements and serious injury and mortality should an entanglement occur. The ALWTRP includes a combination of fishing gear modifications and time/area closures to reduce whale entanglement in commercial fishing gear. The nature of the gear modification requirements varies by location and time of year, maximizing reduction in entanglement risk based on whale distribution and movement. NMFS complements these gear modification requirements with prohibitions on fishing at times and in places where right whale aggregations are greatest, and therefore where entanglement risk may be particularly high.

Comment 19: One commenter believed fishermen cannot control ship strikes or entanglements with fishing gear that is obviously not from the Northern Nearshore Lobster Waters Area. The commenter believes that Maine fishermen are required to compromise to fix a problem that they are not causing.

Response: NMFS is addressing vessel interactions with large whales through a separate action (71 FR 36299, June 26, 2006). The number of entanglements for which gear type can be identified is too small to detect any trends in the type of gear involved or the area where the entanglement occurred. However, trap/pot and gillnet gear appears to be the most common gear involved in entanglements. Based on the limited information available on entanglements, NMFS views the entanglement issue as a coast-wide problem rather than solely a ''Maine problem''. Consequently, NMFS in consultation with the ALWTRT, has developed a coast-wide strategy with regional components to address entanglements.

Comment 20: One commenter stated that in Grand Manan Channel, Machias, Seal Islands, and many areas in Down East Maine, fishermen cannot operate under existing requirements (i.e., weak links cannot hold and fishermen are constantly replacing poly balls).

Response: In developing the appropriate breaking strengths for weak links used by commercial fishermen in this area, NMFS worked closely with the ALWTRT, including commercial fishermen and the state of Maine to develop what it believes is the appropriate breaking strength tolerance for fishermen fishing in this area. Should new information become available that may warrant a change to the weak link tolerances in this area, NMFS will consult with the ALWTRT regarding whether to take a subsequent action.

Comment 21: One commenter believes that environmentalists are pushing NMFS to over-regulate and that fishermen are being put out of business everyday.

Response: Federal regulations are not based on pressure from environmentalists. The purpose of the revisions to the ALWTRP is to provide additional conservation and protection to Atlantic large whales. Such revisions would fulfill NMFS' obligations under the ESA and the MMPA. The need for the revisions in this final rule is demonstrated by the continuing risk of serious injury and mortality of Atlantic large whales due to entanglement in commercial fishing gear.

Comment 22: Many commenters believed that the DEIS is not adequate for the following reasons: (1) It failed to follow NEPA requirements; (2) it disregarded certain comments provided during the scoping process; and (3) it lacked an assessment of the biological benefits to large whales that are likely to occur as a result of implementing these modifications to the ALWTRP.

Response: The DEIS complies with all applicable requirements of NEPA and contains, among other analyses, complete assessments of the biological, social, economic, and cumulative impacts associated with this action. In addition, the DEIS summarizes and integrates the biological, economic and social impacts analyses allowing for a broad assessment of the relative merits of the regulatory alternatives considered by NMFS. The DEIS also contains a discussion of the alternatives considered but rejected by NMFS. The DEIS summarizes various approaches and briefly explains why NMFS chose not to integrate the approach into the regulatory alternatives under consideration by NMFS. However, based on public comment, some of the discussions regarding why some of the approaches were not adopted by NMFS was expanded upon in the FEIS to better articulate NMFS' rationale.

Comment 23: One commenter stated that the DEIS fails to discuss the ethical values of whales and the marine environment, which deserve protection from human interference and threats. The commenter believed that DEIS Chapter 7 in particular discusses social impact on fishermen's quality of life, but shows no contrasting view of spiritual and intellectual enjoyment of whales.

Response: Under NEPA, a Federal agency is not required to consider non-physical effects such as psychological effects or moral and ethical values caused by or in anticipation of a proposed action. Nonetheless, the analysis contained in the DEIS does discuss passive uses as raised by the commenter. The DEIS discusses passive use in Chapter 10, the regulatory impact review section. Chapter 7 of the DEIS also discusses ''passive uses'' and provides a table of passive use studies related to marine mammals. Language has been added to the FEIS to clarify that non-use values such as those measured in these studies are closely related to the ''spiritual'' or ''ethical'' values emphasized by the commenter.

Comment 24: One commenter supported continued disentanglement efforts, such as floating forklifts, hydraulic slings between two boats, and an inflatable blanket to keep a subdued whale afloat.

Response: NMFS appreciates the support for continued disentanglement efforts. NMFS recently convened a third workshop in a series, which included marine animal experts from numerous disciplines including, veterinarian sciences, disentanglement experts, anesthesiology, marine mammal behaviorists, etc. to discuss these suggested approaches as well as many other options to ascertain which had the most merit for investigating further versus which were too cost prohibitive and logistically impractical. NMFS reiterates that disentanglement is only a temporary ''band-aid'' approach and that the solution that all involved parties are striving for is to prevent entanglement and reduce serious injury and mortality, if an entanglement occurs.

Comment 25: Two commenters believed NMFS did not address minke whales in the EIS. One commenter said that the ALWTRP currently does not consider minke whales, yet the State of Maine actively trained and equipped fishermen to disentangle minke whales

in state waters. The commenter believes that for the State of Maine to go to such lengths indicates that these protected species do become entangled at a significant rate and that those whales should be considered under the plan.

Response: The ALWTRP is designed to protect right whales, humpback whales, and fin whales. Right, humpback, and fin whales are strategic stocks because they are listed as endangered under the ESA. Therefore, because these strategic stocks interact with Category I and II fisheries, under the MMPA, the ALWTRP was established to assist in the recovery of these large whale species. Minke whales are neither listed as endangered or threatened under the ESA, nor do they have high incidental mortalities relative to population abundance. Therefore, minke whales are not considered a strategic stock and are not included within the ALWTRP. However, the ALWTRP does provide ancillary benefits to the minke whale. The minke disentanglement program is a component of the Maine's Large Whale Conservation Program whereby only a few commercial fishermen are trained and authorized to respond to entangled minke whales. The program was not developed because of increased takes of minke whales within state waters.

Comment 26: Several commenters expressed concern for minke whale regulations under the ALWTRP. One commenter believes the potential biological removal (PBR) for minke whales may be exceeded based on the fact that half of the whales stranded between Maine and Virginia (2002–2004) showed signs of fishery interactions. Another commenter requested that the minke whale stock be considered ''strategic'' under the ALWTRP and for NMFS to continue current take reduction measures for the species. The commenter stated that the status of minke whales in Atlantic waters is poorly known with more fishery interactions occurring than that which is reported. The commenter states that minke whales are found dead 2 and a half times more than all other species combined. Another commenter stated that the Large Whale Entanglement Report suggests high entanglement-related mortality. Two commenters stated that minke whale carcasses may be less likely to float after death, thus underestimating serious injury and mortality.

Response: Stranding data alone do not provide a reliable base to estimate PBR and currently, there is no accurate method to extrapolate further from stranding data. Minke whales are neither listed as endangered or threatened under the ESA, nor do they have high incidental mortalities relative to population abundance. Therefore, minke whales are not considered strategic and are not included within the ALWTRP. However, the species will still benefit from ALWTRP regulations, see responses to Comments 4, 25, and 299. It should be noted that minke whales are the most common species of baleen whales found in western North Atlantic waters; estimates suggest that there may be four times as many minke whales in these waters as there are humpback whales. High overall minke whale abundance may account for the high incidence of carcass recovery. Also, there is no current data to either suggest or support that minke whales are less likely to float after death when compared to other large whale species such as humpback and fin whales.

Comment 27: Numerous commenters believed there was a lack of discussion in the EIS regarding how these measures will be enforced. One commenter further encouraged NMFS to make monitoring and enforcement plans a formal part of a take reduction plan.

Response: At its April 2003 meeting, the ALWTRT recommended that NMFS establish a Compliance Committee to discuss issues such as evaluating, monitoring, and improving ALWTRP compliance. The plan development includes working through the Atlantic States Marine Fisheries Commission (ASMFC) and Joint Enforcement Agreement (JEA) contacts and involves stakeholder groups on the ALWTRT. NMFS has made some progress regarding this issue, particularly with NMFS and state enforcement offices through the JEA process. However, NMFS acknowledges more work is needed in this area. At its 2004 and 2005 meetings, the ALWTRT also discussed separating monitoring issues from the Compliance Committee and addressing these through a Status Report Subcommittee. The discussion focused on the interpretations of the annual right whale and humpback whale scarification analysis. Specifically, the ALWTRT discussed whether the scarification analysis was the best method for evaluating the ALWTRP. NMFS has and intends to continue these discussions with the ALWTRT.

Comment 28: One commenter asked why vertical lines were not addressed in the DEIS. One commenter believed that the key elements of a vertical line strategy could have been articulated in the DEIS without committing at this time to specific alternatives.

Response: The proposed changes to the ALWTRP include some gear modifications to vertical line and the DEIS includes a discussion of vertical lines. Specifically, the DEIS notes that further risk reduction to address risk associated with vertical line will occur through a future rulemaking action due to the need for additional information and discussions to develop comprehensive and effective management measures. NMFS and its partners (e.g., scientific, state, and industry) are currently researching ways to reduce risk associated with vertical line. NMFS and its partners are also investigating how whales utilize the water column, including their foraging ecology and diving behavior, which will help to determine appropriate mitigation strategies to reduce entanglement risk of vertical line. NMFS has developed a list of potential management options to reduce risk associated with vertical line that was provided to the ALWTRT at its 2005 and 2006 meetings. NMFS discussed these options with the ALWTRT during the 2006 meeting and intends to further discuss these at the next meeting.

Comment 29: One commenter stated that the agency is balancing the desires of the industry with the needs of conservation and the commenter states this is not appropriate. The commenter says that the ESA is quite clear that the needs of the species outweigh economic impact. The commenter prefers NMFS to require the institution of the more risk-averse groundline profile immediately. It should be coast-wide and year-round, because whales do wander.

Response: NMFS believes it is implementing the appropriate measures to reduce risk associated with groundlines, amongst other risk reduction measures, as quickly as is feasible and consistent with the requirements of the ESA. NMFS believes a phase-in period is warranted to enable fishermen to rig their gear with sinking and/or neutrally buoyant groundline, but believes fishermen will be continually converting their gear before the effective date, which will result in risk-reduction to large whales. Additionally, NMFS believes that the coast-wide management approach, with year-round requirements in the northeast, and seasonal requirements in the mid and south Atlantic, is risk-averse. Although whales may be present outside a seasonal window, the sightings are rare and the risk of gear to large whales at these times of the year is minimal. However, NMFS will continue to monitor the areas where seasonal requirements are in effect. Should new information become available that indicates that a change in

seasonal window is warranted, NMFS will share the information with the ALWTRT and take appropriate action.

Comment 30: Several commenters believe NMFS failed to hold hearings in jurisdictions or locations where groups other than the industry could be heard. One commenter requested that the public comment period on the DEIS be extended even further, or a supplemental EIS be issued with additional hearings held in metropolitan areas so interested public, advocacy groups, and the scientific community can take part.

Response: NEPA provides opportunities for public involvement at various stages of the environmental review process. NMFS held scoping meetings and public hearings on the DEIS from Maine to Florida. NMFS chose areas and locations that were most affected by the action. NMFS also solicited public comment through three open comment periods where comments could be submitted to NMFS in writing. NMFS provided an opportunity for the public to comment during the publication of its Notice of Intent (NOI) to prepare a DEIS (68 FR 38676, June 30, 2003), the notice of availability for the DEIS (70 FR 9306, February 25, 2005), and the proposed rule (70 FR 35894, June 21, 2005). The public comment period of the DEIS was originally 45 days, but was extended to 81 days (70 FR 15315, March 25, 2005) while the public comment period on the proposed rule was extended from 31 to 63 days (70 FR 40301, July 13, 2005). A summary of all scoping comments and copies of all written DEIS comments received by NMFS are found in the FEIS. NMFS believes that it has selected appropriate areas for its public hearings and provided adequate opportunity for public comment.

Comment 31: One commenter recommended NMFS prepare a supplemental DEIS to consider alternate time/area fishing closures in areas where right whales and other large whales congregate, such as critical habitat. Another commenter recommended that NMFS develop a supplemental DEIS to discuss available information on the frequency of vertical line entanglements that involved weak links. The commenter believes that results of this analysis should be used to estimate whether, and to what extent, weak links will reduce the number of entanglements under each alternative.

Response: NMFS believes that the DEIS represents a comprehensive suite of alternatives to amend the ALWTRP as well as a thorough analysis of the impacts of the proposed alternatives on the human environment. NMFS worked with the ALWTRT to help evaluate the ALWTRP and discuss additional modifications necessary to meet the goals of the MMPA and ESA. NMFS also solicited input from the public after issuing a Notice of Intent to prepare an EIS. Although there were no consensus recommendations from the ALWTRT or consistent proposals from the public, NMFS believes that it has developed the best options available for amending the ALWTRP. NMFS did consider seasonal closures to prohibit lobster trap/pot and gillnet fishing in all designated right whale critical habitats during times when whales are known to congregate in those areas. This discussion is included in the DEIS summary of written scoping comments received. This comment is reflected in the section of the DEIS that lists the alternatives considered and rationale for rejection, as well as in the section that describes the alternatives considered. In the FEIS, NMFS included additional language to clarify that this comment was considered. NMFS has analyzed all entanglements including those that involve weak links. Although weak links are one gear modification that is included in the current ALWTRP, as well as a component of the broad-based gear modifications in the DEIS, NMFS is not relying solely on this modification. There is no evidence to suggest that weak links are ineffective. NMFS believes weak links, in combination with other mitigation measures, serve as a valuable conservation tool.

Comment 32: One commenter stated that the Southern monkfish area is not overfished and is not deemed overfished and this should be fixed in the DEIS.

Response: Monkfish has been determined by NMFS to not be overfished in both the northern and southern areas from 2003 through 2005. The NEFSC held a monkfish stock assessment workshop in the fall of 2004 (SAW 40). The data used in the 2004 assessment included NEFSC research survey data, data from the 2001 and 2004 Cooperative Monkfish Surveys, commercial fishery data from vessel trip reports, dealer landings records, and observer data. The Stock Assessment Review Committee concluded that the resource is not overfished in either stock management area (north or south). Chapter 4 of the EIS discusses the status of affected fisheries and does not indicate that monkfish are overfished. Therefore, NMFS agrees with the comment that monkfish is not overfished in the southern area as of December 31, 2005. NMFS has changed the FEIS to reflect this, but has noted that new information (New England Fishery Management Council (NEFMC and NEFSC 2006 Monkfish Monitoring Report)) finds that monkfish are now overfished in both the northern and southern areas. In the monkfish Management History section of Chapter 9 of the EIS, the discussion has been updated to reflect the latest assessment of the fishery's status.

Comment 33: One commenter states ship strike mortalities are not covered in the DEIS.

Response: Section 118 of the MMPA requires that take reduction teams address serious injuries and mortalities of marine mammals that interact with commercial fishing operations. The DEIS is focused on serious injuries and mortalities of large whales that result from entanglements in commercial fishing gear. However, NMFS did consider ship strike mortality as part of the cumulative effects analysis in Chapter 9 of the DEIS.

Comment 34: One commenter wants NMFS to consider the importance of the DEIS as NMFS balances the survival of right whales against development and commercial interests that can be modified while still profitable. The commenter believes that development and commercial interests can be done in an environmentally friendly and commercially viable way. The commenter also believes that it is the North Atlantic right whale that may not survive without NMFS' strong protection.

Response: NMFS acknowledges the commenter and believes that the DEIS represents a comprehensive suite of alternatives that has thoroughly analyzed the impacts of the proposed alternatives on the human environment and large whales, including right whales, as well as other marine mammal species.

Comment 35: One commenter states that Exhibit 6–6 identifies potential sources of increased gear loss, but there was no specific analysis for gear loss in rocky/tidal habitats. Further, there is no analysis for the concept of low profile groundline in the potential reduction of gear loss rates. The commenter states that Exhibit 6–8 states the estimated change in annual gear loss for Maine inshore waters in Alternatives 2–4 and 6 will increase by 10-percent; the commenter states that anecdotal information says this is a very low estimation.

Response: As noted in Exhibit 6–6, the EIS acknowledges that gear loss may be higher in certain waters such as rocky bottom areas. Consequently, the analysis of changes in gear loss rates separately examines Maine's inshore fishery and applies the higher rate of 10 percent. This value represents an

estimate of the typical change in gear loss rates for Maine inshore waters; NMFS acknowledges that some fishermen will likely experience higher rates while others will likely experience lower rates.

NMFS and its partners are actively researching the use of low profile line in rocky/tidal habitats to minimize gear loss; however, additional research is required before NMFS can determine whether use of this gear is feasible. See response to Comment 128.

Comment 36: One commenter believes that Exhibit 6C–1 does not seem to account for the useful life of sinking line in rocky/tidal habitats.

Response: The analysis assumes that the useful life of sinking and/or neutrally buoyant line will be lower, on average, than the useful life of floating line. This assumption is based in large part on recognition that the line is more susceptible to chafing, particularly in rocky or heavy tide habitats. Adjusting estimates of the line's useful life to take local conditions into account would introduce a level of detail into the analysis that is infeasible as it would be impossible to test in all locations where groundline could be used.

Comment 37: One commenter believed that the ESA is relatively blind to costs of the reasonable and prudent alternatives of a biological opinion if the species is in jeopardy.

Response: Regulations implementing section 7 of the ESA define the criteria for reasonable and prudent alternatives (RPA). RPAs must be technologically and economically feasible. The ALWTRP is promulgated under the MMPA. Pursuant to NEPA, NMFS analyzed the social, biological, and economic impacts of the various ALWTRP alternatives on the human environment.

Comment 38: One commenter suggested developing a new approach to eliminate all takes, such as real-time right whale tracking, improved reporting of location and amount of gear in the water, mandatory gear marking, and effective area closures for trap/pot and gillnet gear.

Response: The ALWTRT has discussed many of the commenter's concepts in the past. Several of the commenter's ideas are currently being pursued by NMFS and the ALWTRT. However, a couple of these concepts need further development. In particular, real-time right whale tracking has several limitations both from a technical and legal standpoint. Monitoring the location and volume of gear in the water is also very challenging. Nonetheless, these ideas have some merit and NMFS will continue to discuss these issues with the ALWTRT.

Comment 39: A few commenters believed that there are generally no whales beyond 4–6 miles (7.4–11.1 km) offshore, so the eastern edge of the ALWTRP line off of Florida should not be extended to the Exclusive Economic Zone (EEZ). Another commenter said that fisheries in the Southeast occur greater than 3 nautical miles (5.6 km) from shore, but most whales are inside of 3 nautical miles (5.6 km) and in temperatures greater than 70 °F (21.1 °C) where most fisheries do not occur.

Response: Habitat models based upon the aerial survey data collected off the southeast suggest a strong relationship between the spatial distribution of calving right whales, water temperature, and bathymetry. In particular, calving right whales were strongly correlated with water temperatures between 55.4–59 °F (13–15 °C) and water depths 49.2–65.6 ft (15–20 m) (Keller *et al.*, 2006; NMFS unpublished, 2006). However, southeast spatial distributions and habitat correlations for non-calving right whales (e.g., females without calves) and other large whale species remain unclear at this time. Sightings data from the North Atlantic Right Whale Sightings Database suggest that right whales, and other large whale species, do occupy waters greater than 3 nautical miles (5.6 km) from shore. However, given the lack of offshore survey effort in this region, it is possible that there are more large whales in this area than reflected in the database. Thus, NMFS has extended management measures out to the eastern edge of the EEZ to protect any large whales in this area, but also to remain consistent with management areas extending to the EEZ in Mid-Atlantic and Northeast waters.

Comment 40: One commenter said that there is little effort in the shark gillnet fishery in the Southeast and this should be acknowledged.

Response: NMFS acknowledges that gillnetting effort in the Southeast does not meet or exceed gillnetting levels in the Mid-Atlantic or Northeast.

Comment 41: NMFS received many comments supporting year-round, coast-wide gear modifications. Comments supporting this idea included the following rationale: (1) Right whales and humpback whales have been seen as far south as the Carolinas or even farther south all year long (e.g., humpback whales documented feeding off North Carolina in June 2004); (2) fin whales have been documented in the Mid-Atlantic from January through March; (3) seasonal exemptions seem linked to survey effort (i.e., there is little winter/early spring survey effort in southern areas); (4) documented sightings of large endangered whales off New Jersey (within 20 mile (37.0 km) radius of Cape May) in summer; (5) stranding/ship strike data show whales using waters south of Rhode Island in summer; (6) Mate data (Mate *et al.*, 1997) show right whale mother/calf off New Jersey in August of 1997; (7) humpback whale strandings in Virginia and North Carolina have been recorded in summer; and (8) large whale movements are unpredictable (e.g., Kingfisher went from the southeast to New England and back again in a few weeks), therefore, NMFS should consider updated satellite tracking information (Baumgartner and Mate, 2005). One commenter questioned the sighting effort for right and humpback whales in the Mid-Atlantic during the late spring/summer and suggested increased effort in this area; in the interim, the commenter supported year-round requirements in the Mid-Atlantic.

Response: NMFS has based its regulations on the best available data and has considered and incorporated all sources of available data (e.g., satellite tracking papers) into this final rule and the FEIS. NMFS recognizes that animals occur in Mid-Atlantic waters outside seasonal management periods, however, sightings referred to in the above comments are not typical of the known ecology of large whales. Expanding seasonal measures to year-round, coast-wide modifications would only offer minimal risk reduction for large whales in comparison.

Comment 42: One commenter stated that whale watch boats operate in the Mid-Atlantic from April 1 through November 30. The commenter believes that if the numbers of whales were expected to be low from May 31 through September 1, whale watch boats would not operate during this time.

Response: Many Mid-Atlantic whale watching operations conduct tours for dolphins and other cetacean species. However, NMFS currently does not possess data on where such vessels are traveling or what type of marine mammals they are observing. Data that are available to NMFS at this time show a low sightings record of large whales in the Mid-Atlantic from June 1 through August 31. NMFS is not opposed to receiving new information on large whales in this area and would welcome sightings and effort data from Mid-Atlantic whale watching vessels.

Comment 43: One commenter said that he takes sea-sampling observers out everyday and is willing to take someone with him if it would help determine if whales are there.

Response: NMFS appreciates the support and assistance being offered by this commenter. Sea-sampling observers do collect large whale sightings data, however, this is one of many data collection responsibilities. If a right whale is sighted, the sighting is entered directly into the SAS Right Whale Reporting System. However, broad-scale surveys are the best source of information on the spatial and temporal distribution of large whales.

Comment 44: One commenter said that humpback whales can be consistently found in the Gulf of Maine during a longer period (April–December) than indicated in the DEIS. The commenter also believed that data presented were obtained by analysis of a right whale sightings database with opportunistic data for other large whale species. The commenter said that humpback whales have different ecological characteristics than right whales and do not use the same feeding habitats concurrently. The commenter believed that opportunistic sightings data may not paint a representative picture of the spatial and temporal distribution of humpback whales.

Response: NMFS has modified the FEIS to reflect this comment. However, NMFS did not analyze only opportunistic sightings data when analyzing the distribution of other large whale species. Systemic sightings data (e.g., NMFS survey data), are incorporated into the NARWC Database (curated by URI). These aerial and vessel surveys are conducted throughout the Atlantic coast, and although many surveys are focused on right whale documentation, many other surveys are conducted to sight and record the location of other large whale species or marine mammals.

Comment 45: One commenter believes whales that get entangled are sick, which inhibits their ability to navigate around gear. The commenter further believes whales get entangled in ghost gear (e.g., trailing lines and refuse).

Response: Currently there is no data to support this hypothesis. Scarification analyses indicate a large percentage of whales interact with fishing gear, with most surviving these encounters. Also, at this time, NMFS cannot state conclusively that whales are becoming entangled in ghost gear.

Comment 46: One commenter wanted to know if the economics and technological feasibility of implementation had been considered.

Response: The specific meaning of the ''economics and technological feasibility of implementation'' is unclear. The commenter may refer to the public sector cost of administering and enforcing the proposed rules; such an analysis is not required in an EIS. Alternatively, the commenter may be referring to the economic impact of the proposed alternatives on the fishing industry, a subject addressed extensively in the EIS. Chapter 6 estimates per-vessel and industry-wide incremental costs for affected fisheries. Chapter 7 considers the socioeconomic impact of the alternatives, i.e., what geographic areas are most affected and will the regulations affect the economic viability of fishing operations. Furthermore, the regulatory flexibility analysis (Chapter 11) focuses on the implications of the rules for small business.

General Comments on Proposed Alternatives

Comment 47: NMFS received many comments stating that none of the proposed alternatives would sufficiently protect large whales for several reasons that include: (1) The proposed regulations will not achieve PBR; (2) the proposed actions may not achieve the goals of the MMPA; and (3) proposed regulations need to be strengthened, as it is NMFS' mandate under the ESA.

Response: NMFS disagrees with the commenters' assessment that none of the proposed alternatives would sufficiently protect large whales. NMFS believes that the EIS represents a comprehensive suite of alternatives to amend the ALWTRP as well as a thorough analysis of the impacts of the proposed alternatives on the human environment. NMFS worked with the ALWTRT to help evaluate the ALWTRP and discuss additional modifications necessary to meet the goals of the MMPA and ESA.

Comment 48: Numerous commenters stated that more time is needed to evaluate whether the current plan is working. Many believed that other ALWTRP measures (i.e., weak links, critical habitat closures, buoy modifications, and limited time-area closures) should be properly evaluated to determine their effectiveness before implementing a prohibition on floating groundlines.

Response: Since right, humpback, and fin whales are listed as endangered species under the ESA, they are considered strategic stocks under the MMPA. In response to its obligations under the MMPA, NMFS established the ALWTRT to develop a plan for reducing the incidental take of large whales in commercial fisheries to below the PBR. PBR for right whales is set at zero. Consequently, if any right whale is entangled in commercial fishing gear that has been determined to be from the sink gillnet or pot/trap gear, NMFS must take additional action to protect right whales. Evaluation of implementation and effectiveness of existing measures is ongoing; however, since serious injury and mortality of large whales in commercial fisheries exceeds PBR, NMFS needs to take additional action in response to its requirements under the MMPA.

Comment 49: Some commenters stated that until research shows how, when, and where whales become entangled in fishing gear, none of the alternatives should be implemented. One commenter believes research is needed regarding where and when whales are most at risk. Otherwise, the commenter believes a new management plan may be ineffective to protect whales, while also causing economic hardship to fishermen. The commenter believes new rules must be based on the most recent data and build in flexibility to generate new data for consideration.

Response: The FEIS notes that entanglements of large whales are still occurring in sink gillnet and trap/pot gear and highlights the legal mandates of the MMPA and ESA that NMFS is required to follow. Based on the continued serious injury and mortality of large whales due to entanglement in these gear types, NMFS must take action to provide more protection to large whales. Although NMFS acknowledges a need for more scientific information, NMFS is required to take action based on the best information that is available when developing the EIS. As new information becomes available regarding large whales, entanglements, or commercial fishing gear modifications, NMFS will share this information with the ALWTRT to determine if additional changes to the ALWTRP are warranted.

Comment 50: Several commenters urged NMFS to develop whale rules with as much flexibility as possible, allowing for innovations to be implemented as they are developed. One commenter believes that as NMFS constructs the final rule for this Plan, the agency should adopt a flexible and adaptive approach, and continue refining the regulations on a region-by-region basis. The commenter also believes that, considering our limited understanding of large whale ecology across diverse habitats, as well as the variability among the dozens of different fixed gear fisheries along the Atlantic seaboard, the Plan must be flexible and responsive to changing ecological and economic conditions over time.

Response: NMFS acknowledges this very important comment and will continue to work with the ALWTRT and

with its legal mandates and requirements to help facilitate better flexibility within the ALWTRP regulations. NMFS has developed and implemented flexible regulations in the past, but learned that the mandates and requirements that NMFS must follow limited NMFS' flexibility and ability to react quickly. In addition, in many instances, NMFS is also limited by the lack of information available to implement flexible regulations. NMFS will continue to explore the concept of flexible rulemaking with the ALWTRT.

Comment 51: One commenter stated that the 2001 biological opinions on the American Lobster, Multispecies, Spiny Dogfish, and Monkfish FMPs make clear that unless the agency identifies an alternative that would eliminate entanglement and ship strikes, the alternative is unlawful.

Response: The 2001 Biological Opinion included an RPA composed of several measures that were subsequently incorporated into the ALWTRP. The Biological Opinion also included criteria to monitor the RPA's effectiveness. The RPA and monitoring criteria are based solely on right whale entanglements with commercial fishing gear, not ship strikes. Ship strikes are evaluated through a separate action in support of the implementation of the national right whale ship strike strategy. At that time, the 2001 Biological Opinion concluded that the RPA was sufficient to allow the commercial lobster trap/pot fishery to continue. However, since that time NMFS has reinitiated consultation on the continued implementation of the American lobster fishery in federal waters based on new information on the effects of the fishery on right whales. This consultation is ongoing. NMFS will consider changes to the ALWTRP during consultation on the American lobster fishery.

Comment 52: One commenter asked how many lethal takes are expected to occur under the status quo and how many lethal takes are expected to occur under each alternative.

Response: NMFS cannot predict how many lethal takes are expected to occur under each alternative. The evaluation of the impact of regulatory changes on whale entanglement risks is largely qualitative. This approach is necessary because models that would enable NMFS to conduct a rigorous quantitative assessment of such risks do not exist. The known threat that commercial fishing poses to large whales is the risk of incidental entanglement in commercial fishing gear. The regulatory changes under consideration are designed to reduce harm to large whales by reducing the likelihood of entanglement and/or reducing the severity of an entanglement should one occur. NMFS seeks to achieve these objectives through a combination of two general measures: (1) Gear modification requirements; and (2) restrictions on fishing activity at specified locations and times. Chapter 5 of the EIS examines the impact of these measures on whale entanglement risks.

Comment 53: Several commenters disagreed with NMFS' conclusion that gear modifications were necessary for tended and/or actively fished net fisheries.

Response: NMFS specifically requested public comment on whether gear modifications were warranted for gear that is tended and/or actively fished. NMFS is not implementing the proposed weak link requirement for tended driftnet gear at this time due to potential safety issues that were raised. Thus, NMFS believes further research on this fishery, and specifically testing weak links in drift gillnet gear, is needed before weak links should be required.

Comment 54: One commenter suggested the alternatives should be harmonized with other federal mammal protection plans (e.g., the bottlenose dolphin protection plan) to prevent the possibility of creating several plans each with their own unique requirements.

Response: Chapter 9 of the EIS includes a cumulative effects analysis that examined the impacts of this action in conjunction with other factors that affect the physical, biological, and socioeconomic resource components of the affected environment. The purpose of the cumulative effects analysis is to ensure that Federal decisions consider the full range of an action's consequences, incorporating this information into the planning process. The cumulative effects analysis studies the impacts of the regulatory alternatives to other federal marine mammal take reduction plans and fisheries management plans within the context of other past, present, and reasonably foreseeable future actions.

Comment 55: Several commenters believed that the proposed rule should not apply to Florida gillnet fisheries for several reasons: (1) Some non-shark fisheries currently use rope that has a breaking point of 800 lb (362.9 kg), well below the 1,100-lb (499.0-g) weak link breaking point indicated in the take reduction plan; (2) night fishing is allowed only if strike nets are deployed (strike nets are set in a circle and sink two to five feet (0.6 to 1.5 m) below water; the net is then retrieved); (3) anchored gillnets are not used by Florida fisheries; (4) sinking or neutrally buoyant line is already used on buoys; and (5) gillnets are always tended (i.e., within eyesight of fishermen).

Response: NMFS acknowledges that some gillnet fisheries conducted off the coast of Florida may already use gear that is more restrictive than that gear proposed in the EIS. However, NMFS believes that there are several new and emerging fisheries that do not prescribe to the gear requirements noted by the commenter. This final rule will regulate several new fisheries under the ALWTRP through the Category I and II annual list of fisheries process implemented under the MMPA. The final rule provides protection to large whales from these new and emerging fisheries and, at the same time, ensures that the current fisheries have an established baseline for large whale protection.

Comment 56: One commenter supports the implementation of a pre-1997 status quo.

Response: A pre-1997 status quo option was not analyzed in the DEIS. Section 118 of the MMPA requires that NMFS reduce bycatch of strategic marine mammal stocks incidentally taken during commercial fishing operations. The level of documented serious injury and mortality of right, humpback, and fin whales due to entanglement in fishing gear required NMFS to convene a take reduction team and develop a take reduction plan to protect these whales. This final rule implements modifications to the ALWTRP, which are necessary because NMFS has evidence that serious injury and mortality in commercial fishing gear is still occurring at unsustainable levels.

Comments Specific to Each Alternative

Comment 57: NMFS received numerous comments in support of Alternative 1. Commenters believed NMFS has not provided data to show there is a problem that warrants amending the current ALWTRP. Other commenters thought existing regulations have not been given enough time to work. One commenter also said that economically, in today's dollars, it would probably cost $8,000 to replace groundline as proposed in the other alternatives, and the way that the material is increasing in price, costs could be greater than $10,000 by 2008.

Response: NEPA requires NMFS to analyze a no action alternative (Alternative 1). NMFS did not choose to finalize this alternative because it does not adequately protect large whales, and therefore, does not satisfy the

requirements of the MMPA or ESA. Due to the endangered status of the North Atlantic right whale population, and the insufficiency of existing measures in addressing right whale mortality, there is a need to further reduce serious injury and mortality. NMFS has determined that the additional regulatory measures included in this action are necessary to meet the objectives of the ESA and the MMPA. The ESA requires that NMFS ensure that activities it authorizes, including commercial fishing, do not jeopardize the continued existence of endangered and threatened species. The MMPA provides that the immediate goal of a take reduction plan is to reduce incidental mortality and serious injury of marine mammals taken in the course of commercial fishing to levels less than the PBR level and the long-term goal is to reduce such incidental mortality and serious injury to insignificant levels approaching a zero rate. These regulatory changes are necessary to attain these goals.

The costs associated with converting to sinking and/or neutrally buoyant groundline will vary by vessel, depending on the quantity of gear fished. The $8,000 to $10,000 range specified by the commenter may be valid for certain vessels. In the FEIS, gear replacement costs have been revised to incorporate up-to-date data on key inputs such as groundline. Chapter 7 of the EIS identifies vessel segments that may be heavily impacted by comparing average vessel revenues with compliance costs. The analysis suggests that under Alternative 6 Final (Preferred), a limited number of small vessels are most at risk. Although costs are high for some vessels, NMFS made modifications to the final rule, based on public comment, to decrease costs where possible while still meeting its goals under the MMPA and ESA (see *Changes from the Proposed Rule* section of the preamble). While these vessels may still realize high costs relative to revenues, fishermen have some options to try to mitigate the costs. For example, the impacts of converting to sinking and/or neutrally buoyant groundline may be defrayed, in part, by current and future groundline buyback programs operated by NMFS and other partners. In addition, although the requirements under Alternative 6 Final (Preferred) may impose significant costs within the first year after publication of the final rule (to convert all groundline to sinking and/or neutrally buoyant groundline), fishermen may be able to distribute the cost of the new gear over its useful life by seeking a loan. After the first year, ongoing costs would be significantly lower as fishermen would only need to replace worn-out and lost gear.

Comment 58: NMFS received a comment opposing Alternative 1.

Response: NMFS agrees with the commenter (see response to Comment 57).

Comment 59: One commenter supports Alternative 1 until the shipping industry and Navy have been regulated so their take is considerably less than it is now.

Response: NMFS recognizes that other marine resource users such as the shipping industry and the U.S. military are impacting large whale species, and NMFS is simultaneously pursuing various regulatory and non-regulatory means of addressing the ship strike issue (see response to Comment 279). However, serious injury and mortality to large whales due to entanglement continues to occur under the current regulations, and as such, NMFS must continue to address the impact by modifying the ALWTRP as appropriate.

Comment 60: Numerous commenters expressed support for Alternative 2 stating that it is the only option that truly affords large whales protection from the risk of entanglement.

Response: Alternative 2 is the most conservative, risk-averse approach to the protection of endangered whales because it would require year-round use of low-risk gear along the entire Atlantic coast. However, based on the available sighting information the potential for entanglement of whales in the Mid-Atlantic or South Atlantic waters during summer months is minor. Therefore, the year-round requirements provided in Alternative 2 would likely offer a minimal risk reduction benefit relative to NMFS' preferred alternative, Alternative 6 Final, which incorporates seasonal requirements based on sightings data documenting the movements of large whales.

Comment 61: NMFS received several comments objecting to Alternative 2. In addition, one commenter proposed specific changes to Alternative 2 regarding the number of traps per trawl in specified areas.

Response: NMFS agrees with the commenters (see response to Comment 60). NMFS has reverted back to the status quo for the number of traps per trawl in specified areas.

Comment 62: Several commenters expressed support for Alternative 3. One commenter supported the alternative because it incorporates seasonal components. Another commenter would only support Alternative 3 if the Mid-Atlantic northern boundary was moved to the southern border of Delaware, in order to better protect whale habitat. Conversely, NMFS received many comments objecting to Alternative 3. One commenter believed its requirements may cause effort to shift into exempted areas. The commenter believes the line drawn from Watch Hill Point, RI (41°18.2′ N. lat. and 71°51.5′ W) south to 40°00′ N. is arbitrary and not sufficiently protective of right whales, which have sometimes been seen west of 72°00′ W. The commenter states that NMFS used sightings data to determine this line, but those data are not included in the DEIS. Further, the commenter believes a more regional management approach is prudent and suggested that NMFS analyze incorporating the ''Middle Zone'' boundary.

Response: The DEIS identified Alternative 3 as one of its preferred alternatives because of the risk reduction benefit of implementing broad-based gear modifications on a seasonal basis. NMFS did consider implementing Alternative 3 along with the commenters proposed change to the northern boundary of the Mid-Atlantic area. However, the available sighting information did not support the proposed change to the Mid-Atlantic boundary. At this time, NMFS considers waters south of Watch Hill Point, RI (41°18.2′ N. lat. and 71°51.5′ W) to have a seasonality for Atlantic large whales (e.g., migratory corridor). Although animals may be present in Mid-Atlantic waters outside the seasonal period defined in this final rule, recorded large whale sightings are rare at that time for waters south of Long Island Sound. Thus, moving the northern boundary of the Mid-Atlantic management area to the southern border of Delaware would not offer substantial risk reduction for large whales. However, NMFS will reconsider such measures if it receives additional data for such areas and seasons. In addition, NMFS believed that Alternative 6 also offered more immediate protection to right whales and identified this as the other preferred alternative in the DEIS.

NMFS recognizes that there have been sightings of right whales west of 72°00′ W.; however, such events are uncommon. The seasonal variation in gear modification requirements is based on whale distribution data in NMFS' analysis of the NARW Sightings Database through early 2003, supplemented by additional data on humpback and fin whale sightings.

Comment 63: NMFS received several comments in support of and in opposition to Alternative 4.

Response: Alternative 4 is one of the more risk-averse approaches to the protection of endangered whales

because it would require year-round use of low-risk gear from the coast of Maine through the South Carolina/Georgia border and seasonal restrictions off the coast of Georgia and Florida. However, based on sighting information, the potential for entanglement of whales in the Mid-Atlantic waters during summer months is low. Therefore, the year-round requirements provided in Alternative 4 for the waters off the Mid-Atlantic coast would likely offer a minimal risk reduction benefit relative to NMFS' preferred alternative, Alternative 6 Final, which incorporates seasonal requirements based on sightings data documenting the movements of large whales.

Comment 64: NMFS received many comments in support of Alternative 5. Most comments in support of Alternative 5 were from the commercial fishing industry from Maine. Many of these commenters supported Alternative 5 only if the status quo alternative (Alternative 1) could not be maintained. Others believed Alternative 5 best suited fishermen in Maine because Maine fishermen would only have to shoulder a small fraction of the compliance costs under this alternative as compared to the other alternatives. One commenter believed that Alternative 5 has the least impact on Maine fishermen while still meeting baseline whale protection goals of the ALWTRP. Two state representatives and several other commenters supported Alternative 5 as it did not prohibit the use of floating rope. Similar comments were also received from fishermen from the Mid-Atlantic and Southeast.

Response: As noted in the response to Comment 57, the status quo Alternative 1 does not adequately protect large whales resulting in NMFS determination that regulatory changes are necessary to attain the goals of the ESA and MMPA. Of the remaining alternatives considered, NMFS believed that Alternative 5 was the least conservative, risk-averse approach to the protection of endangered whales. Although the SAM area was proposed to be expanded beyond what is currently required, the use of low-risk gear (e.g., prohibition on floating groundline) was only required in a relatively small area along the entire Atlantic coast. Thus, NMFS believed Alternative 5 offered less protection to large whales compared to the final preferred alternative because the risk of serious injury and mortality is greater under Alternative 5 and less likely to obtain the goals under the ESA and MMPA.

Most fishermen seemed to prefer Alternative 5 based primarily on economic impacts. By adopting Alternative 5, the cost of compliance would be shifted to fishermen who fish within the smaller SAM area. However, based on the available sighting information, NMFS believes the potential for entanglement of whales can occur outside of SAM areas. Although Alternative 5 produces the lowest economic effect to industry, it provides a lower risk reduction benefit compared to both the seasonal and area requirements provided under NMFS' preferred alternative, Alternative 6 Final, which is based on the movements and sightings of large whales.

Comment 65: The States of Connecticut and New York concurred with NMFS' determination that the proposed measures are consistent with the state's Coastal Zone Management (CZMA) Program, provided that NMFS exempt Lobster Management Area 6 (LMA 6) from the requirements of the ALWTRP. They noted that the available sightings information indicates that large whales do not frequent this area and there is a significant increase in the risk of gear loss. They further identified Alternative 5 as its first preference, but noted that should NMFS not select Alternative 5, that they would favor Alternative 6.

Response: NMFS reviewed the available sightings information within LMA 6 and determined that the potential for entanglement of whales is low in this area while the potential for gear loss is high. Therefore, NMFS has expanded the exemption line in Rhode Island sound to extend from Watch Hill, Rhode Island, to Montauk Point, New York. As noted in the response to Comment 64, NMFS believes Alternative 5 provides a lower risk reduction benefit compared to both the seasonal and area requirements provided under NMFS' final approved Alternative 6, which is based on the movements and sightings of large whales.

Comment 66: Several commenters objected to Alternative 5 stating that it is the least protective alternative to protect large whales.

Response: Not including the status quo Alternative 1, NMFS agrees that Alternative 5 was the least conservative, risk-averse approach to the protection of endangered large whales and did not select this alternative in the final rule.

Comment 67: One commenter stated that Alternative 5 does not include a phase-in of gear modification requirements (i.e., there are no broad-based gear modifications outside of expanded SAM). The commenter believes that NMFS should justify this by showing the level of risk reduction for Alternative 5 with respect to other alternatives, or how risk reduction deficiencies would be compensated elsewhere.

Response: Chapter 5 of the EIS provides a detailed discussion of the risk reduction associated with Alternative 5 relative to the other alternatives. Consistent with the comment, Chapter 5 concludes that the absence of broad-based gear modification requirements in Alternative 5 would result in lower risk reduction benefits for large whales.

Comment 68: One commenter believes that if NMFS were to implement Alternative 5, SAM areas may be further expanded even more in the future.

Response: The SAM area developed in Alternative 5 was based on the best sightings information available. However, had NMFS selected Alternative 5, NMFS could have modified the SAM area through a separate rule if an expansion of the SAM area was warranted.

Comment 69: A commenter recommended that if Alternative 5 is selected it should be effective September 1–March 31 in the Mid-Atlantic. The commenter pointed out that year-round closures are unnecessary in the Mid-Atlantic area (especially around New Jersey) since sightings of large whale tend to occur between January and March.

Response: Seasonal gear modifications for the Mid-Atlantic will be required from September 1–May 31, as defined in this final rule. At this time of year, large whales primarily occur and are still migrating from southern waters to northern feeding grounds (through April and May). NMFS believes that implementing regulations through March 31 would not offer adequate protection.

Comment 70: Several commenters believed that Alternative 5 was impracticable because it required 600-lb. (272.2-kg) weak links for vertical lines, which would snap in heavy tides and lead to more ghost gear (i.e., gear lost at sea).

Response: There is no 600-lb. (272.2-kg) weak link requirement for vertical lines. The 600-lb. (272.2-kg) weak link requirement is for flotation and/or weighted devices added to the vertical line. Due to results from load-testing analyses, NMFS believes these breaking strengths are appropriate.

Comment 71: NMFS received a few objections to Alternative 6; one commenter opposed Alternative 6 because of the seasonal component of the broad-based gear modifications. However, numerous other commenters expressed support for Alternative 6. One

commenter asked that NMFS only apply Alternative 6 where whales have been sighted.

Response: NMFS believes that Alternative 6 (Final) offers the best risk reduction benefit to protect endangered whales because it requires the use of low-risk gear in areas and times shown to have a high abundance of large whales. Because of their migratory patterns, large whales are primarily present in Mid- and South Atlantic waters during particular months while they appear to be in New England waters on more of a year round basis. Alternative 6 (Final) requires low-risk gear on a seasonal basis for fisheries in the Mid- and South Atlantic while requiring low risk gear on a year round basis in the New England area.

Comments on Exemption Lines/Areas

Comment 72: One commenter believed exemption lines should be proposed by state governments.

Response: As part of the scoping process provided under NEPA, NMFS conducted several scoping meetings throughout the Atlantic coast. At each meeting, NMFS made available a scoping document that contained issues and options for modifications to the ALWTRP. The document contained a section concerning exemption areas and requested input from the general public, including state representatives on the ALWTRT, to identify exemption areas. The proposed exemption areas have been developed in response to requests from state fishery management agencies, as well as others, and are designed to ensure that the ALWTRP does not unnecessarily extend commercial fishing regulations to waters in which endangered or protected whales have been rarely, if ever, observed. However, partially based on the comments submitted by interested states, NMFS modified the proposed exemption areas. The *Changes from the Proposed Rule* section of the preamble discusses these exemption line changes. NMFS will continue to monitor all exempted areas, and encourage states to develop contingency plans in the event a large whale is sighted in such areas.

Comment 73: Many commenters supported using the International Regulations for Preventing Collisions at Sea (COLREGS) to base exemption lines. However, one commenter did not support using the COLREGS in Buzzards Bay and Long Island Sound and requested NMFS to review large whale sightings and reconsider these exemptions. Another commenter stated there is little evidence to support exempting Buzzards Bay and Cape Cod Canal from gear modification requirements because sightings data corroborate that whales do occur in both areas.

Response: NMFS reviewed the large whale sightings for Long Island Sound and has amended the proposed exemption line. The new exemption line runs from Watch Hill, RI, to Montauk Point, NY. Based on comments, NMFS will revert to the status quo exemption lines for Massachusetts, which includes Buzzards Bay. Thus Buzzards Bay will not have an exemption at this time. See response to Comment 77 for more specific information about Massachusetts.

Comment 74: Many commenters believe that there need to be exemptions within 3 nautical miles (5.6 km). One commenter stated that the considered regulations seem unfair and unsafe for those fishing near the shore, where they said whales are not seen. Several other commenters believed that SAM areas should not exist inshore of 3 nautical miles (5.6 km) due to the fact that no whales have been seen within 3 nautical miles (5.6 km) of shore.

Response: NMFS has received many reports throughout New England and the Mid-Atlantic detailing numerous sightings of large whales within 3 nautical miles (5.6 km) of shore. Therefore, NMFS does not believe exemptions within the 3 nautical mile (5.6 km) line along the coast would provide adequate protection for large whales and is not appropriate at this time.

Comment 75: One commenter stated that NMFS has no means to require modifications if whale habitat use changes (e.g., if fisheries expanded to > 280 fathoms (512.1 m or 1,680 ft) or if right whale habitat use changes due to potential climatic shifts. Such changes could result in whales using proposed exempted areas, such as Delaware and Chesapeake Bays.

Response: Should new information become available that indicates that a change in the inshore or deep water exemption areas is warranted, NMFS will share the information with the ALWTRT and will take appropriate action.

Comment 76: One commenter believes the 280 fathom (512.1 m or 1,680 ft) groundline exemption should be flexible and revisited when the agency has more research information and sightings data.

Response: Currently available dive data suggest that large whales do not dive deeper than 280 fathoms (512.1 m or 1,680 ft). Data come from world-wide observations and are not limited to the Gulf of Maine. As with all exempted areas, if NMFS is presented with new information on the diving behavior of large whales along the east coast that calls the 280 fathom (1,680 ft or 512.1 m) depth level into question, then it will revisit regulations in waters greater than 280 fathoms (512.1 m or 1,680 ft) if necessary. See Comment 75.

Comment 77: Several commenters oppose the proposed exemption line for Massachusetts for the following reasons: (1) It would cause a safety issue as there are 8,000 recreational lobstermen in the state and enforcing ALWTRP requirements so close to shore could be dangerous; (2) the proposed area is too small to benefit fishermen; and (3) nearly all trap/pot fishermen who fish in the exempted area have received a 75-percent subsidy to convert to sinking groundline, therefore, exempting these areas would be difficult to explain and enforce.

Response: NMFS agrees with the concerns raised by the commenters and therefore did not adopt the proposed expansion of the exemption line within Massachusetts state waters. Should new information become available to alleviate these concerns, NMFS in consultation with the ALWTRT, may take future action to modify the exemption line.

Comment 78: Numerous commenters expressed concern for exemptions in the area known as ''the Race'' in Connecticut and New York. The commenters suggested that waters west of a straight line drawn from Montauk Point, Long Island, to Watch Hill, Rhode Island (current Lobster Management Area 6 line), should be excluded from the proposed amended ALWTRP.

Response: Discussed in response to Comment 65, NMFS reviewed the available sightings information within LMA 6 and determined that the potential for entanglement of whales is low in this area while the potential for gear loss is high. The data revealed that large whales are rarely sighted near the mouth of Long Island Sound and there are no documented interactions between whales and fishing gear in this area. Upon further inspection NMFS found that this area falls on either side of the current exemption line and has exceptionally strong currents with varying depths and very rocky topography. This area also has high vessel traffic where gear loss is already common. NMFS believes that the use of sinking groundline and 600-lb (272.2-kg) weak links in this area coupled with the issues noted above would increase this gear loss and create a safety risk to fishermen. Consequently, NMFS has modified the exemption line in Long

Island Sound to run from Watch Hill, RI, to Montauk Point, NY.

Comment 79: One commenter recommended that NMFS check the accuracy of Exhibit 6H–1. The commenter stated that Connecticut fishermen operate in waters other than Connecticut waters; they report commercial fishing activities outside of Connecticut waters to the CTDEP and they fish in the ''Race'' under New York non-resident commercial lobster licenses. The commenter believes the assumption in Exhibit 6H–1, that vessel activity for state-permitted vessels is equally distributed only within state waters, is not accurate. Also, the commenter believes Exhibit 6G–2 is not accurate because, although there are fishermen who operate in Connecticut waters inside Long Island Sound, which is exempted, there are also vessels that fish in the ''Race'' and are affected by ALWTRP requirements.

Response: NMFS recognizes that Connecticut lobstermen fish in New York State waters. The analysis of other trap/pot and gillnet vessels applies a broad assessment of licenses issued by New York that likely includes licenses to out-of-state vessels. NMFS acknowledges that Connecticut-based vessels that purchase trap tags from Connecticut may not be accounted for under Alternatives 2 through 6 Draft (in the DEIS). However, under the preferred alternative, Alternative 6 Final, the portion of waters referred to in this comment (the ''Race'') would be exempted from the proposed regulatory requirements. As a result, under the preferred alternative, Connecticut-based vessels operating in these waters would not be affected by the regulations. The EIS acknowledges that fishing activity is not likely to be equally distributed throughout state waters. Data on the location of state-permitted vessel activity are unavailable; in lieu of better data, the analysis employs assumptions that provide a reasonable basis for estimating the number of affected vessels. To the extent that fishing activity is disproportionately concentrated in waters exempted from the requirements, fewer vessels than estimated in the EIS would be affected. Conversely, to the extent that activity is disproportionately concentrated outside of the exempted waters, more vessels than estimated in the EIS would be affected.

Comment 80: One commenter wants LMA 2 to be exempt from any new regulations as no whales are seen in that area. Another commenter said that there is no Dynamic Area Management (DAM) density in Area 2, thus, the area should be exempt.

Response: LMA 2 is located in Southern New England nearshore waters, south of Cape Cod and off the southern coast of Rhode Island. Despite the fact that a DAM may not have been triggered in this area, NMFS sightings data indicate that right whales are occurring within LMA 2. Although sightings may not be numerous, right whales have been seen in these waters, including areas outside of Long Island Sound and Block Island. It should also be noted that DAM zones are a regulatory measure only intended for Northern right whales. Thus, a lack in DAM density is not a reliable indicator of whale distribution of other species, in general. Other large whale species covered under the ALWTRP that would not trigger a DAM are known to occur in this area.

Comment 81: One commenter believed that NMFS does not have a plan to deal with gear in exempted areas if and when right whales are reported in those exempted waters. The commenter stated that since 2002 it does seem that there have been a lot more of what is considered to be out of season/out of habitat sightings and there is no way for NMFS to deal with them.

Response: The changes to the exemption lines have been developed in response to requests from state fishery management agencies, as well as others, and are designed to ensure that the ALWTRP does not unnecessarily extend commercial fishing regulations to waters in which endangered or protected large whales have been rarely, if ever, observed and there is low risk. In developing the revised exempted areas, NMFS reviewed the available sightings information (including information since 2002) and right whale tracking information where available, and determined that the potential for entanglement of whales is low in these areas so that no changes to the exemption lines are needed, other than those modifications noted in this final rule. NMFS will continue to monitor all exempted areas, and encourage states to develop contingency plans in the event a large whale is sighted in such areas. Should new information become available that indicates that a change in the exemption areas is warranted, NMFS will share the information with the ALWTRT and will take appropriate action.

Comment 82: One commenter believes that the proposal to exempt inshore of the 50-fathom (91.4-m or 300-ft) curve to explore low profile groundline is inappropriate. The commenter states that this proposal would put whales at risk.

Response: The alternatives provided in the DEIS and proposed rule did not include a proposal to exempt inshore of the 50-fathom (91.4-m or 300-ft) curve to explore low profile groundline.

Comment 83: Several commenters believe that NMFS should analyze the 50-fathom (91.4 m or 300 ft) curve in Maine as a line for delineating gear modification requirements (i.e., exempt inshore of 50 fathoms (91.4 m or 300 ft)). They believe this may protect right whales going to and from the Bay of Fundy while allowing operationally realistic risk reduction gear modifications.

Response: NMFS sightings data confirms the frequent occurrence of right whales in waters landward of the 50-fathom (91.4-m or 300-ft) curve (e.g., southern Maine), thus it would not be an appropriate exemption line.

Comments on Proposed Exemption Lines in Maine

Comment 84: One commenter said that if there is going to be an exemption line set, it should be based off LMA 1, which already has a line 40 miles (64.4 km) out. The commenter suggested using this line until research shows a problem inside the line. The commenter said the problem is not in the nearshore fishery where 95-percent of fishermen in the State of Maine are fishing.

Response: In developing potential changes to state exempted waters, NMFS reviewed the NARW Sightings Database from 1960 through mid-September 2005 containing dedicated survey effort and opportunistic sightings data, which is supplemented by additional data on humpback and fin whale sightings, sightings data collected from 2002 through 2006 through the NEFSC systematic aerial surveys and the Northeast U.S. Right Whale SAS, as well as a large whale sightings database compiled by Maine DMR, for data on right, fin, and humpback whale sightings from 1960 to 2002. The areas that would be newly exempted from ALWTRP requirements contained in this final rule include only those in which whales are only occasionally found and are at low risk, as suggested both by NMFS' review of the data and its current understanding of whale behavior. NMFS does not believe that regulating the waters that will be exempted from the ALWTRP would have a significant benefit to large whales. The sightings data do not support exempting state waters out to 40 nautical miles (64.4 km). Exempting this large of an area from ALWTRP regulations would likely have a significant, direct effect on large whales.

Comment 85: NMFS received numerous comments in support of using the Maine DMR's suggested exemption line.

Response: After re-examining the sightings information from the available data sources noted in the response to Comment 84 with respect to both NMFS' proposed and Maine DMR's suggested exemption lines, NMFS concluded that exempting areas inside the State of Maine's suggested exemption line will provide an adequate level of protection to endangered large whales. Thus, the final exemption line for the state of Maine will use the coordinates of the exemption line suggested by Maine DMR.

Comment 86: If NMFS retains the proposed exempted line, commenters asked NMFS to consider the exempted lines in Maine from headland to headland (*e.g.*, Cape Small to Cape Elizabeth and Two Lights) rather than using the COLREGS because this area would encompass the same bottom type and fishing patterns. In addition, one commenter also stated that there is no exemption proposed for Penobscot Bay.

Response: NMFS agrees with the commenters' concerns and will not use the COLREGS line in Casco Bay; instead the exemption line will run just outside Casco Bay by a line connecting a series of buoys. The location of the exemption line in Casco Bay is the same as that suggested by Maine DMR. Moving this exemption line from the COLREGS line to the line suggested by Maine DMR will not have great economic or biological impacts because there are few affected vessels and infrequent whale sightings. For exempting Penobscot Bay, NMFS' proposed exemption line incorporated three coordinates from Maine DMR's suggested exemption line to exempt the Penobscot and Blue Hill Bay areas. These coordinates will remain largely the same.

Comment 87: Several commenters suggested that NMFS consider extending the Maine state exemption line to the 3-nautical mile (5.6-km) line. Their reasons include high boating traffic during the summer resulting in increased gear loss and the lack of whale sightings within the 3 nautical mile (5.6 km) limit.

Response: NMFS believes that the area exempted under the Maine state exemption line contained in this final rule includes a significant portion of the area identified by the commenters as high vessel traffic areas. Consequently, the potential gear loss related to boat traffic in areas outside of the Maine exemption line will not have a significant economic impact to fishermen or create a significant ghost gear problem. As noted in the response to Comment 85, NMFS reviewed the available sightings information in conjunction with both NMFS' proposed and Maine DMR's suggested exemption lines, and is adopting the latter exempted line in the final rule. The available sightings information did not support extending the Maine state exemption line to the 3-nautical mile (5.6-km) line throughout the coast of Maine.

Comment 88: One commenter thinks NMFS did not use new satellite tracking data from Maine and instead relied on limited sightings data to develop exempted areas.

Response: The information used by NMFS to develop and finalize the state exemption areas was the best scientific information available. For the final exemption line, NMFS reviewed the available sightings database (from 1960 through mid-September 2005), large whale sightings data from 2002 to 2006 collected through the NEFSC's systematic aerial surveys and the SAS, as well as a large whale sightings database compiled by Maine DMR, for data on right, fin, and humpback whale sightings from 1960 to 2002. NMFS considered satellite tracking information that was contained within published papers to develop and finalize exempted areas. During the development of the exempted areas, NMFS considered the paper entitled, ''Satellite-Monitored Movements of the Northern Right Whale'' (Mate *et al.*, 1997). While finalizing the exempted areas, NMFS considered the previous paper in addition to the paper entitled, ''Summer and fall habitat of North Atlantic right whales (*Eubalaena glacialis*) inferred from satellite telemetry'' (Baumgartner and Mate, 2005). NMFS will continue to monitor all exempted areas and should new information become available regarding the exemption areas, NMFS will share this information with the ALWTRT to determine if changes to the exemption areas are warranted.

Comment 89: Two commenters questioned the justification of the Maine exemption line. The commenters requested NMFS to consider additional tracking data (one commenter provided a graphic with the tracking data) based on two right whale sightings in Maine waters. One commenter asked NMFS to see if these whales are landward of the proposed exemption line. The commenter stated that documented movements of two whales in a small population suggest that Maine waters are used more frequently than we know; the other commenter also stated that entanglement risk still exists when there is a high concentration of gear and a low concentration of whales. Both commenters stated gear recovered from the right whales ''Kingfisher'' and ''Yellowfin'', with one commenter noting that ''Kingfisher's'' gear came from Maine.

Response: NMFS will consider tracking data, and any other new information that becomes available, and revisit exemption areas in Maine if necessary. NMFS considered the graphic provided by the commenter and notes that the two whales discussed in the comments were included in the Baumgartner and Mate (2005) paper that NMFS also reviewed. Additionally, as noted in the Final and Draft EIS, NMFS did consider published reports of tracking data (see response to Comment 88). As indicated in Mate *et al.* (1997), the accuracy of the whales' locations depends on the number and distribution of the transmissions received from the tags during a satellite pass. Based on the number of transmissions received from the tags during a pass, the locations of the whales as recorded by the satellite receivers may vary 150 to 1,000 meters from the whales' true locations (Argos, 1990, as found in Mate *et al.*, 1997). Since the satellite data have levels of error, precise latitudes and longitudes are not generated by the tags; thus, it is difficult to determine exactly where these whales were sighted with respect to the final exemption line for Maine. Although the coordinates for the sightings were not provided, NMFS did review the available information and believes the final exemption line for Maine is appropriate.

Comment 90: One commenter cited Exhibit 6–10, which states that 50-percent of Maine's waters would be exempted under the proposed exemption line. However, lobster grounds are only a fraction of state waters and actual impact upon fishing effort would be greater and should be analyzed as such.

Response: The EIS acknowledges that fishing activity is not likely to be equally distributed throughout state waters. Data on the location of state-permitted vessel activity are unavailable; in lieu of these data, the analysis employs assumptions that provide a basis for estimating the number of affected vessels. To the extent that actively fished lobster grounds are disproportionately concentrated in waters exempted from the requirements, fewer vessels than estimated in the EIS would be affected. Conversely, to the extent that actively fished lobster grounds are disproportionately concentrated outside of the exempted waters, more vessels

than estimated in the EIS would be affected.

Comments on Right Whale Critical Habitat

Comment 91: Due to limitations of available technology, particularly for vertical lines, two commenters recommended that NMFS adopt seasonal closures to prohibit all gillnet and lobster gear in all designated right whale critical habitats during times when whales are known to congregate in those areas until gear modifications that give reasonable assurance to prevent entanglement are developed. Two commenters urged NMFS to consider revising right whale critical habitat. One commenter suggested NMFS revise right whale critical habitat to include both SAM areas as well as the DAM areas that had been implemented through 2004. The other commenter suggested NMFS analyze all available right whale sightings data to reassess appropriate critical habitat boundaries that encompass high-use feeding and calving habitat.

Response: NMFS did consider adopting new seasonal closures in critical habitat areas in response to comments provided during the scoping process for the DEIS. This issue was included in the DEIS summary of written scoping comments received. The issue is addressed in the section of the DEIS that lists the alternatives considered and rationale for rejection (e.g., implement a gillnet closure in the Great South Channel Sliver Area from April 1 through June 30), as well as in the section that describes the alternatives considered (e.g., gillnet fisheries not currently regulated would be required to abide by current restrictions which include closures). In the FEIS, NMFS included additional language to clarify that this comment was considered but rejected.

There are currently closures in place to protect critical habitat. Contrary to the sentiments expressed by the commenters, NMFS is not relieving current restrictions in critical habitat areas. This is consistent with the Conservationist members' proposal provided at the 2003 ALWTRT meeting that, amongst other measures, critical habitat restrictions remain in place until vertical and groundline risks are reduced. In fact, Alternatives 2 through 6 in the DEIS considered that any gillnet and trap/pot fishery not regulated in these areas be required to abide by the current Critical Habitat restrictions (e.g., gillnet closure in Cape Cod Bay Critical Habitat Area from January 1 through May 15; trap/pot closure in Great South Channel Critical Habitat Area from April 1 through June 30). Additional closures to fisheries operating in Critical Habitat areas were not within the scope of the DEIS.

The preferred alternative in the FEIS takes a broad-based management approach by expanding the more protective gear modifications for lobster in Cape Cod Bay Critical Habitat, and lobster and gillnet gear for the DAM gear modifications coast-wide. Additionally, as discussed in the FEIS, NMFS believes that there is a need to re-evaluate whether critical habitat boundaries should be modified, and revisit the relationship between critical habitat and the ALWTRP before further changing current requirements in these areas. NMFS is currently taking a number of steps prior to deciding whether to propose any revisions to critical habitat, including an analysis of the following: (1) Southeast U.S. right whale distribution data in relation to bathymetry and sea surface temperature derived from Advanced Very High Resolution Radiometer imagery; and (2) characterizing the spatial and temporal distribution of zooplankton in the Northeast U.S. NMFS hopes to begin discussions with the ALWTRT regarding these critical habitat issues and their relationship to the ALWTRP in 2008.

Comments on Closed Areas

Comment 92: Several commenters urged NMFS to continue implementing closures given the uncertainty of gear modification effectiveness and until proven gear modifications are implemented. One commenter believes closures are needed for high-risk areas during peak right whale occurrence (this is in addition to critical habitat areas) and suggests removing gear from feeding/calving areas. In New England, the commenter suggested closing Cape Cod Bay to trap/pot fishing during peak months based on the best available data at the time (e.g., right whale surveys, prey abundance). Additionally, the commenter suggested closures in the Mid-Atlantic during migration (e.g., from the third week of February to the third week of March and mid-December to mid-January).

Response: NMFS considered the concept of a total closure to trap/pot and gillnet gear in unique ''high risk'' areas and determined that gear modifications developed through the ALWTRT process would result in more conservation benefits to the animals. The basis for this determination is two-fold. First, comments received from some ALWTRT members and the general public during the scoping and public hearing meetings stated that closures are not an economically feasible option for commercial fishermen given the uncertainty of right whale distribution patterns. Despite increased aerial survey effort, there is still a high degree of variability regarding right whale distribution. Generally, NMFS has a good understanding of when and where right whales will be in an area, but the size of the area and timing of when right whales enter these areas vary year to year. Fishermen could be closed out of a given area to protect right whales, but the whales might not yet be in that area. Similarly, the shift in effort to other areas may also be to areas where right whales are present.

Second, total closures refocus fishing efforts to other areas and may result in an edge effect where gear is concentrated around the periphery of a closed area, posing a greater risk of entanglement. NMFS believes that the gear modifications required in this final rule prevent entanglements where possible and will alleviate the threat of serious injury or mortality.

Comment 93: Several commenters stated that closures may not be very effective in light of right whale movements as indicated by satellite tracking data. Commenters state that closures may shift gear and effort to the edges of these areas (i.e., creating a ''wall'' of gear), thus increasing the entanglement risk for whales and placing gear where the whales feed and travel.

Response: NMFS believes that the gear modifications required in this final rule prevent entanglements where possible and will alleviate the threat of serious injury or mortality. However, if future serious injury and mortalities due to entanglements are proven to have occurred in high risk areas where gear modifications are in effect, or in critical habitat or restricted areas during the relative restricted periods from allowable gear, NMFS will consider closures for reducing the serious injury and mortality of large whales due to entanglements by requiring the complete removal of all trap/pot and/or gillnet gear. Absent such circumstances, NMFS will continue to work with the ALWTRT to monitor and modify fishing gear to adequately reduce the risk of serious injury and mortality of large whales.

Comment 94: One commenter requested that NMFS analyze the existing Western Gulf of Maine Closure that encompasses most of Jeffreys Ledge for potential inclusion as a year round modified gear area.

Response: The Western Gulf of Maine Closure and Jeffreys Ledge area are

included in ALWTRP management areas. Modifications to these management areas were considered in Alternatives 2, 3, 4, 5, and 6 in the DEIS. The final rule requires year-round gear modifications in and around Jeffreys Ledge. See Chapter 3 section 3.1.7 of the FEIS or the ''Changes to the ALWTRP for Gillnet Gear Requirements'' section of this preamble for a complete description of the gear modifications required for this area.

Comment 95: Several commenters said that they supported changing the restricted period for the Southeast U.S. Restricted Area south of 29°00′ N. lat. from November 15–March 31 to December 1–March 31.

Response: Recent data indicate that right whales are rarely sighted south of 29°00′ N. lat. in November or April. Consequently, NMFS has determined that a restricted period beginning on December 1 and ending on March 31 is appropriate for the Southeast Restricted Area N.

Comment 96: One commenter said that south of 29°00′ N. the area should be opened due to a lack of whales in the area. One commenter said that NMFS should consider an area only 6 miles (11.1 km) from shore.

Response: Aerial survey and other sightings data indicate that right whales routinely move south of 29°00′ N., particularly during January and February. Reviewing sightings data may suggest most/more whales occur within a few miles of shore; however, it is important to note that survey effort is biased toward shore (see Comment 39) and thus, whales farther from shore are likely undercounted.

Comment 97: One commenter suggested that 26°46.5′ N. should be the southern boundary for Other Southeast gillnet waters.

Response: NMFS believes that 27°51′ N. is the appropriate southern boundary for Southeast Atlantic gillnet fisheries under the ALWTRP. The line for operational restrictions is north of 27°51′ N. for both Southeast Atlantic gillnet and trap/pot fisheries. Right whales are occasionally found in waters south of 27°51′ N.; thus, observational requirements (e.g., VMS, gear marking) will be in effect under this final rule for the Southeastern U.S. Atlantic shark gillnet fishery from 27°51′ N. south to 26°46.5′ N. NMFS will continue to monitor this area from 27°51′ N. south to 26°46.5′ N. in the event that sightings data warrant the expansion of management areas or restricted time periods.

Comment 98: One commenter said that fishing practices south of 29°00′ N. lat. off Florida are different from those north of this line for non-shark gear and this should be recognized in the regulations.

Response: NMFS agrees with the commenter and is aware that the Southeast U.S. Atlantic shark gillnet fishery is active primarily south of 29°00′ N. lat. during the restricted period. Furthermore, NMFS is aware that the Southeast Atlantic gillnet fishery has been active north and south of 29°00′ N. lat. during the restricted period and that, in general, fishermen are targeting Spanish mackerel with runaround nets south of 29°00′ N. lat. and have used sink gillnets to target whiting north of 29°00′ N. lat. For this reason, and due to the seasonal north-south movements of right whales, NMFS has divided the Southeast U.S. Restricted Area into two separate management areas (N and S) that are divided at 29°00′ N. lat.

Comment 99: One commenter said that the restricted period in the Southeast should be changed from March 31 to March 25 or earlier south of the Cape Canaveral and north of Sebastian Inlet. The commenter also said that if whales are not present in the area, it should be opened.

Response: NMFS has considered this comment. However, sightings data from aerial surveys indicate that March 31 is an appropriate temporal boundary for this area.

Comment 100: One commenter believed that extending the current eastern boundary to the EEZ line for Florida fisheries should only occur if NMFS has precise data about whale migratory patterns and routes.

Response: This final rule implements a broad-based approach to the ALWTRP regulations, and focuses on the times and areas where large whales are likely to occur. NMFS believes that the boundaries of management areas, as presented in this final rule, are appropriate for large whale protection. Surveys are continually conducted by the NMFS Southeast Fisheries Science Center and other NMFS partners. At this time, NMFS cannot conclude with certainty that large whales are not occurring in offshore waters out to the eastern edge of the EEZ; thus, NMFS deems it appropriate to extend the boundary.

Comment 101: Several commenters suggested that the original names for the Southeast management areas should be kept the same for clarity because the new names are confusing.

Response: Based on public comment, NMFS is not including the proposed name change in this final rule. However, based on the commenters' view that the proposed name changes are confusing, NMFS is implementing a modified name change more similar to the status quo. For regulated waters west of 80°00′ W. long., NMFS is keeping the ''Southeast U.S. Restricted Area'' terminology and adding a ''N'' or ''S'' to denote North or South of 29°00′ N. NMFS is changing ''Southeast U.S. Observer Area'' to ''Southeast U.S. Monitoring Area'' due to the Vessel Monitoring System (VMS) being substituted for 100-percent observer coverage in the Southeastern U.S. Atlantic shark gillnet fishery.

Comments on SAM and DAM

Comment 102: Several commenters support the elimination of the SAM program stating that the effectiveness and enforceability of SAM is controversial.

Response: NMFS disagrees with the commenters' statements that the SAM program is being eliminated because of controversiality regarding its effectiveness and enforceability. This final rule implements an expansion of the SAM program to bridge the gap between the publication of the final rule and the effectiveness of the floating groundline prohibition 12 months after publication of this final rule. NMFS has no evidence that the gear modifications required under the SAM program have resulted in an entanglement, serious injury, or mortality to large whales. NMFS believes that the entanglements that occurred since the 2002 implementation of the SAM and DAM programs are the result of gear interactions with large whales in areas outside of the SAM and DAM programs. In fact, this final rule will implement many of the SAM gear modifications on a year-round or seasonal basis throughout the Atlantic coast. The elimination of the SAM program 12 months after publication of the final rule is a result of the expansion of the final SAM gear requirements rather than an elimination of the SAM program because it is not effective or enforceable.

NMFS agrees that at-sea enforcement is important to the success of the ALWTRP and has conducted enforcement activities. NMFS also relies on its partnership with the U.S. Coast Guard (USCG) and state agencies to monitor compliance with the ALWTRP. NMFS has existing penalty schedules for violations of the MMPA and the ESA, and regulations pursuant to those statutes. In addition, NMFS has entered into agreements with many states to encourage and facilitate joint enforcement of regulations. In recent years, NMFS, in collaboration with the USCG and its state partners, has targeted small areas within SAM areas to check

compliance with SAM gear modifications. Smaller inshore areas were chosen based on the volume of gear fished in the area and the proximity to right whales. NMFS will continue to work with its state partners and the USCG to enforce the requirements of the ALWTRP.

Comment 103: Many commenters support maintaining and/or expanding SAM. The commenters offered the following suggestions on SAM expansion: (1) Expanding SAM with respect to other fishery closures, review of recent large whale entanglements and other mortality and foraging data; (2) expanding SAM requirements year-round; (3) combining an expanded year-round SAM with Alternative 2 to provide the most conservation benefit to large whales; and (4) adjusting expanded SAM boundaries until the SAM program is eliminated and replaced with broad-based gear modifications.

Response: This final rule expands SAM East and SAM West zones by increasing the size of the SAM areas until 12 months after publication of the final rule when the groundline requirements are expanded to include all waters on a year-round or seasonal basis. Additionally, the boundaries for the southeast area of SAM East would be modified. The expanded SAM area would include the Great South Channel Critical Habitat area; therefore, trap/pot and gillnet gear would be subject to the SAM program inside critical habitat areas during time periods when the requirements for fishing inside these areas are no more conservative than the surrounding waters (*i.e.*, when the protections of critical habitat areas disappear).

Extending SAM to the west and south will provide greater protection for endangered whales. Additional analyses of right whale sightings prompted the spatial adjustment of SAM West to better reflect recent data on right whale seasonal distributions (Merrick, 2005). Additional broad-scale survey observations have also been evaluated by NMFS and support the decision to expand the SAM area. See Comment 116.

Comment 104: Some commenters stated that an expanded SAM program is inadequate. The commenters stated that it does nothing to protect large whales in areas outside of SAM areas and its geographic scale is smaller than that of whale movements. Furthermore, one commenter also stated that an expanded SAM still does nothing to protect whales going into Cape Cod Bay. The commenter mentioned it only takes effect for animals that are leaving Cape Cod Bay and the new SAM area will only include 2 out of the 17 DAM areas.

Response: Extending SAM to the west and south will provide greater protection for endangered whales. Additional analyses of right whale sightings prompted the spatial adjustment of SAM West to better reflect recent data on right whale seasonal distributions (Merrick, 2005). Additional broad-scale survey observations have also been evaluated by NMFS and support the decision to expand the SAM area. See Comment 116.

NMFS agrees that relying solely on the expansion of the SAM program, as proposed in Alternative 5, is inadequate to protect large whales for the same reason stated by the commenter. Except for the status quo Alternative 1, NMFS believes that Alternative 5 was the least conservative, risk-averse approach to the protection of large whales because it only required seasonal use of low-risk gear in the SAM area off the New England Coast. Although the SAM area was proposed to be expanded beyond what is currently required, the use of low-risk gear would only be required in a relatively small area along the entire Atlantic coast at a time when right whales are known to aggregate. NMFS believes that Alternative 5 does not consider seasonal migration patterns of large whales from Maine to Florida, resulting in lower risk reduction compared to both the time and area requirements provided in NMFS' approved alternative. Alternative 6 Final uses an expansion of the SAM program to serve as a bridge to allow fishermen until 12 months after publication of the final rule to convert their groundlines to sinking line. Once fully converted, the gear modifications provided under the revised SAM program will be expanded to include all New England waters on a year-round basis and seasonally for the remainder of the Atlantic coast.

Comment 105: One commenter disagrees with the 6-month delay in effective date for SAM. The commenter states that fishermen using this area should already have sinking groundline.

Response: NMFS disagrees with the commenter. This final rule will expand the current SAM area, which will affect fishermen who had not been required to comply with the SAM gear requirements in the past. The 6-month delay in the effective date for SAM gear requirements is to allow fishermen in the new expanded areas to convert their gear.

Comment 106: One commenter opposes regulations in the area surrounding Mount Desert Rock, which could be included in a future SAM plan.

Response: This final rule will expand the SAM area, which will require gear modifications during certain times of the year within these areas. The expanded SAM requirement will be in effect until 12 months after publication of the final rule. The SAM area will not affect the immediate Mount Desert Rock area. However, beginning 12 months after publication of the final rule, fishermen in the Mount Desert Island area may be affected by the groundline requirements, consistent with the SAM program, depending on whether the fishermen fish seaward of the Maine state exemption line.

Comment 107: One commenter believes that the success of the revised SAM program, exemption lines, or any other boundary-based management approach rests on the assumption that NMFS sets the boundaries in the most appropriate locations, considering the risks to whales and the compliance costs to fishermen. The commenter suggested that NMFS work with Maine DMR to periodically review and adjust the boundaries and gear requirements of SAM as necessary.

Response: NMFS agrees with the commenter. Regarding the SAM program, NMFS reviewed the NARW Sightings Database through early 2003, supplemented by additional data on humpback and fin whale sightings. In addition, NMFS used information, including that which was provided by the State of Maine, to modify the Maine state exemption line (see response to Comment 84). NMFS will continue to work with Maine, other state partners, and ALWTRT members to develop appropriate measures for the ALWTRP.

Comment 108: One commenter believes the boundaries for expanded SAM areas do not reduce risk, stating that the SAM West area does not protect late winter arrivals (December–February) and that the overlap is too small. The commenter states that the reduced eastern portion of SAM East combined with DAM elimination equals a net loss of right whale protection. The commenter stated that two analyses of data to determine boundaries for SAM were March to May and March to July, but that January and February were not considered in the analyses. The commenter stated that sightings data from 2004–2005 were ignored and NMFS should have used them (see *http://whale.wheelock.edu/whalenet-stuff/reportsRW_NE*).

Response: NMFS believes that the expanded SAM area implemented in this final rule provides increased protection for right whales, as well as

other large whales, in the Gulf of Maine. NMFS delineated the expanded SAM area based upon the best data available at the time, which included data from approximately 1960 through 2003 from the NARW database distributed in December 2004 (Merrick 2005). This dataset included sightings through fall 2003; the 2004 data had not been added and the 2005 data had not yet been collected. NMFS analyzed data from March through July only, and did not analyze data from January and February as there were very little winter sighting data available at that time.

Comment 109: NMFS received numerous comments supporting the elimination of the DAM program.

Response: This final rule eliminates the DAM program six months after publication of this final rule.

Comment 110: Two commenters supported elimination of the DAM program but were concerned that it will reduce the incentive for fishermen to change over their gear. Another commenter stated that the unpredictability of the DAM program can lead to fishermen converting their gear.

Response: NMFS believes that eliminating the DAM program will not reduce the incentive for commercial fishermen to convert to the SAM or DAM gear modifications. When the initial SAM and DAM programs were implemented in 2002 and the DAM program was amended in 2003, NMFS acknowledged that one of the benefits of these programs was that they provided an incentive for commercial fishermen to convert their gear to the more restrictive gear requirements on a year-round basis. NMFS believes that many fishermen chose to convert on a year-round basis to avoid interruptions in their fishing seasons because of gear modifications imposed by the SAM and DAM programs. Furthermore, two gear buyback programs have been completed, and a third buyback program is currently underway. These buyback programs provide more incentive to fishermen to convert their gear because they are compensated for converting their gear prior to the implementation of the more restrictive gear requirements.

Comment 111: Many commenters believe that the DAM program should not be eliminated 6 months after publication of this final rule and NMFS should keep the DAM program as part of the ALWTRP. The commenters believe that if NMFS eliminates DAM, there is no contingency measure for when whales are sighted in exempted areas. Specifically, some commenters said there will be no method to protect right whale aggregations in the Gulf of Maine (outside SAM) between now and 2008, especially during the fall and winter.

Response: The DAM program is not designed for exempted areas. This final rule expands the SAM area and allows the DAM program to be eliminated six months after publication of this final rule. NMFS conducted two different analyses to examine whether and where SAM would provide additional protection to right whales. The results of these analyses indicated that the area to be incorporated into the expanded SAM would encompass many of the areas that previously have been designated as DAM areas. Thus, NMFS believes that replacement of the DAM program with an expanded SAM program will increase the protection afforded to whales. In addition, NMFS believes that expanding the SAM area will provide greater protection to right whales in the Northeast during times of predictable spring aggregations. In particular, the new overlap of SAM East and SAM West will provide a direct benefit to right whales in this area during April, when the number of right whales in the vicinity is expected to be high. In addition, six months after publication of this final rule, additional gear modifications will take effect in the areas outside of the expanded SAM area.

Comment 112: Some commenters supported eliminating the DAM program as soon as sinking/neutrally buoyant groundline requirements take effect (e.g., 2009 in some areas and 2010 in others). Several commenters favored elimination of the DAM program, but support its continuation until 2008 or 2009 with the implementation of gear modifications (e.g., low profile groundline). Other commenters believed the DAM program should be eliminated as soon as possible with the SAM expansion.

Response: See response to Comment 111. As described in the DEIS, NMFS considered but rejected the low profile groundline concept (see also Response to Comment 158).

Comment 113: Two commenters encouraged NMFS to retain and expand the DAM program into the Mid-Atlantic area even though they believe it takes NMFS too long to implement; the commenters suggested speeding up the process of filing the DAM rules in the **Federal Register**. Another commenter said that DAMs should be implemented and rescinded more quickly.

Response: NMFS explored options to expedite the implementation of DAM areas. Once a DAM area is identified, NMFS must determine the appropriate action by considering a variety of factors, including but not limited to: the location of the DAM zone with respect to other fishery closure areas, weather conditions as they relate to the safety of human life at sea, the type and amount of gear already present in the area, and a review of recent right whale entanglement and mortality data. Despite NMFS best efforts to expedite the analysis of these factors, it still takes some time to complete and review the analysis prior to approval and implementation. Given the decision factors for implementing restrictions within a DAM area and the time needed to complete and review the analysis, NMFS could not find any ways to expedite the process. NMFS believes that replacing the DAM program with broad-based gear modifications designed to reduce entanglements and serious injury should an entanglement occur will increase the protection of right whales.

Comment 114: One commenter recommended expanding closed areas to buffer DAM zones and to allow for unpredictable movements of individual whales.

Response: The ALWTRP regulations favor broad-based gear modifications over area closures. Movement and location of whales is often difficult to predict with certainty, making gear modifications more protective than closures of limited areas. Furthermore, closures may produce undesirable consequences such as concentrations of gear just outside of closed areas, which could increase entanglement risks to large whales.

Comment 115: Several commenters encouraged NMFS to increase enforcement of DAMs and one commenter supported removing all gear from DAM zones to ease enforcement. If this does not occur, the commenter encouraged NMFS to develop a more effective enforcement strategy.

Response: The decision to eliminate the DAM program is not based on enforcement issues. NMFS has developed and implements a successful enforcement strategy for the DAM program through its agreements with its state partners and the vessel and aerial support provided by the USCG.

Comment 116: Some commenters suggested the agency should include all previous DAM zones into an expanded SAM, up to and including trigger areas defined by NMFS in 2005. Further, these commenters presume that NMFS believes expanded SAM would cover high use areas most likely to pose risk outside of critical habitat areas, such as Jeffreys Ledge, Stellwagen Bank, and the waters east of Chatham, MA. One commenter requested that NMFS revisit

the expanded SAM analysis for Alternative 2, given that several DAM zones occurred outside the expanded SAM area from 2003–2005.

Response: NMFS considered many DAM areas when expanding SAM boundaries for this final rule. If whales were observed in the same area during the same season in three or more years, then this area was considered to have predictable concentrations of whales, and was incorporated into the final SAM area. However, many DAMs only occurred once in an area and were thus considered too unpredictable to be considered as Seasonal Management zones (Merrick 2005). Beginning 12 months after publication of this final rule, the expanded SAM zones will be eliminated as the final gear modifications required in the SAM zones will be expanded to include all areas, both spatially and temporarily, throughout the range of right whales and other large whale species.

Comments on Effective Date

Comment 117: Many commenters urged NMFS to implement gear modifications sooner than 2008. The commenters believed NMFS should implement ALWTRP modifications sooner because: (1) The proposed effective date does not comply with the MMPA; (2) the proposed effective date does not comply with the intent of ESA; and (3) PBR is being exceeded. Several commenters believed the gear modifications should occur sooner than 2008 in certain large whale habitats, such as Great South Channel, Stellwagen Bank, and Jeffreys Ledge, especially in light of the Massachusetts buyback program that assisted fishermen in converting to sinking and/or neutrally buoyant groundline.

Response: The ESA requires agency actions to avoid jeopardy, and NMFS believes the effective dates for this action are sufficient to avoid jeopardy. The action and effective dates are also in compliance with the goals of the MMPA, including reducing serious injury and mortality of large whales to below PBR.

In 2004, the International Fund for Animal Welfare, Massachusetts Division of Marine Fisheries (MADMF), and the Massachusetts Lobstermen's Association partnered to implement a lobster gear buyback program. More than $650,000 was disbursed to Massachusetts lobster fishermen who turned in floating groundline; these fishermen replaced the floating line with non-buoyant line consistent with the measures contained in this final rule. Therefore, NMFS believes a portion of the industry is voluntarily implementing the measures in this final rule before they are required to do so through the ALWTRP. In addition, NMFS, in collaboration with National Fish and Wildlife Foundation (NFWF), administered a similar buyback program in the Mid-Atlantic; see response to Comment 110. Finally, the Gulf of Maine Lobster Foundation received a grant from NMFS for the development and implementation of a floating groundline buyback and recycling program, in which floating groundline is exchanged for sinking or neutrally buoyant groundline. The first phase of this program took place in May 2007 in southern Maine and participants included Maine state lobster fishermen in Zone G as well as federal lobster permit holders in Maine.

Comment 118: Many commenters stated that the time period for implementing the final rule is too short. The commenters believe NMFS should extend the time to implement the ALWTRP because: (1) There is a limited availability of line; (2) price gouging may occur; (3) gear manufacturers are hesitant to produce line based on their awareness of current line testing; (4) there is a lack of awareness of the actual [line] breaking strength and schedule of degradation; (5) there is no immediate process for changing line; (6) two line testing experiments are currently underway to determine the usable life of sinking groundline and the practical commercial application of new materials; (7) it will give offshore lobstermen more time and allow NMFS to consider the possibility of low profile groundline; (8) it will allow for more research and financial planning by industry; (9) as is, it would cause a large capital expenditure over a 2-year period; (10) it will give the Federal Government and environmental groups more time needed to secure funding to minimize the financial burden; and (11) it will cost approximately $100,000 for an offshore lobsterman to switch over his gear. Many commenters suggested an implementation time of 4 years from the publication date of the final rule.

Response: Typically, NMFS provides 30 or 60 days for fishermen to comply with gear modifications such as mesh size restrictions and other requirements. However, as evident by overwhelming public comment, given the magnitude of the time and resources needed by fishermen to change their gear to sinking and/or neutrally buoyant groundline requirement, NMFS believes giving fishermen 12 months from the publication of the final rule to comply is warranted. See the ''Comments on Low Profile'' portion of the this section with respect to low profile issues. The costs and impacts analyzed in Chapters 6 and 7 of the EIS explicitly consider the incremental effects of groundline replacement beyond routine levels. The cost analysis presented in the EIS is based on prevailing market prices for all factor inputs, including neutrally buoyant and/or sinking groundline. One commenter points out that groundline suppliers may take advantage of a mandate to use neutrally buoyant and/or sinking groundline by resorting to price gouging, i.e., charging artificially high prices in order to realize large profits. The government is aware of the potential for such behavior and, if it occurs, may take action to stop it. NMFS also believes, however, that the schedule for implementing the modifications in the final rule will reduce the potential for price gouging. The requirement to use neutrally buoyant and/or sinking groundline does not take effect until 12 months after publication of the final rule. NMFS believes spreading initial demand for neutrally buoyant and/or sinking line over this period of time will likely relieve market pressures that might otherwise lead to price gouging. NMFS further believes the 12 month phase-in period would give suppliers of neutrally buoyant and/or sinking line the opportunity to increase production to meet the increased demand; this increase in production would likely mitigate against price gouging. Thus, NMFS believes rope will continue to be available for fishermen to comply with the effective date for the ALWTRP sinking and/or neutrally buoyant groundline requirements.

Although the model vessels analyzed in Chapter 6 of the EIS are generalized and may not reflect costs for all individual vessels, NMFS does not believe incremental costs (i.e., *costs beyond* routine gear replacement costs) will typically be as high as $100,000. The analysis suggests that initial investment costs are more on the order of $39,000 for large offshore vessels. Furthermore, while costs may be high for some large offshore lobster vessels, the compliance costs are generally commensurate with revenues for these large operations, i.e., costs as a percent of revenue are not prohibitive. Chapter 7 of the EIS identifies vessel segments that may be heavily impacted by the requirements and suggests that under Alternative 6 Final (Preferred), a limited number of small vessels are most at risk. Although costs are high for some vessels, NMFS made modifications to the final rule, based on public comment, to decrease costs where possible while still meeting its goals under the MMPA and ESA (see *Changes from the*

Proposed Rule section of the preamble). While these vessels may still realize high costs relative to revenues, fishermen have some options to try to mitigate the costs. For example, the impacts of converting to sinking and/or neutrally buoyant groundline may be defrayed, in part, by current and future groundline buyback programs operated by NMFS and other partners. In addition, although the requirements under Alternative 6 Final (Preferred) may impose significant costs within the first year after publication of the final rule (to convert all groundline to sinking and/or neutrally buoyant groundline), fishermen may be able to distribute the cost of the new gear over its useful life by seeking a loan. After the first year, ongoing costs would be significantly lower as fishermen would only need to replace worn-out and lost gear.

Comment 119: One commenter suggested NMFS require switching to sinking/neutrally buoyant groundline for trap/pot gear in 2009.

Response: The sinking and/or neutrally buoyant groundline requirement will be effective in expanded SAM areas six months after publication of this final rule, and in all other areas effective 12 months after publication.

Comment 120: Some commenters stated that complying with the proposed weak link regulations by 2008 would be problematic. One commenter stated that splicing weak links into existing gear will be time-consuming, costly, change how gillnets work, and lower the catch. The commenters suggested requiring weak links by 2009 or 2010, as this would help reduce compliance costs and allow more time for gear modification.

Response: NMFS agrees that meeting the increase in the number of weak links per net panel from one to five or more, depending on the length of the net panel, will take time for fishermen. However, based on public comments received, this final rule gives gillnet fishermen 2 options to install the additional net panel weak links. These two net panel weak link options will be effective six months after publication of the final rule. However, thirty days after publication of the final rule, these net panel weak link options will be allowed in current SAM areas and implemented DAM zones when a gear modification option is selected.

Comment 121: One commenter states that NMFS seems to be balancing interests of different groups that advocate for accelerated phase-in of gear modifications with those that favor a longer phase-in period. The commenter stated that NMFS sees species survival equal to the interests of the fishing industry, and that this approach directly counters NMFS' obligation to protect whales and take measures to recover species under the MMPA and ESA.

Response: NMFS disagrees and believes it is implementing the appropriate measures to reduce risk associated with groundlines, amongst other risk reduction measures, as quickly as is feasible and consistent with the requirements of the MMPA and ESA.

Comments on Groundline

Comment 122: One commenter questioned whether there is overwhelming evidence that groundline has caused entanglements.

Response: There is evidence that groundline has been involved in whale entanglements. Both buoy lines and groundlines have been identified as sources of entanglements.

Comment 123: Many commenters supported the use of sinking groundline. One commenter stated that it will substantially reduce entanglement risks because it will reduce the amount of line in the water column. One commenter stated there are few areas in Massachusetts where large whales have not been sighted, and also stated that sinking groundline may cause fewer gear conflicts. However, another commenter supported the use of sinking groundline only if it would help the whales, and is not in favor of it in areas where there are going to be gear losses and it would not save any whales.

Response: NMFS appreciates the support with respect to sinking and/or neutrally buoyant groundline and agrees that the end result is less line in the water column, and therefore a reduced risk of entanglement. NMFS agrees that fewer gear conflicts may be a byproduct of sinking and/or neutrally buoyant groundline. As discussed in the FEIS, NMFS believes the use of sinking groundline will reduce the risk of entanglement and recognizes it may increase gear losses.

Comment 124: One commenter cautions that juvenile humpback whales and right whales have emerged with mud on their heads, which indicates feeding on the bottom. Therefore, risks to these whales may be increased when using sinking groundline. The commenter states that it will be critical to monitor gear modifications, specifically regarding how and when effectiveness will be measured.

Response: Although there are anecdotal reports of whales going to the bottom or having scratches on their snouts and stomachs, presumably from traveling to the bottom, there is little published data that supports these reports; whale behavior (i.e., foraging) at various depths and bottom types is also largely unknown at this time. NMFS recognizes that whales may spend time at or near the bottom in some habitats, as described by the commenter. The sinking groundline concept is a measure to remove the maximum amount of line from the water column in an effort to reduce the overall risk of entanglement. See also Comment 267.

Comment 125: Many commenters believed that rocky ledges are unlikely habitat for large whales and questioned whether NMFS knew if large whales are bottom feeders around rocky bottoms. These commenters also believed low profile line should not be prohibited in such areas (i.e., inshore rocky habitat).

Response: Currently, available data and scientific literature do not suggest that whales treat rocky bottom areas any differently than locations with other bottom types (e.g., mud). NMFS data show whales aggregate over the northern edges of George's Bank, which is dominated by rocky ledges. NMFS acknowledges that a better understanding is needed on prey distribution, and how whales utilize the water column, including the foraging and diving behavior of whales.

Comment 126: One commenter does not believe that sinking/neutrally buoyant groundline would pose a risk to bottom-feeding whales.

Response: NMFS recognizes that any line in the ocean poses some risk of entanglement and believes that sinking and/or neutrally buoyant line reduces that risk substantially.

Comment 127: One commenter supports sinking groundline for gillnet gear.

Response: NMFS appreciates the support for sinking groundline in gillnet gear.

Comment 128: Many commenters opposed sinking/neutrally buoyant groundline. The commenters objected to this requirement because they believed the use of sinking/neutrally buoyant groundline would cause the following: (1) The potential for an increase in hangdowns, chafe, snag and/or burring that would then increase gear loss/ghost gear; (2) safety issues and potential injury to fishermen; (3) a significant increase of vertical lines in the water as fishermen who normally fish pairs, triples, or trawls would probably move to fishing singles (i.e., if they had to use sinking and/or neutrally buoyant line); (4) the line to twist around the traps; and (5) the line to sand up during storms and making it hard to grapple to get it back. Furthermore, commenters cited other reasoning for not using

sinking/neutrally buoyant groundline, including: (1) The threat to large whales is not reduced by changing line type (Johnson *et al.*, 2005); (2) replacement costs for traps (traps cost $55 to $70) and line would be expensive; (3) the rope manufacturers could not produce enough line to outfit the offshore fleet by 2008; and (4) switching away from floating line will force everyone to fish in the gravel and mud gullies, instead of the hard bottom, and will increase congestion.

Response: The fishing industry from Maine to Florida utilized sinking line successfully in a variety of applications prior to the advent of floating line, and some percentage of fishermen today do not use floating groundline for a variety of reasons. In implementing a prohibition on floating groundline, NMFS acknowledges fishermen may experience operational difficulties in adjusting to sinking and/or neutrally buoyant groundline in different habitats. However, NMFS believes that industry can develop fishing practices to address any difficulties in transitioning from floating groundline to sinking and/or neutrally buoyant groundline, as evident at the 2005 NMFS Low Profile Groundline Workshops by one fishermen transitioning in rocky habitat areas. NMFS further acknowledges that the potential for hangdowns and gear loss/ghost gear may increase. The economic cost analysis in the FEIS explicitly takes into account potential changes in gear loss rates under the various regulatory alternatives. The economic analysis also explicitly takes into account the need to replace sinking and/or neutrally buoyant line more frequently than floating line.

NMFS believes that the gear modifications required under the ALWTRP do not present any significant increased dangers above those of normal fishing practices. However, NMFS will continue to monitor this situation through discussions with industry and the ALWTRT.

NMFS recognizes there may be an increase of vertical lines due to the number of traps per trawl being reduced; however, the total amount of line in the water column will be reduced as a result of the neutrally buoyant line measures. There are currently provisions in the regulations that prohibit single traps in certain times and areas to reduce the overall number of vertical lines. NMFS believes the reduction of line in the water column based on the use of sinking and/or neutrally buoyant groundline will provide a substantial reduction in entanglement risk. NMFS also recognizes the issue of vertical lines as an entanglement risk and will be addressing that subject with the ALWTRT. NMFS recognizes the potential for groundline to twist around traps and that this may contribute to hangdowns; however, the risk reduction associated with the use of sinking and/or neutrally buoyant groundline warrants this gear configuration. NMFS recognizes that the longevity of sinking and/or neutrally buoyant groundline has the potential for being less than floating groundline. NMFS believes that the rope manufacturing industry is aware of the issue and will continue to work on enhanced lines that address this concern.

NMFS believes that using sinking and/or neutrally buoyant groundline, as opposed to floating groundline, will reduce risk of entanglement. The is also supported by a study by Johnson *et al.* (2005).

NMFS recognizes there are costs to the fishing industry to comply with these gear provisions. Groundline replacement costs represent a large share of the overall compliance costs for most affected vessels. The social impact analysis included in the FEIS examines the economic burden posed by the alternatives and the likely effect on the economic viability of fishing operations. The analysis identifies vessel segments that may be heavily impacted by the requirements and suggests that under Alternative 6 Final (Preferred) a limited number of small vessels are most at risk when comparing annual compliance costs to average per-vessel revenues. While some of these small vessels face costs that could potentially drive them out of business, current and future groundline buyback programs may help defray the compliance costs for many vessels. See response to Comment 57 for additional information related to defraying costs.

NMFS and its state partners have worked with rope manufacturers to keep that industry informed of the potential for a large increase in demand for sinking and/or neutrally buoyant line. In addition, the requirements are spread over a one year period.

NMFS recognizes that the change from floating groundline to sinking or neutrally buoyant groundline may result in changes in fishing practices and areas. The risk reduction warrants these changes in fishing practices and gear configuration.

Comment 129: One commenter stated that the $120,000 cost that fishermen are expecting/predicting does not take into account petroleum, the rising cost of everything, or the fact that sinking rope is heavier than the floating rope that is being used. The Commenter states that fishermen will have to replace their rope more and more, which is double or triple the cost of what they are currently spending. This will result in price gouging.

Response: While the model vessels employed in the economic impact analysis presented in the EIS are generalized and may not reflect costs for all individual vessels, NMFS does not believe incremental costs (i.e., costs beyond routine gear replacement costs) will typically be as high as $120,000. The analysis suggests that initial investment costs are likely to be more on the order of $39,000 for large offshore vessels. While it is true that input costs—particularly fuel costs—are rising, the cost analysis presented in the FEIS has been updated to reflect recent changes in costs. The price of sinking and/or neutrally buoyant line employed in the analysis is greater than the price it specifies for floating line, but the difference is less than a factor of two (not the two to three factor noted by the commenter). In addition, the cost analysis incorporates assumptions that recognize the shorter useful life of sinking and/or neutrally buoyant groundline. Regarding price gouging, the government is aware of the potential for such behavior and, if it occurs, may take action to stop it. NMFS also believes that the schedule for implementing the modifications in this final rule will reduce the potential for price gouging. The requirement to use sinking and/or neutrally buoyant groundline does not take effect until 12 months after publication of the final rule. NMFS believes spreading initial demand for sinking and/or neutrally buoyant groundline over this period of time will likely relieve market pressures that might otherwise lead to price gouging. NMFS further believes the 12 month phase-in period would give suppliers of sinking and/or neutrally buoyant groundline time to increase production to meet the increase in demand; this increase in production would likely mitigate against price gouging. See also Comment 118.

Comment 130: Several commenters questioned the quality and durability of sinking groundline, stating that fishermen cannot find anything that lasts more than 2 years, whereas 15-year old float rope is as good as new. Other commenters believed that more research should be conducted to make sinking rope more durable before any regulations require the use of sinking line. They stated that sinking line frays more easily in the normal course of fishing and consequently wears out faster than polyester and polyurethane floating rope and it is more expensive.

Response: Sinking groundline has been utilized in the fishing industry for many years and new line blends have been and continue to be developed to address the issues raised in this comment. NMFS has funded research with the states, manufacturers, and industry to address this issue. Based on public comment received, industry and state fishery management representatives noted that in some unique areas, particularly off the coast of Maine, there may be a need to allow groundline the ability to float over rocky bottom types. See response to Comment 158 on issues related to ''low profile'' groundline.

Comment 131: Commenters stated that, in New Jersey, groundlines are usually full of recreational fishing hooks. The commenters believe sinking rope is not durable enough to handle pulling hooks out often, so they will have to replace sinking groundline more often than floating groundline.

Response: This issue appears to be unique to New Jersey and may require that the affected fisherman work with line manufacturers to develop an enhanced sinking groundline to address this issue. NMFS believes that sinking and/or neutrally buoyant groundline may actually reduce the incidence of recreational hook entanglement in groundlines as the groundline will be out of the water column, therefore less likely to encounter the recreational gear, as recreational hooks travel up and down through the water column.

Comment 132: Several commenters believe that fishing with sinking and/or neutrally buoyant line will cause ''hangdowns'' to occur every few minutes, which will increase abrasion and cause the line to fill with sand. Furthermore, hangdowns are considered a safety hazard. For example, a USCG Safety Alert issued on May 28, 1998, for small vessel stability warned that ''gear hung down on the seabed'' is a dangerous condition to fishermen; even larger vessels up to 50 ft (15.2 m) will be at severe safety risk due to rope getting stuck under rocks/ledges.

Response: See Response to Comment 128.

Comment 133: Several commenters stated that there are many areas where sinking and/or neutrally buoyant groundline cannot be used; instead they should be allowed to use float rope in those areas. Many commenters referred to hard/rocky/tidal/ragged bottoms and/or habitats. Commenters suggested that sinking and or neutrally buoyant line is not feasible in these areas because: (1) There would be a large amount of gear loss if required to use sinking line; (2) there would be chafing; (3) there would be an increase in hangdowns; and (4) it is impossible to fish the hard bottom in Maine using pairs, triples, or trawls without the use of floating groundline. Other areas where commenters stated sinking and/or neutrally buoyant line could not be used included: (1) Downeast Maine (one commenter made a specific reference to bottom topography changes east of Casco Bay); (2) the North Carolina black sea bass fishery; (3) live rock or coral areas; (4) wrecks; (5) reefs; and (6) bottoms that include sand and shell (clam and oyster), as it would could cause chafing.

Response: See Response to Comment 128 regarding hangdowns, chafing, unique bottom types and bottom compositions. See below for habitat and coral area discussion.

NMFS acknowledges there are unique issues related to habitat impacts, live rock and coral areas and, although sinking and/or neutrally buoyant groundlines could interact with the seafloor and adversely impact benthic marine habitats, these impacts are not expected to be more than minimal when compared to the use of floating groundline. The FEIS provides a description of the affected environment, including the identification of areas designated as Essential Fish Habitat (EFH) and Habitat Areas of Particular Concern (HAPCs) as well as an analysis of the impacts of fishing gear on this environment. Bottom-tending static gear (e.g., traps/pots) has been found to have low to moderate effects on benthic habitats when compared to the more severe physical and biological impacts caused by bottom-tending mobile gear (e.g., bottom trawls and dredges). Furthermore, the amount of bottom area that would be disturbed by sinking and/or neutrally buoyant groundline, and the frequency of disturbance in the exact same area that would result from repeated contact with sinking and/or neutrally buoyant groundline, would be very small, allowing enough time for recovery of benthic communities that would potentially be affected. Thus, NMFS has concluded that the final preferred alternative is not expected to have more than a minimal and temporary adverse impact on benthic EFH.

NMFS evaluates and regulates the adverse impacts of fishing on bottom habitats in other management actions. Currently, several areas in the Northeast (e.g., on Georges Bank, in southern New England, and in the Gulf of Maine) are closed to the use of mobile, bottom-tending fishing gear, such as bottom trawls and dredges, and two offshore canyons (e.g., Lydonia and Oceanographer) are closed to the use of bottom trawls and gillnets by vessels using monkfish days-at-sea permits. The monkfish closures have the added benefit of protecting deep-water corals and other structure-forming organisms in these two canyons. The New England Fishery Management Council (NEFMC) published a Notice of Intent on February 24, 2004 (69 FR 8367), to prepare a programmatic EIS and Omnibus EFH Amendment that will apply to all Council-managed FMPs. This amendment has been divided into two phases (70 FR 53636, September 9, 2005). In phase 1, the amendment will revise the existing EFH and HAPC designations for all 27 Council-managed species. In phase 2, the NEFMC is expected to identify and implement new measures to minimize the adverse impacts of fishing on EFH, which would replace or supplement the existing regulations. Final action on the Omnibus Amendment is not expected until late 2008 or early 2009. EFH protection measures are also being considered by the Mid-Atlantic Fishery Management Council in individual FMPs that will be promulgated during the next several years. The Atlantic States Marine Fisheries Commission (ASFMC), composed of representatives from the Atlantic coastal states and the Federal Government, develops fishery conservation and management strategies for certain coastal species, including American lobster, and coordinates the efforts of the states and the Federal Government toward concerted sustainable ends. NMFS is working cooperatively with the ASFMC to evaluate the EFH impacts of the lobster trap fishery. In the Southeast, with regard to preventing, mitigating, and minimizing the adverse effects of fishing on EFH, the Gulf of Mexico and Caribbean Fishery Management Councils (FMC) in 2004 considered prohibiting sinking groundlines between traps/pots traps to prevent sweeping of the bottom during trap/pot retrieval and recognized the effect of probable increased interactions of buoy gear with marine mammals by requiring individually buoyed traps/pots. In 1991, the South Atlantic FMC prohibited fish traps throughout its jurisdiction with the exception of black sea bass pots north of Cape Canaveral, Florida, because sea bass pots are small, fished primarily in shallow waters less than 20 fathoms (36.9 m or 120 ft), and there was a lack of evidence of environmental harm. This Council is currently conducting a review of its EFH designations and provisions to protect EFH. Each of the southeast Councils identified practicable measures to

minimize adverse effects of fishing by using a variety of factors when evaluating the impacts of fishing gears. These included the duration and frequency of the impact, the intensity and spatial extent of the impact, and the sensitivity of the habitat and habitat functions. When considering these factors and that the proposed action will not change fishing practices, NMFS believes that sinking and/or neutrally buoyant groundlines would result in impacts on EFH that would be no more than minimal and temporary in nature.

Additionally, in response to a petition by Oceana to immediately promulgate a rule to protect deep-sea coral and sponge (DSCS) habitat from the impacts of mobile bottom-tending fishing gear, NMFS outlined an approach to address these issues (70 FR 39700, July 11, 2005). Specifically, NMFS adopted an approach to address DSCS issues that will be formalized in a National DSCS Conservation and Management Strategy. NMFS will work actively with each Regional FMC and the ASMFC to evaluate the issue, and take action where appropriate, to protect DSCS, which may include future rulemaking to protect DSCS in specific locations based on analyses for specific fisheries. Additionally, NMFS plans to develop a strategy to address research, conservation, and management issues regarding DSCS habitat, which eventually may result in rulemaking for some fisheries.

Comment 134: Many commenters believe that sinking line should not be required more than 100 miles (185.2 km) offshore or in deep canyons. Reasons include hangdowns and rope getting caught on rocky areas which produce major safety issues.

Response: See response to Comment 128 regarding hangdowns and safety concerns. Current sightings data show whales occurring in waters greater than 100 miles (185.2 km) offshore. Data also suggest that right whales, humpback whales, and fin whales all occur at the edge of canyons. For example, northeast sightings data places large whales at the edge of the seafloor drop-off for George's Bank in the Gulf of Maine. See also Comment 125. To ensure adequate protection for large whales in these areas, NMFS believes groundline regulations put forth in this final rule are appropriate.

Comment 135: Several commenters emphasized their belief that low-cost alternatives to sinking line were needed before there are any requirements for groundlines to be composed exclusively of sinking line. They urged NMFS to conduct more research on low-cost alternatives. Several commenters requested that NMFS include a low cost alternative in the FEIS based on research by the NMFS Gear Team. The commenters stated that, if this is not included, NMFS should indicate in the FEIS the agency's commitment to developing a low-cost alternative prior to phasing in gear modifications. The commenters cited page 3–41 of the DEIS, Alternatives Considered but Rejected, and stressed the importance of a low-cost alternative to reducing groundline profile for New Jersey fishermen; commenters believe the data are already available to support/implement low profile line.

Response: NMFS has sought comments and considered many proposals from the ALWTRT and public, and no suitable, low cost alternative to sinking and/or neutrally buoyant line has been identified. In the absence of an alternative to sinking and/or neutrally buoyant groundline that, amongst other factors, is low cost to industry, enforceable and also reduces serious injury and mortality to large whales, NMFS is implementing a sinking and/or neutrally buoyant groundline requirement in this final rule. Research continues on alternative approaches to those contained in this final rule. NMFS plans on further discussing the concept of low profile line with the ALWTRT at the next meeting.

Comment 136: Several commenters requested that, if a sinking/neutrally buoyant groundline is implemented, NMFS should: (1) Allow 2,000-lb (907.2-kg) weak links in offshore areas; (2) exempt the top line of gillnets; (3) exempt the bottom third of up and down lines; (4) establish a 1.03 specific gravity standard; (5) extend the phase-in period so fishermen can amortize rope replacement costs; (6) conduct research to improve sinking line durability; (7) explore whether rope manufacturers can produce sinking line that meets federal requirements; and (8) consider the safety issues of working with sinking line.

Response: NMFS does not recognize a link between weak link breaking strength and sinking or neutrally buoyant groundline. Top lines of gillnets are not required to be composed of sinking or neutrally buoyant line. Composition of up and down line or buoy lines are currently regulated in 3 areas, Cape Cod Bay, SAM West, and SAM East, during seasonal periods. During these seasonal periods buoy line composition does allow the bottom third to be composed of floating line. Buoy line composition, floating versus sinking or neutrally buoyant, is not regulated in all other ALWTRP areas. NMFS has included a definition of neutrally buoyant or sinking line specifying a specific gravity in this final rule. The final rule does require sinking and/or neutrally buoyant groundline 12 months after publication of the final rule. NMFS, rope manufacturers, and the fishing industry continue to work on the durability issue. However, NMFS believes the phase-in period implemented in this final rule is still warranted to reduce the serious injury and mortality of large whales due to entanglement in commercial fisheries in order to meet NMFS' mandates under the MMPA and ESA. NMFS has determined that manufacturers have produced line that meets the standard required by this final rule. Additionally, NMFS has considered safety issues of working with sinking line and will continue to consider safety with the ALWTRT.

Comment 137: Many commenters requested that NMFS develop a rope buy-back program. The commenters support the program for the following reasons: (1) It would ease the burden of switching to sinking groundline (e.g., help absorb financial burdens and defray the higher cost of sinking rope); (2) it would encourage fishermen to change over to sinking/neutrally buoyant groundline earlier than the proposed implementation date; and (3) a line recycling/buyback program is the only acceptable solution for taking care of miles of useless poly line.

Response: NMFS agrees that buyback programs are a viable option for the reasons stated and several programs have been executed in states along the eastern seaboard. See responses to Comments 117, 138, 139, and 140 regarding Massachusetts, Mid-Atlantic, and Maine gear buyback program activities.

Comment 138: One commenter mentioned the gear buyback pilot program, in which 300 Massachusetts inshore lobster fishermen participated and 300,000 lbs (136,078 kg) of floating groundline were collected. The commenter hopes this pilot program will serve as a model for other states as gear modification requirements take effect.

Response: NMFS agrees and, in collaboration with NFWF, administered a similar buyback program in the Mid-Atlantic during January 2006. This exchange program is also an effort to remove floating groundlines between traps/pots. State and/or federally licensed/permitted commercial trap/pot fishermen in New Jersey, Maryland, Delaware, Virginia, and North Carolina were eligible to participate. In addition, the State of Maine is initiating a

buyback program in 2007 (see responses to Comments 117, 137, 139, and 140).

Comment 139: One commenter believes that fishermen will not be able to bear the full economic burden of the proposed regulations. One commenter states that a Congressional budget earmark for multi-year poly buyback and rope exchange was requested for Maine to coincide with proposed low profile implementation dates (2007–2009).

Response: The social impact analysis included in the FEIS examines the economic burden posed by the alternatives and the likely effect on the economic viability of fishing operations. The analysis identifies vessel segments that may be heavily impacted by the requirements and suggests that under Alternative 6 Final (Preferred), a limited number of small vessels are most at risk when comparing annual compliance costs to average per-vessel revenues. Current and future groundline buyback programs may help defray the compliance costs for many vessels.

Comment 140: One commenter stated that The Ocean Conservancy is working closely with the State of Maine, Maine Lobstermen's Association (MLA), and Southern Maine Lobstermen's Association to secure funding to assist fishermen with line replacement.

Response: NMFS confirms that several entities in Maine have been working to establish a line replacement program. The Gulf of Maine Lobster Foundation has been identified to develop and conduct a line replacement program in 2006 and 2007. The Gulf of Maine Lobster Foundation is currently administering the program with 1.9 million dollars they received via a Federal grant.

Comment 141: Many commenters asked NMFS to consider other regulations such as what the NEFMC is considering for protecting deep sea coral in canyons. One commenter stated that sinking groundline will get caught on deep sea coral and suggested that fishers are asked to use floating groundline only in canyons. Others commenters stated that chafing of rope would cause gear loss and the bottom would get torn up by the rope.

Response: NMFS acknowledges the impacts of sinking groundline, but NMFS believes that in many areas the industry can develop fishing practices to address any difficulties in transitioning from floating to sinking and/or neutrally buoyant groundline. NMFS will further discuss low-profile groundline for other areas at the next ALWTRT meeting. Also, see response to Comment 128.

Comment 142: One commenter would like to see a clause that, for pots less than 15 or 20 feet (4.6 or 6.1 m) apart, that sinking line is not required.

Response: NMFS recognizes that this configuration, 15–20 feet (4.6–6.1 m) groundline, seeks to minimize the amount of groundline, which is a positive step toward the overall reduction of line in the water. However, NMFS is not able to exempt this configuration. NMFS will be discussing the concept of low profile groundline further with the ALWTRT at the next meeting, and will be providing the ALWTRT with comments such as this to consider.

Comment 143: One commenter stated that, in the waters where he fishes, one must use float rope because, while setting the gear in 50 fathoms (91.4 m or 300 ft), by the time it hits bottom, it is at 70 or 80 fathoms (128.0 m or 420 ft to 146.3 m or 480 ft) because it will be carried by the currents a half or ¾ of a mile (0.8 or 1.2 km) before it hits bottom.

Response: NMFS recognizes there are many unique physical environments that fishermen contend with while fishing. The issue in this case appears to be the delay in time from the last trap being deployed from the vessel, the trawl hitting bottom, and the drift of the trawl during that time. Sinking and/or neutrally buoyant groundline may actually be an asset in this unique case as the nature of this type of line (i.e., higher specific gravity compared to floating line) may reduce the time from the deployment of the last trap from the vessel until the trawl hits the ocean bottom.

Comment 144: One commenter believes that in Grand Manan Channel, where he fishes, it is impossible to continue business using sinking rope. His reasons for this include the rocky habitat and the tide in the area.

Response: NMFS has worked with industry in the Grand Manan Channel in the process of developing sinking and/or neutrally buoyant groundlines. NMFS has had discussions with some fishermen regarding the successful use of sinking and/or neutrally buoyant groundline in this area.

Comment 145: Two commenters requested an exemption from sinking groundline requirements in waters deeper than 100 fathoms (182.9 m or 600 ft) along/in rocky canyons due to their jagged topography. Use of sinking groundline in these areas would cause hangdowns and rope getting caught, which is a big safety issue.

Response: NMFS is not able to exempt these areas at this time. See response to Comment 125 in reference to whale habitat and rocky bottoms. See response to Comment 128 in reference to hangdowns and safety issues.

Comment 146: One commenter supports the 280-fathom (512.1-m or 1,680-ft) groundline exemption as long as gear is marked and NMFS has a formal mechanism to reconsider this exemption if data show whales feeding at these depths or become entangled in gear fished at these depths.

Response: NMFS appreciates the support of the 280-fathom (512.1-m or 1,680-ft) groundline exemption. There is no provision for groundline marking in the ALWTRP, including in waters in excess of 280 fathoms (512.1 m or 1,680 ft). NMFS will continue to discuss gear marking to monitor strategies with the ALWTRT to see whether additional gear marking strategies are needed and should be implemented in the future.

Comment 147: One commenter would like to see use of sinking line separated by lobster management areas. The commenter said that in LMA 2, 90-percent of fishermen fish on rocks and cannot use sink line due to hangdowns/hangups, which is a major safety factor for fishermen. A few commenters believed that the lobster fishery should be exempt from having to use sinking and/or neutrally buoyant line in LMA 3 deeper than 90 fathoms (164.6 m or 540 ft). This area is very rocky. Commenters stated ropes would be on rocks and would chafe off and cause ghost gear. Another commenter stated that the Maine coast should not be regulated by ''a one-size-fits-all'' strategy, and that the state is divided into zones because they could not manage the areas very well by one-size-fits-all, because every zone, every town, and every fisherman has to do things differently (i.e., eastern Maine has extreme tides and York County on the other end of the state does not have much tide). Another commenter said the area south of Stonington and Boothbay have mud on the bottom, and Downeast has rocky or ledgy bottom, so the areas should be treated differently.

Response: The ALWTRP management areas were modeled after the Federal LMAs with some additional unique areas also identified. NMFS has conducted gear research in diverse habitat areas along the coast of Maine over the years and believes that fishing could be successfully accomplished in these areas using sinking and neutrally buoyant groundline. See Response to Comment 128 with respect to unique bottom types and physical environments.

Comment 148: Several commenters questioned the durability of neutrally buoyant tail warps. The commenters

believed that warps made with neutrally buoyant line were not lasting as long as those made with floating line, causing more frequent gear replacement. Commenters stated the following problems with neutrally buoyant tail warps: (1) Increased chafing and burring; (2) twisting of the line around the traps; and (3) increased gear loss.

Response: There are currently many choices for fishermen in selecting non-floating line. The line manufacturers are working closely with fishermen to develop lines suitable for a variety of fishing practices. NMFS notes that the fishing industry from Maine to Florida utilized sinking and/or neutrally buoyant line successfully in a variety of applications before the advent of floating line. Some percentage of fishermen today do not use floating groundline for a variety of reasons. NMFS believes that the industry can develop work practices that will address the difficulties in transitioning from floating groundline to sinking and/or neutrally buoyant groundline. The potential for hangdowns and ghost gear may increase (see response to Comment 149).

Comment 149: One commenter said that he went out with a few others and tested the groundline/tail warp. The commenter went out with an underwater robotic camera and went from Swans Island to Jericho Bay to Isle au Haut to Deer Isle Thoroughfare. The commenter said that they put the camera down on a lot of traps and the ten fathom (18.3 m or 60 ft) tail warp was 2–3 feet (0.6–0.9 m) off the bottom. The commenter believed that this works even though some others were 15–18 fathoms (27.4 m or 90 ft-32.9 m or 108 ft) and standing 5–6 feet (1.5–1.8 m).

Response: NMFS appreciates this report on demonstrated line performance. NMFS will pass this comment on to the ALWTRT for consideration when low profile groundline is further discussed.

Comment 150: One commenter said that at a recent TRT meeting, a whale expert stated that as long as there is one piece of line in the entire Atlantic Ocean that it poses a serious threat to the right whale. The commenter believed that the comment sums up everything and that NMFS will eventually try to take away line all together, not just the ones discussed in the plan. The commenter said that fishing cannot be done without rope, and the technology is not there to do so.

Response: NMFS recognizes a variety of opinions exist on these issues. The options considered in this rulemaking did not include removal of all lines as NMFS recognizes this is not a technically and operationally feasible option.

Comment 151: For trap/pot gear, one commenter recommended implementing groundline modifications from September 1 to March 31 rather than to May 1. The commenter believes this will reduce gear loss and difficulty retrieving lost gear.

Response: The times and areas identified for gear modifications are based on whale sightings data. April and May are months when whales are expected to occur in the Mid-Atlantic. NMFS believes the September 1 through May 31 time period in the Mid-Atlantic is appropriate. Thus, the gear modifications that reduce the threat of serious injury and mortality due to entanglement in gear are required for that gear type during these months.

Comment 152: One commenter states that 17-fathom Rocks area and wrecks should be exempted from groundline requirements because their line gets caught and can cause gear loss.

Response: NMFS recognizes that all rocky bottoms and wrecks present a risk of hangdowns for all gear types. NMFS also recognizes that sinking and/or neutrally buoyant line has been fished successfully coastwide for many years by a variety of gear types through the development and implementation of unique work practices. The 17-fathom Rocks area mentioned by the commenter has a compliance date 12 months after publication of this final rule, similar to other areas. Also see response to Comment 128 regarding sinking and/or neutrally buoyant groundline.

Comment 153: One commenter stated that sinking/neutrally buoyant groundline is the most significant feature in the DEIS. The commenter also stated that, since it is not fully required until 2008, it is difficult, if not impossible, to review the effectiveness of this plan before 2012.

Response: NMFS appreciates the comment on reviewing the effectiveness of the plan and has created a Status Report Review Committee as an outcome of the 2005 ALWTRT Meeting to discuss these issues. NMFS believes that effectiveness will be discernable before 2012.

Comment 154: Several commenters stated that none of the alternatives establish a mandated phase-in time for sinking groundline. One commenter stated that, instead of relying on requiring a certain percentage of traps to be re-rigged with sinking/neutrally buoyant groundline by predetermined dates before 2008, the alternatives rely on incentives of unknown effectiveness to encourage increased use of sinking/neutrally buoyant groundline before 2008. Further, the commenter stated that incentives allow vessels to enter areas otherwise closed to fishing because of large aggregations of right whales. The commenter stated that the DEIS does not contain any information about how many fishermen operate in those areas or how many might convert their groundline before 2008 as a result of being given access to those areas.

Response: Several of the alternatives establish a mandatory date for the use of sinking and/or neutrally buoyant groundline. The commenter is correct in stating that the alternatives do not work on a percentage of traps but instead require all gear be converted by an established date. NMFS believes the required gear modifications reduce the risk of entanglement to the large aggregations of whales referenced by the commenter.

None of the alternatives in the FEIS remove time-area closures. In fact, newly regulated gillnet and trap/pot fisheries are required to abide by the current time-area closures for these gear types. The commenter may be referring to the number of vessels allowed to enter DAM areas. DAM announcements are unpredictable, making it difficult to estimate the number of vessels affected. Chapter 5 of the FEIS estimates the number of additional vessels that could be affected under the alternatives. The removal of the DAM program and the interim expansion of the SAM zone are designed to address the unpredictability of large whale distribution, and they will be replaced with broad-based gear modifications.

Comment 155: Several commenters are already rigging their gear with sinking groundline due to SAM, DAM, Massachusetts requirements, and the recent buyback program as well as individual preferences.

Response: NMFS acknowledges this fact and notes these actions may mitigate the costs of the requirements of this final rule.

Comment 156: A few commenters were concerned that having to use sinking/neutrally buoyant groundline will jeopardize their ability to make a living as fishermen in Maine.

Response: Chapter 7 of the FEIS identifies vessel segments that may be heavily impacted by comparing average vessel revenues with compliance costs. The analysis suggests that under Alternative 6 Final (Preferred), a limited number of small vessels are most at risk; about half of these are Class I vessels operating in Maine waters. While these vessels may still realize high costs relative to revenues, fishermen have some options to try to mitigate the costs. For example, the impacts of converting

to sinking and/or neutrally buoyant groundline may be defrayed, in part, by current and future groundline buyback programs operated by NMFS and other partners. Further, NMFS has considered concerns about sinking and/or neutrally buoyant groundline in Maine in developing its preferred alternative, identifying additional areas off the coast of Maine that would be exempt from ALWTRP requirements. Expansion of the exempted areas would reduce the economic burden on Maine lobstermen without increasing entanglement risks. In addition, although the requirements under Alternative 6 Final (Preferred) may impose significant costs within the first year after publication of the final rule (to convert all groundline to sinking and/or neutrally buoyant groundline), fishermen may be able to distribute the cost of the new gear over its useful life by seeking a loan. After the first year, ongoing costs would be significantly lower as fishermen would only need to replace worn-out and lost gear.

Comment 157: One commenter said that a consequence of the four alternatives (Alternatives 2, 3, 4, and 6) would be that because sinking groundlines are too dangerous to employ, lobstermen will be forced to fish single traps in areas where they normally fish pairs, triples, or small trawls. The commenter also said that this will be an incredible economic burden to fishermen and it will double the amount of surface lines and buoys.

Response: See Response to Comment 128 regarding safety. The social impact analysis included in the FEIS examines the economic burden posed by the alternatives and the likely effect on the economic viability of fishing operations. The analysis identifies vessel segments that may be heavily impacted by the requirements and suggests that under Alternative 6 Final (Preferred) a limited number of small vessels are most at risk when comparing annual compliance costs to average vessel revenues.

Contrary to the commenter's assertion that the alternatives would increase the amount of surface line, the alternatives are specifically designed to reduce the amount of fishing line in the water column by requiring sinking and/or neutrally buoyant groundline and by extending sinking buoy line requirements at the surface to new fisheries not currently covered by the ALWTRP. In addition, NMFS is currently performing related research on vertical line by examining the geographic distribution of vertical line relative to whale distribution. This research will help characterize how ALWTRP requirements and other regulatory changes have influenced risk from vertical line. Additionally, NMFS has discussed and will continue to discuss options to reduce risk associated with vertical line with the ALWTRT.

Comments on Low Profile

NMFS solicited comments and information from the public on issues related to ''low profile'' groundline (e.g., prey distribution, large whale distribution and behavior, and methods for reducing the profile), and received numerous comments. As many of those comments are not directly related to the present rulemaking action, this preamble does not respond to all of the ''low profile'' comments received during the public comment period in this rule. NMFS will provide all comments regarding low profile to the ALWTRT at the next meeting when low profile groundline will be discussed further. NMFS and the ALWTRT will have an opportunity to review and consider these comments at that time.

Comment 158: One commenter said that the state of Maine low profile research that has been done with the underwater camera has not been taken into consideration by NMFS.

Response: As noted in the preamble to the proposed rule and DEIS, NMFS was unable to support using ''low profile'' groundline in the development of this rulemaking action. NMFS identified additional research and analysis necessary to determine whether lowering the profile of groundline to depths other than the ocean bottom reduces the potential for large whale entanglement in certain areas. Additionally, NMFS determined that the depth to which the groundline profile could be reduced needs to be established after more information is collected and analyzed on prey distribution, large whale distribution and behavior, and methods for reducing the profile of groundline. NMFS would need to define ''low profile'' line in such a way that it is enforceable, is operationally feasible for fishermen, and reduces the risk of entanglement. Presently, NMFS and others are researching all of these issues. For example, NMFS has supported groundline studies by Maine DMR since 2003, including use of a Remote Operating Vehicle (ROV) to investigate groundline profile and the experimental testing of low-profile groundline. During the development of this final rule, NMFS also conducted a series of workshops in September 2005 to gather information on low profile groundline, which included discussion of Maine's research, and was discussed at the December 2006 ALWTRT meeting. In addition, NMFS solicited comments and information on ''low profile'' groundline through the public comment process for this rulemaking. Thus, states and fishing industry are working with NMFS and the ALWTRT to determine if emerging technology exists to allow a conservation equivalent gear modification to sinking and/or neutrally buoyant groundline in identified areas. NMFS may consider ''low profile'' groundline in the future, and will be further discussing these issues with the ALWTRT at the next meeting.

Comment 159: One commenter stated that sinking line between anchors or concrete blocks and the traps is problematic as the line wraps around these anchors. The commenter believed a 6-fathom (11.0-m or 36-ft) piece of floating line or shorter piece (e.g., one to three fathoms (1.8 or 6 ft to 5.5 m or 18 ft) is necessary in this area to avoid gear loss and would not affect risk reduction.

Response: Based on this comment regarding the line between traps and anchors, and review of the groundline definition, NMFS finds that the definition does not cover this portion of the gear. (The groundline definition ''with reference to trap/pot gear, means a line connecting traps in a trap trawl, and with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.'') NMFS did not specifically seek or receive public comment on the groundline definition related to the line between traps and anchors, and accordingly cannot make any adjustments to the definition at this time. NMFS will investigate this gear configuration through contact with fishermen and states to determine how common a practice it is in trap/pot fisheries, determine the type of line used in this portion of the gear, quantify potential risk if floating line is used, determine any new issues that may be raised by requiring sinking and/or neutrally buoyant line in this area of the gear, and discuss the appropriate management response with the ALWTRT at the next meeting.

Comment 160: One commenter said that more research on using low profile groundline (i.e., groundlines that float between traps/pots at a height no greater than 2 to 4 feet (0.6 to 1.2 m)) should be pursued by NMFS as an administrative procedure.

Reponse: Low profile groundline is not being required in this final rule. However, as noted earlier in this preamble, NMFS will be further discussing the concept of low profile groundline with the ALWTRT at the next meeting.

Comments on Gear Marking

Comment 161: Several commenters believe NMFS (and the Gear Research Team) need to devise a better line marking strategy to get more information about entanglements and enhance mitigation efforts. Specifically, commenters urged NMFS to require different colors to indicate the type and location of fishing gear. Several commenters suggested putting a red tracer/colored tracer fibers in floating groundline midway between each trap to see where the whales get caught in the gear. Colored tracer fibers could be input/twisted in during the manufacturing of the line; one commenter further states that no cost estimates exist for color-coding into new line manufacturing. Many commenters believe the marking should identify fishery, area fished, and part of line, such that sinking/neutrally buoyant groundline is distinguishable from floating groundline or buoy line. Another commenter suggested NMFS should develop stainless steel or nylon type bands that can be crimped around a line, or chips that can be inserted into the line, coded with fishermen identification or fishery/gear/area information, for all fixed gear fisheries and waters along the eastern seaboard. The commenters suggested that the marking should indicate state and gear type and should apply coast-wide. Several other commenters suggested gear marking requirements that are more consistent with current State, Federal FMP, and other TRT requirements.

Response: NMFS considered current State, Federal, and other TRT requirements when finalizing the gear marking requirements in this final rule. Through this final rule, NMFS will require specific color coding for fisheries and areas not previously required to mark gear. All specified gear in specified areas must be marked with a color code that represents gear type and location. NMFS has tested stainless steel or nylon type bands used around the line, and found that this causes a safety issue when the band gets caught in the hauler. NMFS also found that these bands wear out the line when being hauled, which in turn destroys the integrity of the line. NMFS is currently working on a chip technology that can be inserted into the line and coded with fishermen identification for the entire eastern seaboard which will help to more easily identify gear in the water. NMFS will discuss this technology with the ALWTRT in the future.

Comment 162: One commenter suggested that NMFS require that inshore gear at least be marked sufficiently to tell if it is risky for whales.

Response: NMFS agrees and confirms that provision was proposed and is now being implemented in this final rule. Gear in ALWTRP inshore management areas will be required to have one 4-inch (10.2-cm) colored mark midway along the buoy line in the water column as well as surface buoy markings. Many of these inshore areas are also state-mandated to mark traps and buoy systems. NMFS is currently working on developing chip technology that can be inserted into the line and coded with fishermen information for the entire eastern seaboard which will help to more easily identify gear in the water. NMFS will be discussing this technology with the ALWTRT in the future.

Comment 163: One commenter supports the use of red tape to mark gear in LMA 2, but wants to make sure that it is clarified that if less than 60 fathoms (109.7 m or 360 ft), the mark is in the center of the buoy line.

Response: Under this final rule NMFS will not be adopting the proposed gear marking scheme for buoy lines as referred by the commenter. Rather, the gear marking scheme will require one 4-inch (10.2-cm) colored mark midway along the buoy line in the water column, regardless of the length of the line. NMFS believes this requirement is in line with what the commenter was suggesting.

Comment 164: Two commenters urged NMFS to require marking of all surface buoy systems in federal and state waters in a manner that identifies the owner/vessel such as vessel name and/or license/permit number and/or fishery.

Response: NMFS will require trap/pot and gillnet gear to mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state.

With regard to gear markings that yield individual vessel information, many of the state and Federal FMPs currently require marking of buoys and/or traps with individual vessel identification. NMFS plans to continue to work with state fisheries agencies to investigate gear marking coast-wide and identify gaps in marking of surface gear, gillnets, and traps.

Comment 165: One commenter believes buoy lines that are 50 fathoms (512.1 m or 1,680 ft) or less should have one 4-inch (0.1 m) colored mark unique to a fishery and state and for buoy lines above 50 fathoms (512.1 m or 1,680 ft) should have two marks.

Response: Based on implementation considerations and technology presently available, NMFS believes the final gear marking scheme is appropriate. If more promising techniques become available in the future, NMFS will discuss these further with the ALWTRT. See response to Comment 163.

Comment 166: One commenter suggested marking buoy lines greater than 20 fathoms (36.6 m or 120 ft) once midway in the lines and for buoy lines greater than 100 fathoms (182.9 m or 600 ft) marking once at least every 50 fathoms (91.4 m or 300 ft) for sinking and floating buoy lines.

Response: See response to Comment 163.

Comment 167: Several commenters supported marking buoy lines with 1 four inch (0.1 m) mark every 10 fathoms (18.3 m or 60 ft). One commenter supported the proposed gear marking scheme as long as it is not too complicated and fishermen have enough time to comply. Another commenter stated that he would mark buoy lines twice if it would help determine the origin of gear. One commenter stated that, at the last ALWTRT meeting, the team agreed that any additional requirements would be decided by a gear group.

Response: See response to Comment 163. NMFS did solicit gear marking options from the ALWTRT previously, and will continue to discuss any other appropriate gear marking schemes/strategies with the ALWTRT.

Comment 168: Many commenters object to the proposed scheme of marking buoy lines with a 4-inch (0.1 m) mark every 10 fathoms (18.3 m or 60 ft). Commenters objected to the proposed marking scheme for the following reasons: (1) It would be impossible in deep water; (2) the tape will not stick to wet rope, nor will paint. While these markings could be applied to rope when dry, adjusting the marks at sea is impossible; (3) marking techniques lose their visibility within a few weeks in the water as algal growth accumulates on the ropes making the mark hard to discern and basic wear and tear of marks; (4) gear marking would be difficult to implement as line is spliced or fouled over the course of its useful life; (5) there would be a problem in trying to figure out whether the space between marks is exactly ten fathoms (18.3 m or 60 ft) when the lines are spliced due to broken buoys, lines etc.; (6) it will be tough to mark at sea, especially given temperature, sea state, and safety considerations; (7) the

proposed scheme would only identify a buoy line, but not a fishery or even a region where the gear was fished (i.e., no unique identifier), so this limits the amount of information that can be tracked and evaluated; (8) it is too time consuming, costly, impractical, and unworkable; (9) the marking scheme is generic and limited marks will not provide much information; (10) too many areas will not have marking requirements (e.g., exempted areas, recreational gear, Canadian waters); (11) gear loss would be too much with using the new gear marking; (12) it will be a financial burden to fishermen, without much chance for results that are useful; (13) buoys and traps are already marked under current lobster fishing rules; and (14) it would be hard to enforce given the large number of recreational lobstermen. One commenter states that if this provision is adopted, it might tempt fishermen to use a different color code or no marking at all to divert attention away from their sector.

Response: Based upon these comments, NMFS changes the regulations through this final rule, to require all fisheries to mark buoy lines with one 4-inch (10.2 cm) colored mark midway along the buoy line in the water column and mark surface buoys. Requiring only one mark alleviates all concerns regarding safety and other practicality issues raised by commenters. NMFS will continue to discuss gear marking strategies, factoring in safety and other concerns, with the ALWTRT.

Comment 169: Some commenters stated that fishers will be reluctant to comply with the marking scheme because there is no direct risk reduction to whales.

Response: NMFS believes that, although there is no direct risk reduction to whales, the information obtained from gear marking may assist in the management of incidental whale entanglements.

Comment 170: One commenter suggests more frequent marking of buoy lines (e.g., every 5 fathoms (9.1 m or 30 ft)).

Response: See response to Comment 163.

Comment 171: Two commenters suggest marking the buoy lines less frequently. One commenter believes that requiring marking in lesser increments may increase compliance. One commenter believes one mark in the middle of a rope is sufficient as there is no difference between having one mark or ten marks.

Response: See response to Comment 163.

Comment 172: One commenter believes that in the various gear marking systems proposed throughout the history of the ALWTRP, NMFS has routinely failed to: (1) Incorporate and capitalize on gear marking already required in the fishery under existing take reduction regulations or FMPs; (2) augment the existing gear marking system with more frequent marking requirements to increase the probability of identifying gear type and parts (e.g., buoy line from groundline); and (3) devise a marking system that is easy, safe, and technologically feasible to implement.

Response: NMFS has capitalized on and considered other management plans as well as take reduction regulations regarding gear marking requirements. NMFS did consider more frequent marking in the proposed gear marking scheme; however, based on public comments that this is not operationally feasible, NMFS came up with the gear marking scheme that is implemented in this final rule. NMFS is currently researching a future marking system that is easy, safe, and technologically feasible to implement.

Comment 173: One commenter states than an area-specific scheme may complicate the marking strategy.

Response: NMFS does not believe that an area-specific scheme would complicate the marking strategy because an area-specific scheme already exists. However, to alleviate any possible complications, NMFS is grouping requirements for all trap/pot fisheries and for all gillnet fisheries. Where possible NMFS is expanding gear marking schemes to be consistent with existing color schemes.

Comment 174: One commenter stated that fishermen would have to replace the buoy line markings every time they move gear from shallow (e.g., 3 fathom (5.5 m or 18 ft)) to deeper water (e.g., 30 fathom (54.9 m or 180 ft)) such as what occurs along the hard bottom ridges and reefs in and beyond Casco Bay. The commenter stated that it would be time prohibitive to have to keep replacing the lines.

Response: NMFS believes that line would not have to be replaced, but marks would have to be changed when gear is moved from shallow to deeper water in all areas and when buoy lines are lengthened.

Comment 175: One commenter supports microchip tracer technology for marking gear.

Response: NMFS agrees and is currently working on developing a microchip technology for marking gear.

Comment 176: Several commenters agree with experts who request that ropes be identifiable in aerial images of entangled whales.

Response: It is difficult to identify the gear on entangled whales in aerial images at present, but NMFS is exploring technologies such as microchip technology that will help to identify gear that is entangling whales.

Comment 177: One commenter stated that gear marking may be a problem to enforce because not many people know how much 10 fathoms (18.3 m or 60 ft) is.

Response: As a result of the difficulty in implementation, NMFS is changing the proposed buoy line marking requirement to one 4-inch (10.2 cm) colored mark midway along the buoy line in the water column.

Comment 178: One commenter would like the marking of surface buoys to be consistent with the bottlenose take reduction plan.

Response: The Bottlenose Dolphin Take Reduction Plan (BDTRP) final rule published on April 26, 2006 (71 CFR 24776), does not require the marking of surface buoys.

Comment 179: One commenter stated that the proposed scheme does not include any marking of groundline. Commenters suggested that NMFS require all parts of the gear to be marked, including sinking groundline to monitor its effectiveness; a specific color should be used to identify sinking/neutrally buoyant groundline from floating groundlines or buoy lines. NMFS should work with rope manufacturers to designate such color codes.

Response: This final rule does not require the marking of groundline. NMFS did not propose marking groundlines through this rulemaking due to the time and cost burden associated with requiring sinking and/or neutrally buoyant groundline coupled with the lack of a suitable gear marking technique that reduces burden to fishermen (e.g., costs and labor) given the amount of line used in these fisheries. NMFS will continue to discuss gear marking strategies with the ALWTRT and support research and development of promising marking technologies.

Comment 180: One commenter wanted to know what studies have been done in the Quoddy Head area. Specifically, examining the current. The current is heavy and will wash marks off. The commenter also questioned the gear marking of every 10 fathoms (18.3 m or 60 ft) and believed that it would be a lot of marking due to the amount of buoy line needed.

Response: NMFS is aware and has considered the impact of the heavy

currents in the Quoddy Head area (see the report ''Load Measurements in Lobster Gear'' in NMFS' Large Whale Gear Research Summary (NMFS, 2002)). There are many reliable techniques available in marking or affixing the color code: The line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line. In this final rule, the gear marking scheme will require one 4-inch (10.2-cm) colored mark midway along the buoy line in the water column.

Comment 181: One commenter stated that all gear-buoys and floats are marked by law so there are 3,000 chances to identify gear. The commenter said that most of lines are marked 4 times with license number, name, and sometimes home port.

Response: NMFS understands that there are requirements that both traps and buoys be marked in many areas. To improve the chances of identifying a gear type when neither a trap or buoy are recovered some identification on the buoy line could be helpful. Under this final rule, the gear marking scheme will require one 4-inch (10.2 cm) colored mark midway along the buoy line in the water column. Additionally, trap/pot and gillnet gear regulated by the ALWTRP must mark all surface buoys to identify the vessel or fishery with one of the following: the owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state.

Comments on Weak Links

Comment 182: Several commenters support the proposed use of weak links/weak link regulations for the following reasons: (1) Fishermen have been cooperative in using them; (2) considerable research has already been done; and (3) weak links may reduce drowning deaths, reduce rope wounds at early entanglement stages, and lessen the effects of entanglement by allowing the whale to shed smaller lengths of gear.

Response: The continued cooperation and support from the fishing industry is essential for the ALWTRP to achieve its goals. NMFS is committed to gear research and development and intends to continue to support studies on weak links, which add a level of protection for large whales.

Comment 183: Several commenters support weak link research. One commenter suggested that NMFS determine species-appropriate breaking strengths and the best number and placement of weak links according to gear type and use. Another commenter stated that weak links on the buoy lines should be designed to break. One commenter believes that without further research, NMFS cannot assume that the benefits of weak links to survival of whales are greater than the dangers posed by weak links; this commenter states that the greatest danger is using untested methods that could result in death and injury to whales that should have been protected by other means.

Response: NMFS is committed to gear research and development, and intends to continue to support studies on weak links to reduce interactions between large whales and commercial fishing gear. NMFS has gear laboratories and research teams that specifically focus on gear development and testing. Additionally, NMFS contracts with researchers, individuals, and companies to develop gear solutions. Much of the current take reduction plan measures are based on the outcome of such gear research (e.g., weak links) conducted and/or funded by NMFS. NMFS believes that weak links add a level of protection for large whales, and in combination with other mitigation measures, serve as a valuable conservation tool.

Comment 184: Numerous commenters stated that weak links have never been proven to reduce risk and that NMFS relies too much on them. Several commenters stated that lethal and life-threatening entanglements are known to have involved gear with weak links still attached, which had breaking strengths equal to or less than what NMFS has proposed. One commenter stated that weak link requirements in current ALWTRP regulations have been in place for nearly 5 years, yet the rate of large whale entanglement has not been reduced. The commenter believes that the effectiveness of deploying weak links on gear needs to be better analyzed for entanglement prevention. Another commenter suggested weak link failure may be a result of where the weak links are being placed in the gear.

Response: There is no evidence to suggest that weak links, when designed and used properly, are ineffective. Weak links reduce the breaking strength of traditional gear. The breaking strength of weak links is based on the tractive force of animals in addition to commercial fishing practices (DeAlteris *et al.*, 2002). Weak links add a level of protection for large whales and NMFS intends to continue to support studies on weak links to reduce entanglement risk. See also response to Comment 183.

Comment 185: One commenter agrees with using weak links in gillnets more than in buoy lines, but does not believe that NMFS has proven that 1,100-lb (499-kg) weak links are sufficiently risk averse.

Response: NMFS believes that 1,100-lb (499-kg) weak links reduce entanglement risks by reducing breaking strength of traditional gear, which ranges from 3000 to 5000 lbs (1361 to 2268 kgs). The breaking strength of weak links is based on the tractive force of animals in addition to commercial fishing practices (DeAlteris *et al.*, 2002). Should new information become available that may warrant a change to the weak link tolerances in gillnets, NMFS will consider this new information in consultation with the ALWTRT.

Comment 186: Several commenters disagreed with requiring five or more weak links with a 1,100-lb (499-kg) breaking strength per net panel. One commenter stated that modifying gear under the proposed weak link regulations is not possible, as they will incur great financial losses during haulback. One commenter specifically suggested conducting further research to determine if this is operationally feasible for the offshore gillnet fishery in Maine.

Response: In developing the appropriate gear modifications in this area, testing has been done with offshore vessels in the Gulf of Maine. Testing showed no additional operational problems beyond those experienced in the course of traditional fishing practices. NMFS worked closely with commercial fishermen and the state of Maine to develop weak links for fishermen in this area.

Comment 187: A few commenters questioned why NMFS is proposing to retain the same breaking strength for inshore fisheries while allowing greater breaking strengths in offshore fisheries. Several commenters stated that weak link breaking strengths should be greater for offshore fisheries. One commenter believes that, for the lobster trap/pot fishery, the weak links should be 1,500 lb (680.4 kg) offshore and 600 lb (272.2 kg) inshore, and should be in place from Sept 1–Mar 31 only. Another commenter would like to see a 1,000-lb (499-kg) weak link or 1,500-lb (680.4-kg) weak link versus a 600-lb (272.2-kg) weak link in offshore waters so that there is not as much gear loss during bad weather.

Response: Several months of at-sea testing of trap/pot gear has been conducted and NMFS believes the breaking strengths in this final rule for inshore and offshore fisheries are

appropriate. NMFS is reducing the breaking strength for weak links in the ALWTRP offshore management areas from 2,000 lb (907.2 kg) to 1,500 lb (680.4 kg) akin to the current weak link requirement for SAM. There is not a 600-lb (272.2-kg) weak link requirement in the ALWTRP offshore management areas. If the commenter meant to say ALWTRP nearshore management areas as mentioned above, NMFS believes the weak link requirements in this final rule are appropriate. In developing the appropriate breaking strengths, NMFS considered tide, sea conditions, weather conditions, load cell data, and size and weight of gear.

Comment 188: One commenter would like to see weak links for inshore pot fisheries be 1,000 lb (499 kg) in case the trap itself is considered a weight under the regulations.

Response: NMFS does not consider the trap itself to be a weight in the regulations. In this final rule, the ALWTRP inshore trap/pot management areas will be required to have 600-lb (272.2-kg) weak links. See response to Comment 187.

Comment 189: One commenter stated that the load testing information presented at the 2003 and 2004 TRT meetings does not support breaking strengths as strong as presented for many trap/pot fisheries, as well as offshore fisheries. The proposed rule (70 FR 35903, June 21, 2005) notes that load cell testing showed a strain of 320 lbs (145.1 kg) was necessary to haul the gear, therefore, allowing a breaking strength of almost 4 times that is excessive and likely to pose greater risk to whales than is necessary.

Response: The Cordage Institute establishes safety standards for rope, and has come up with a safety factor, or safe working load of 10 in applications such as commercial fishing. See response to Comment 187.

Comment 190: One commenter stated that in Cape May, New Jersey, the fishermen have a lot of trouble with 50-foot (15.2-m) sport boats hanging on buoys, and at night in canyons you can see 20–30 boats hanging on every one of the buoys. The commenter believed that the 1,500-lb (680.4-kg) weak links could not hold a 50-ton sport boat. The commenter believed that this is the biggest concern with the weak links in the offshore fishery.

Response: NMFS will share this information with law enforcement officials and encourages the commenter to work with local law enforcement in an effort to address this issue.

Comment 191: One commenter believes that it is inequitable to allow gillnetters to use 1,100-lb (499-kg) weak link when traps/pots have to use 600-lb (272.2-kg) buoy line weak links. One commenter questions if a 1,100-lb (499-kg) weak link is sufficient throughout the coastline. The commenter stated that while it is appropriate in some areas, others areas like Stellwagen Bank and Jeffreys Ledge may be able to use 600-lb (272.2-kg) weak links. The commenter is concerned about young whales not being able to break free. The commenter recommends that NMFS explore feasibility of 600-lb (272.2-kg) weak link for certain high-use areas such as Stellwagen Bank, Jeffreys Ledge, and other inshore areas. The commenter states there have been no failures in approximately 3,600 hauls.

Response: NMFS developed weak link breaking strengths for gillnet and trap/pot fisheries based on load cell testing of surface systems as well as operational issues. In this final rule, NMFS lowered weak link breaking strengths for some fisheries and management areas. NMFS believes the weak link breaking strength requirements in this final rule, including those for Stellwagen Bank and Jeffreys Ledge, are as low as is practical. Further reductions, if required as broad based management measures, could jeopardize safety.

Comment 192: One commenter stated that all state waters should be exempt from weak link requirements for inshore gillnets (strikenets).

Response: This final rule does provide an exemption from the ALWTRP requirements in bays, harbors, and inlets in state waters where whales occur rarely if at all. However, those waters that are not exempt are subject to the ALWTRP requirements. NMFS believes anchored gillnet fisheries in regulated state waters should be subject to weak link requirements because large whales are likely to occur in these areas during the seasons specified under this final rule.

Comment 193: One commenter believes the breaking strength calculation is not appropriate (i.e., considered by some to be ''arbitrary'') and is only based on fishing practices.

Response: NMFS disagrees with the commenter and believes that the weak link requirements described in this final rule are appropriate and based on appropriate calculations. In developing the appropriate breaking strengths, NMFS considered tractive force of right whales, tide, sea conditions, weather conditions, load cell data, and size and weight of gear (DeAlteris *et al.*, 2002). See response to Comment 183.

Comment 194: Several commenters prefer 2,000-lb (907.2-kg) buoy line weak links (rather than 1,500-lb (680.4-kg)) from September 1–March 31 because of issues related to weather, wind, and tides throughout the fall and winter. Further, the commenters state that grappling is hazardous and stronger links will reduce ghost gear. One commenter believes there is no evidence to require gillnets set in deep water to have weak links. The commenter questions whether they would be recovered intact, especially given tidal and storm impacts to nets.

Response: Gear research conducted by NMFS and the fishing industry does not support these concerns. NMFS believes the weak link requirements described in this final rule are appropriate. NMFS collected load cell data in offshore areas during the time period suggested by the commenter, which support the effectiveness of 1,500-lb (680.4-kg) weak links. With regard to the hazards of grappling, see response to Comment 128.

Comment 195: Several commenters suggested method alternatives to the proposed weak link configuration/measures such as: (1) Rigging nets with weak lines (ropes of appropriate breaking strength) that meet breakaway standards instead of with multiple weak links. For example, if the breaking strength of vertical breastlines are less than 1,100 lb (499 kg), the commenter believes a weak link should not be required; (2) using 4 weak links per net panel rather than 5, with a single weak link in the center of the panel's headrope, and one at each end of the headrope within the bridles; (3) using one weak link between net panels plus a weak link in the center of each net panel and one at either end of net before the anchor and buoy system; for the up and down line, the commenter suggests rope of appropriate breaking strength of 1,100 lb (499 kg); (4) using one weak link in the middle of the panel and one weak link in the bridle between nets (instead of using of three weak links in the float line of 50-fathom (91.4-m or 300-ft) net panels); and (5) using 1,100-lb (499-kg) weak rope for the floatline.

Response: Based on public comments, NMFS makes a change from the proposed rule to allow two weak link configurations for net panels in a string [See *Changes from Proposed Rule*]. Details for the two configurations can be found in the *Anchored Gillnet* section of the *Northeast Gillnet Waters* section of this preamble. For further description and a diagram of the two configurations see Figure 4 in this preamble. The breaking strength of each weak link must not exceed 1,100 lb (499 kg) and the weak link requirements apply to all variations in panel size. Elements of the two weak link configurations are similar to aspects of the above comments. In

addition, if rope of appropriate breaking strength is used throughout the floatline or up and down line, or if no up and down line is present, then individual weak links are not required.

Comment 196: One commenter supports one weak link at intervals no less than every 25 fathoms (45.7 m or 150 ft) in gillnets.

Response: Based on gear research conducted by the Gear Research Team, NMFS believes weak links placed no greater than every 25 fathoms (45.7 m or 150 ft) along the floatline for gillnet net panels is an appropriate mitigation measure for gear returned to port in the Mid- and South Atlantic. The net panels are typically 50 fathoms (91.4 m or 300 ft), so this requirement ensures one weak link per net panel.

Comment 197: One commenter opposes one 1,100-lb (499.0-kg) weak link per panel for gillnets returning to port. The commenter uses ''strike nets'' and catches croaker close to the beach in New Jersey state waters from August to November. The commenter states there has been extensive observer coverage in the last 4 years (72 observed trips) and no reported entanglements.

Response: In the Mid-Atlantic, only one weak link per net panel is required for nets returning to port with the vessel. To account for differences between nets returning to port and those not returning to port with the vessel, more weak links per net panel will be required for nets not returning to port. NMFS acknowledges that few interactions between large whales and commercial fisheries have been observed and recorded by NMFS observers. These are rare events; however, they are occurring at a rate unsustainable for these large whale populations.

Comment 198: One commenter believed the 25-fathom (45.7-m or 150-ft) weak link belongs between the net and not on ends. The commenter claims it is easier and less burdensome and it also accomplishes the same thing.

Response: Based on research conducted by the Gear Research Team, NMFS believes that the configuration specified in this final rule for net panel weak links is the most appropriate measure. See responses to Comments 195 and 196.

Comment 199: One commenter would like clarification on the wording of weak link for up and down lines as most fishermen call them breastlines. One commenter stated that weak links should not be required in breastlines in those fisheries where the breastline is composed of twine.

Response: The up and down line is defined as the line that connects the floatline and leadline at the end of each net panel. For further details on weak link configurations for net panels, see response to Comment 195. NMFS notes in this final rule that, if rope of appropriate breaking strength is used throughout the floatline or up and down line (i.e., breastline) or if no up and down line is present, then individual weak links are not required. Thus, if the breastline is composed of twine, as long as it is of appropriate breaking strength, then individual weak links would not be required.

Comment 200: A few commenters believe that the use of breakaways or weak links in beach seine gear is going to be a problem. They believe that if the weak links break, the net will hang down on the beach and the net will rip. Also, the weak links will break when hauling, and the 1,100-lb (499.0-kg) weak link affects the hang.

Response: At this time, NMFS is not regulating gillnets that are anchored to the beach and subsequently hauled onto the beach to retrieve the catch. This fishing technique is known to occur on the beaches of North Carolina. NMFS will be discussing what the appropriate management measures for this unique fishery should be with the ALWTRT at future meetings. In the meantime, NMFS will be conducting outreach and research on this fishery to support future discussions with the ALWTRT. NMFS will be coordinating with the North Carolina Department of Marine Fisheries to revise the definition for beach-based gear to help ensure landings are reported accurately for beach-based gear versus gillnets, among other issues.

Comment 201: One commenter said that 1,500-lb (680.4-kg) weak links cannot be purchased. The commenter said that the person who makes weak links will not make them because nobody buys 1,500-lb (680.4-kg) weak links.

Response: NMFS disagrees. Weak links with a breaking strength of 1,500 lb (680.4 kg) are currently available on the market.

Comment 202: One commenter states that it seems clear from observations of whales that they thrash upon becoming entangled and this may reduce efficacy of weak links. Perhaps placing a weak link at the bottom of vertical lines would allow an animal to pull free with more ease but it can still wrap itself.

Response: Currently, little is known about whales' behavior upon encountering gear. Weak links placed at the bottom of the vertical line could present safety issues as well as problems retrieving gear. NMFS intends to continue to support studies on weak links to reduce the risk to whales.

Comment 203: One commenter suggests certain strengths of weak links for different parts of the year.

Response: This final rule requires weak link breaking strengths based on management areas and does not have a seasonal component to them. However, in special management areas, weak link breaking strengths are lowered during certain times of the year when right whales are present. The commenter is encouraged to work with the NMFS Gear Research Team to develop additional gear research deemed necessary.

Comment 204: One commenter said that where he anchors in southern New England, it is mostly mussels and hard bottom. Usually, the net gets wrapped in mussels and rocks and it will not go anywhere when something hits it. But, years ago, scallopers would hit his nets and go right through them, taking that section of the net right out, without breakaways (i.e., weak links). The net does not move when it is hit, it gets shredded.

Response: NMFS recognizes that nets not properly anchored can easily move across the bottom, as well as up and into the water column. Consequently, research has been conducted to establish anchoring requirements that are appropriate for the weak links in the gillnet panels.

Comment 205: One commenter was concerned about weak links in net panels south of 29°00′ N. causing gear loss in the southeast because the gear is hauled over the stern. The commenter said that fishermen do not need weak links in the southeast as gear is tended, the nets are shorter, effort is low, and the size of the fishery is small. The commenter also said that fishermen are required to move gear if a whale comes near the gear.

Response: NMFS conducted research on several vessels in the southeast region and found that the non-shark gillnet gear could be fished with weak links. These weak link requirements are similar to the Mid-Atlantic where some fisheries are conducted similar to those in the southeast. Weak links are one of the broad-based gear modifications that NMFS is implementing through this final rule. However, in the Southeast, weak link requirements are only applicable to non-shark gillnet fisheries (i.e., not shark gillnet fisheries).

Comment 206: Two commenters cited problems with weak links and heavy boating traffic. One commenter believed that weak links are easily broken due to heavy pleasure boat traffic. The other

commenter stated a loss of 10-percent of his buoys due to boat traffic.

Response: Pleasure boats causing loss of surface systems is not necessarily due to the weak link. Based on the result of at-sea testing, NMFS believes the breaking strength requirements are appropriate.

Comment 207: One commenter states that weak links are unnecessary in shoal waters because they pose a problem when changing lines, plus whales would hit the bottom if they entered these areas. However, the commenter understands that whales could be in 40–50 fathom (73.2 m or 240 ft–91.4 m or 300 ft) water.

Response: NMFS has determined based on its understanding of current fishing practices that placing weak links as close to the buoy as operationally feasible presents little problem when changing buoy line, whether the trap is in shoal or deep water.

Comments on Vertical Lines (or Buoy Lines)

NMFS solicited comments and information from the public on issues related to vertical line (e.g., how whales utilize the water column, gear modification options). Those comments related to this rulemaking action are responded to below. Those comments that are outside the scope of the present rulemaking action are not responded to in this final rule, but will be provided to the ALWTRT at the next meeting, when options for reducing risk associated with vertical lines will be discussed further. NMFS and the ALWTRT will have an opportunity to review and consider these comments at that time. It is important to note that NMFS provided the ALWTRT with a list of management options to reduce risk associated with vertical line to support future discussion on this issue. Additionally, NMFS is funding an analysis to evaluate the effectiveness of current and/or future fishing effort reductions in decreasing the amount of vertical line in the water column. This information will be provided to the ALWTRT at the next meeting to assist in the discussion and development of recommendations to NMFS on reducing risk associated with vertical line.

Comment 208: A few comments were received that claimed that the DEIS was inadequate because it only dealt with half of the entanglement risk to large whales. The commenters referenced the Johnson *et al.* (2005) analysis, which was provided in the DEIS, and indicated that entanglements occur in both groundline and vertical lines on an equal basis. Some commenters believe NMFS has not quantified the net change in risk (between one buoy line or two) or the biological impacts and has not offered a compensatory risk reduction measure.

Response: NMFS considered the Johnson *et al.* (2005) analysis that examined the fishing gear involved in right and humpback whale entanglements. According to Johnson *et al.* (2005), any line rising into the water column presents an entanglement risk to large whales. While it may appear from this analysis that buoy and surface system lines represent a greater entanglement risk to large whales than groundlines do, both the authors of the analysis and the DEIS note that it is difficult to compare the relative risks associated with these parts of fixed gear for a number of reasons. There are many uncertainties associated with entanglements; for example, the history of a particular entanglement may not be fully reflected from the gear recovered or the location of gear on a whale's body when an entanglement is first reported. There are also biases associated with entanglement reporting effort, as well as a lack of information about the types and amounts of gear currently in use. In addition, it is possible that entanglements in buoy lines are reported more frequently at sea than entanglements in groundline, as buoy lines are easier to identify based on the presence of a buoy or high flyer. Groundline does not have any distinguishing characteristics that would make it easy to identify; thus, this part of the gear can usually only be identified if gear has been recovered from an entangled whale, and even then it is difficult to determine the part of the gear that piece of line came from. Johnson *et al.* (2005) state that, despite gear recovery and/or identification, 44 percent of the entanglement events analyzed in the study involved an unknown part of the gear. The study confirms that vertical lines and floating groundlines pose risks for large whales. NMFS believes that addressing the risk associated with floating groundline by requiring the use of sinking and/or neutrally buoyant groundline will reduce serious injury and mortality of large whales due to incidental entanglement in commercial fishing gear. As noted in the DEIS and FEIS, NMFS believes that further research and discussions with the ALWTRT are needed to address risks associated with vertical line.

At this time, neither the ALWTRT or NMFS is able to identify a viable option for further reducing the risk associated with vertical lines. NMFS has, in fact, concluded that requiring the use of one buoy line may encourage fishermen to split trawls or strings, thus increasing the number of vertical lines in the water column. In addition, requiring one buoy line may increase the risk of gear loss, thereby increasing the entanglement risks associated with ''ghost gear'' or fishing gear left untended or lost that continues to fish. Therefore, this would not be an effective broad-based measure to implement. NMFS will work with the ALWTRT to address the risk associated with vertical lines through future rulemaking.

Comment 209: Several commenters prefer the single buoy line requirement in SAM. One commenter stated that this would decrease the number of buoy lines in the water, which offsets the amount of ghost gear created from gear lost due to weather, gear conflicts, etc. Another commenter suggested using one buoy line in Cape Cod Bay, Great South Channel, Stellwagen Bank/Jeffreys Ledge, other Northeast gillnet waters, SAM, Mid-Atlantic Coastal waters, and other Southeast gillnet waters.

Response: As noted in Comment 208, neither the ALWTRT nor NMFS is able to identify a viable option for further reducing the risk associated with vertical lines at this time. NMFS has concluded that allowing the use of two buoys in SAM areas as specified in this final action will not result in an increase in the amount of vertical line in the water. NMFS will work with the ALWTRT to address the risk associated with vertical lines through future rulemaking.

Comment 210: Many commenters supported the use of two buoy lines for the following reasons: (1) It would reduce the number of buoy lines in the area; (2) it would make gear easier to grapple; (3) it would help reduce gear loss/ghost gear; and (4) it would provide for safer hauling conditions.

Response: NMFS supports and allows the use of more than one buoy line. However, NMFS notes that Cape Cod Bay (January 1—May 15), Northern Nearshore Lobster Waters, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Cape Cod Bay Restricted Area (Federal Waters May 16–December 31) currently have minimum limits on the number of traps per one buoy line. See response to Comment 208.

Comment 211: Many commenters supported 2 buoy lines for trawls of 5 or more traps.

Response: NMFS agrees with the commenters that 2 buoy lines are needed for many fixed gear fisheries. However, see response to Comment 208. NMFS notes that Cape Cod Bay (January 1–May 15), Northern Nearshore Lobster Waters, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Cape Cod Bay

Restricted Area (Federal Waters May 16–December 31) currently have minimum limits on the number of traps per one buoy line. See response to Comment 213.

Comment 212: One commenter supports a second buoy line in SAM. The commenter believes this will cut the overall numbers of buoys in SAM. Currently, most people have 2–3 traps on a buoy line because the traps are too expensive to risk setting more on a single buoy line. Thus, if NMFS allowed a second buoy line, there would be fewer small sets of gear and less buoys, and the risk for gear loss would also be reduced.

Response: As discussed in the response to Comment 209, the use of two buoy lines is allowed in SAM areas through this final action. Additionally, see response to Comment 211 for a reminder of the areas where minimum limits on the number of traps per one buoy line are required.

Comment 213: Several commenters did not support the use of one buoy line per trawl of 4 or fewer traps. The commenters state that this may cause fishermen to shorten trawl lengths and/or split their trap trawls to minimize losses and maintain the current number of traps in use. This may then cause an increase in the number of buoy lines in the water column.

Response: NMFS will further address issues related to serious injury and mortality due to vertical lines through future rulemaking. In regard to the number of buoys per trawl allowed, this final action will maintain the status quo (*i.e.*, one buoy line per trawl of five or less traps) for the various management areas that were under consideration. Therefore, NMFS is rejecting the alternative considered in the DEIS that allows the use of one buoy line per trawl of 4 or less traps. NMFS recognizes the concern raised by the commenters that some individuals may shorten trawl lengths, thereby resulting in additional buoy lines being deployed under the current management regime. As noted, NMFS intends to work with the ALWTRT to address the risk associated with vertical lines through future rulemaking.

Comment 214: Some commenters believe there is no justifiable basis for allowing two buoy lines (other than to avoid gear loss).

Response: NMFS has received reports indicating that allowing only one buoy line may cause some fishermen to split their trawls and fish shorter trawls, which can result in the same or a greater number of buoy lines. In addition, requiring fishermen who traditionally fished longer trawls with two buoys to use a single may present a safety hazard for fishermen. Having a single buoy dictates the direction from which fishermen can haul/retrieve their gear. Depending on the sea state, this may place the crew and vessel in harm's way if the vessel is not in the preferred and/or more stable hauling position. Having the choice to start a haul from either end of a string allows fishermen to choose the safest and most stable vessel direction relative to wind and sea conditions. In addition, the use of a second buoy line on trawls/strings of gear could provide a platform for continued testing of new buoy line modifications designed to address the threat of vertical line entanglements. Several potential gear modifications that offer opportunities to reduce the serious injury and mortality due to vertical lines are under investigation (e.g., Time Tension Line Cutter (TTLC), acoustic pop-up buoys, the use of buoy line retrieval line or tag line (made from line with a reduced breaking strength) marking the gear's position, acoustic hauling/release links and galvanic timed release devices).

Comment 215: One commenter states that one buoy line for four or fewer traps is less restrictive than one buoy line for five or fewer and this will increase the number of buoy lines in the water column, which represents a relaxation of the current requirement. Further, the commenter states there is no way to measure the benefits of relaxing this requirement.

Response: As discussed in the response to Comment 213, this action will maintain the status quo (i.e., one buoy line per trawl of five or less traps) thereby rejecting the alternative considered in the DEIS that allows the use of one buoy line per trawl of four or less in certain management areas.

Comment 216: Two commenters said NMFS should minimize the number of knots in buoy lines or require knot-free buoy lines.

Response: NMFS currently encourages, but does not require, fishermen to maintain knot-free buoy lines. While splices are considered less of an entanglement threat and are preferable to knots, NMFS recognizes that such a requirement is not practical, has safety concerns, etc. However, NMFS has encouraged the development of a device that makes knotless connections. If such a device is developed in the future, NMFS will revisit the issue at that time.

Comment 217: Several commenters support allowing 1/3 poly on the bottom of buoy lines.

Response: Through this final action, fishermen have the option to use buoy lines with the bottom 1/3 of the line composed of floating line within SAM areas and Cape Cod Bay during the restricted time periods. The remainder of the line must be composed of sinking and/or neutrally buoyant line. Outside of SAM areas and Cape Cod Bay, fishermen have the option to utilize buoy lines composed of what ever type of rope they choose as long as no buoy line is floating at the surface. Following 12 months after publication of this final rule, fishermen will have the option to utilize the type of buoy line they choose to use in current SAM areas, again, as long as no buoy line is floating at the surface.

Comment 218: Two commenters requested to use more floating line in buoy line than what was proposed. One commenter stated that if fishing in 50 fathoms (91.4 m or 300 ft) of water, fishermen need more because if they use sinking line, the tide will take down the buoy, but if they use more floating line then they can use less buoy line. The commenter said that floating line helps keep the line on the surface and that they need more than 2/3 floating line in heavy tides. Another commenter said he uses 1/2 to 2/3 floating line in his buoy line. Also, if he was required to only use 1/3 poly at the bottom, he would have to use toggles, which are a safety hazard to fishermen.

Response: As discussed in the response to Comment 217, outside SAM areas and Cape Cod Bay, fishermen have the option of utilizing the type of buoy line they choose as long as there is no buoy line floating on the surface. The option to use buoy lines with the bottom 1/3 of the line composed of floating line applies only to the SAM areas and Cape Cod Bay during the restricted time periods and is not one of the broad-based measures implemented by this final action. Following 12 months after publication of the final rule, fishermen will have the option to utilize the type of buoy line they choose to use in current SAM areas as long as no buoy line is floating at the surface.

Comment 219: One commenter said that floating rope does not float on the surface of the water like NMFS thinks it is.

Response: NMFS recognizes that a number of factors may affect the profile of buoy line and groundline in the water, including tide and current. In the case of groundline, underwater video recordings of typical trap/pot gear with floating groundline between traps revealed that the line often forms large loops in the water column between traps. While there is currently no definition for ''floating rope'', this final rule provides definitions of ''neutrally

buoyant line'' and ''sinking line'' (see section 229.2). Under the ALWTRP, buoy line floating at the surface is universally prohibited.

Comment 220: One commenter states that the use of neutrally buoyant line has not been proven for buoy lines in all conditions.

Response: Presently, fishermen use neutrally buoyant line for buoy line in active fishing operations. In addition, a recent modeling study conducted by the Massachusetts Department of Marine Fisheries compared the profiles of buoy lines of different proportions of floating, sinking and neutrally buoyant rope under a variety of currents. The modeling results indicate that, except for at all but the lowest of currents, buoy lines showed similar profiles regardless of line composition (i.e., sink, float, neutrally buoyant). Finally, it is known that fishermen have experimented with neutrally buoyant rope as buoy lines since the late 1990s and continue to use it.

Comment 221: One commenter states that the bottom ⅓ floating line on buoy lines should be allowed in SAM. He also stated that flume experiments showed that leaving the bottom ⅓ as floating line did not pose a problem to the whales and also prevented the traps from ''rocking down'' (i.e., hanging down). He states that floating groundline is the cause of most entanglements, and that there is more groundline in the ocean than buoy line, thus groundline should be regulated more than buoy line.

Response: See response to Comment 217.

Comment 222: One commenter states that a clip is needed to take buoys off the line.

Response: Clips to facilitate removal of buoys are not prohibited as long as they are located above the strong end of the weak link in the buoy line.

Comment 223: One commenter states that, for vertical line in 30 feet (9.1 m) water, there are 150 feet (45.7 m) of vertical line. In the bay with less current, any sinking rope has a tendency to get wrapped around the anchor.

Response: See response to Comment 217.

Comment 224: One commenter said that, if sinking vertical lines are required, people are going to use toggles and they are going to tie or snap-on toggles to the vertical line. These toggles will keep rope straight up, which is going to produce more stuff for whales to drag around.

Response: See response to Comment 217.

Comment 225: One commenter said that no options were considered other than weak links.

Response: In addition to weak links, a number of options to reduce the risk of serious injury and mortality due to vertical lines have been considered. While the alternatives considered in this proposed rule focus primarily on reducing risks associated with groundlines, NMFS is responding to the vertical line issue through such measures as expanded gear marking, reducing the breaking strength of weak links, regulating additional fisheries under the ALWTRP, and considering two buoy lines allowed per trawl or string. As a result, NMFS is outlining a strategy to reduce interactions with groundlines in this final rule, along with some measures to address vertical lines, and plans to further address the risk associated with vertical lines through future rulemaking. In addition, research into reducing the risk associated with vertical line is ongoing. This research is focusing on the profiles of vertical line with different buoy line configurations (e.g., sinking and/or neutrally buoyant vs. polypropylene), as well as other modifications (e.g., requiring a minimum number of traps per trawl in certain areas). NMFS and others are also investigating how whales utilize the water column, including foraging ecology and diving behavior, which will help determine the appropriate mitigation strategies for reducing entanglement risk from vertical lines.

Comment 226: One commenter stated that fishermen use a knot in the middle attached to a buoy to keep sinking line off the bottom and asked that we not eliminate buoy line with ⅔ sinking line on top spliced to ⅓ floating line on the bottom, which is more whale-friendly.

Response: NMFS currently encourages, but does not require, fishermen to maintain knot-free buoy lines. See response to Comment 217.

Comments on Gillnets

Comment 227: One commenter cannot see how gillnets can ever be modified such that they are risk-free to whales, unless a pinger modification is found that works with no adverse effects.

Response: NMFS believes that the required gear modifications will prevent entanglements where possible and reduce the severity of entanglements due to gillnet gear and will reduce the risk of serious injury or mortality. At this time, NMFS does not believe that Acoustic Deterrent Devices (ADDs or pingers) and Acoustic Harassment Devices (AHDs) are an appropriate measure to reduce interactions with large whales. ADDs (or pingers) and AHDs are audible alarm devices which warn small cetaceans and pinnipeds away from commercial fishing gear and aquaculture operations by emitting sound pulses. No evidence exists that large whales would, in fact, respond to such a sound signal. In addition, exposure to alarm or alerting stimuli may result in whales abandoning a desired feeding or mating area, which could result in significant adverse effects on the population. Finally, ADDs typically operate at much higher frequencies (e.g., about 12 kHz) than right whales generally hear and vocalize (e.g., less than 4 kHz).

Comment 228: One commenter suggested that NMFS implement gillnet measures year-round everywhere, including the Southeast.

Response: The potential for entanglement of whales in the south and Mid-Atlantic waters during summer months is minor. Therefore, the year-round requirements offer only minimal risk reduction compared to the seasonal requirements provided in this final rule, which are based on the movement and sightings of whales.

Comment 229: One commenter urged NMFS to prohibit gillnets from Stellwagen Bank National Marine Sanctuary.

Response: See response to Comment 16.

Comment 230: NMFS received one comment in support of the 22-lb (10-kg) Danforth-style anchor.

Response: NMFS agrees that the 22-lb (10-kg) Danforth-style anchor is appropriate based on research and testing and has implemented this provision in this final rule.

Comment 231: One commenter opposed the anchoring requirement for ''stab nets'' in the Mid-Atlantic.

Response: In Mid-Atlantic gillnet waters, the anchoring requirement is only in effect when anchored gillnets do not return to port with the vessel. Therefore, this final rule does not contain an anchoring requirement for stab nets returned to port with the vessel.

Comment 232: Several commenters cautioned that many of the proposed gear modifications (e.g., the use of sinking line, weak links and 22-lb (10.0-kg) Danforth anchors) pose considerable safety risks to fishermen. These commenters advised that sinking line will snag on jagged bottom surfaces, weak links could snap during hauls, and Danforth anchors will be dangerous to retrieve in rough seas. One commenter also stated that the difficulty of retrieving Danforth anchors in adverse conditions will lead to more anchors being left on the bottom and force

fishermen to buy already-expensive replacement anchors more often.

Response: Safety issues are always a concern to NMFS. NMFS believes that the gear modifications required under the ALWTRP do not present significant increased dangers above those of normal fishing practices. However, NMFS will continue to monitor this situation through discussions with industry and the ALWTRT. All three modifications stated by the commenters were tested in the Northeast, Mid-Atlantic, and Southeast regions under diverse weather conditions and were found to be successful. Although NMFS tested Danforth-style anchors in unfavorable weather conditions, fishermen should contact the NMFS Gear Research Team if they experience problems. This final rule states that gear has to be anchored at each end of the net string with an anchor that has the holding power of at least a 22-lb (10.0-kg) Danforth-style anchor, not necessarily a Danforth anchor. However, fishermen in the Mid-Atlantic and Southeast do not have an anchoring requirement unless they return to port without their gear. Additionally, NMFS is approving a weak link anchoring option for gillnet fisherman within 300 yards (274.3 m or 900 ft) of the beach in North Carolina to alleviate safety issues in this area. NMFS gear specialists are available to consult on these issues and to provide suggestions on how to comply with this requirement. In response to any safety risks posed by weak links, gear research studies that involved pulling a string of nets in the Gulf of Maine in up to 45 knots (51.8 mi/hr or 83.3 km/hr) of wind in 100 fathoms (182.9 m or 600 ft) of water and utilizing 1,100-lb (272.4-kg) weak links resulted in no failures. Thus, NMFS believes that it is unlikely that the weak links in the gillnets would break during fishing operations. The NMFS Gear Research Team will continue to investigate weak links and various anchoring systems. Regarding safety issues related to sinking line, see response to Comment 128.

Comment 233: Two commenters do not support an 1,100-lb (499-kg) weak link for driftnets fished at night. They state that nets are 50–60 ft (15.2–18.3 m) deep, are not strong enough, catch fish like bluefish and albacore, and can break easily and create ghost gear if weak links are required. The fishery is from May to July. They state that there has been observer coverage the last 4 yrs (36 trips) and no entanglements were observed.

Response: NMFS is not implementing the proposed weak link requirement for tended driftnet gear at this time due to potential safety issues that were raised. Thus, NMFS believes further research on this fishery, and specifically testing weak links in drift gillnet gear, is needed before weak links should be required. NMFS will conduct research in this fishery and discuss whether additional requirements are warranted with the ALWTRT. NMFS acknowledges that few interactions between large whales and commercial fisheries have been observed and recorded by NMFS observers. These are rare events; however, they are occurring at a rate unsustainable for the large whale populations covered by the ALWTRP.

Comment 234: One commenter encouraged NMFS to require 600-lb (272.2-kg) weak links on all flotation devices attached to the buoy line of driftnet gear.

Response: Driftnet gear will have requirements under this final rule; however, buoy line weak links will not be required. NMFS will discuss whether additional restrictions are warranted for the driftnet fishery with the ALWTRT.

Comment 235: Several commenters were concerned about the current requirement that driftnets be attached to the boat at all times at night. The commenters stated that certain types of driftnets used in the Mid-Atlantic region would not fish properly if the net is constantly attached to the boat.

Response: Presently, this requirement applies in the Mid-Atlantic from December to March under the ALWTRP. This final rule extends this requirement from September to May. NMFS will raise this issue for further discussion with the ALWTRT at future meetings. However, at this time, NMFS is not aware of driftnet fisheries that release the net from the vessel at night.

Comments Specific to Certain Fisheries/ Additional Fisheries Under the ALWTRP

Comment 236: One commenter states that testing is needed on the beach seine fishery, which is a selective type of fishing.

Response: At this time, NMFS is not regulating gillnets that are anchored to the beach and subsequently hauled onto the beach to retrieve the catch. This fishing technique is known to occur on the beaches of North Carolina. NMFS will be discussing what the appropriate management measures for this unique fishery should be with the ALWTRT at a future meeting. In the meantime, NMFS will conduct outreach and research on this fishery to support future discussions with the ALWTRT. NMFS will be coordinating with the North Carolina Department of Marine Fisheries to revise the definition for beach-based gear to help ensure landings are reported accurately for beach-based gear versus gillnets, among other issues.

Comment 237: Several commenters state that recreational fisheries are currently not covered under the plan and should be regulated under the ALWTRP and, in some areas, such as southern New England, they comprise a great deal of fixed gear. One commenter states that all fixed gear, whether it be from recreational or commercial fisheries, should be regulated similarly.

Response: NMFS appreciates the concerns raised by the commenter and reiterates that NMFS currently issues regulations to reduce marine mammal serious injuries and mortalities during commercial fishing operations as mandated by MMPA section 118. The MMPA does not currently authorize the Secretary to address marine mammal bycatch from non-commercial fisheries. However, recreational fishers that take marine mammals are in violation of the MMPA prohibition against taking marine mammals. NMFS has created brochures designed to inform recreational fishermen about protected species conservation.

Comment 238: One commenter requested that NMFS consider regulations that prohibit recreational boats from leaving vessel anchoring systems to occupy a fishing spot without actually fishing there. The commenter believes recreational vessels should be prohibited from tying up to fixed gear high flyers because it is doubtful that a 1,500-lb (680.4-kg) weak link would hold a recreational vessel. The commenter believes this practice increases gear loss in the Mid-Atlantic.

Response: See response to Comment 237 for legal authorization to regulate recreational fisheries. See also response to Comment 190 regarding vessels tying onto other vessels' line. It is unlawful, however, for any person to steal or attempt to steal or to negligently and without authorization remove, damage, or tamper with fishing gear owned by another person located in the EEZ.

Comment 239: Several commenters urged NMFS to investigate emerging fisheries (e.g., whiting fishery and octopus fishery in Florida) that could use fishing gear that poses a threat to whales.

Response: NMFS currently publishes the Atlantic Ocean, Gulf of Mexico, and Caribbean Category I & II List of Fisheries under the Marine Mammal Authorization Program (MMAP) and includes both state and Federal waters. In addition to the current list of fisheries managed by NMFS, any new or emerging fishery operating in Federal

waters that are federally managed is subject to section 7 consultation under the ESA. NMFS also works closely with the fishing industry, state management agencies and any interested partner as part of the ALWTRT to understand any new and emerging fisheries that may present a risk to large whales.

Comment 240: One commenter understands incorporating other fisheries in addition to those already subject to the ALWTRP, but pot fisheries such as scup, black sea bass, and conch occur early summer to fall, and the commenter believes right whales are unlikely to reside in waters where and when this gear is fished. The commenter requested that NMFS examine sightings and exempt Rhode Island state waters. Another commenter wonders about risk reduction from adding in smaller fisheries like black sea bass and scup. The commenter believed that the risk reduction may be minimal and duplicative.

Response: NMFS established the areas and seasons being implemented in this final rule by analyzing databases that included right, humpback, and fin whale sightings. The areas included in the final rule are, amongst other factors, those where documented large whale sightings are common. NMFS believes that the final rule has an appropriate suite of conservation measures to minimize entanglements resulting in serious injury or mortality to large whales.

It is true that few scup and black sea bass vessels operate relative to other trap/pot fisheries, such as the lobster fishery. However, over 400 vessels are permitted for black sea bass trap/pot in the northern fishery and over 300 vessels are permitted for scup trap/pot. Harvest data also suggest that southern vessels seek black sea bass as a principal or secondary target species. Therefore, the amount of gear associated with these fisheries is significant. The addition of these fisheries to the ALWTRP is equitable given that the gear and geographic distribution of effort are similar to the lobster fishery.

Comment 241: One commenter believes that risk reduction is greatest from adding in the hagfish fishery. Also, the commenter states that other fisheries added in do not have the same amount of effort, but that adding them should provide some benefit.

Response: The available data do not allow NMFS to characterize definitively the risk (or risk reduction) associated with individual fisheries, particularly smaller fisheries such as hagfish for which permit data are lacking. New fisheries are being added in to address their contribution to entanglement risk, and because of the similarity between their gear and the gear of currently regulated fisheries.

Comment 242: Some commenters believed that traps for black sea bass and snapper in the Mid-Atlantic region should be exempt from the regulations since these traps are usually hauled to port every night and therefore cause a minimal risk of whale entanglement.

Response: NMFS recognizes that any line in the ocean poses some risk of entanglement and believes that this final rule has an appropriate combination of conservation measures to minimize entanglements resulting in serious injury or mortality to large whales.

Comment 243: When implementing this final rule, one commenter asked NMFS to consider local New Jersey fishing practices and regional fishery conditions. For example, the commenter stated that many vessels are from the same port, there are no more than 30 vessels, and all vessels fish in close proximity to each other. The commenter also stated that there is significant communication among vessel operators if whales are present.

Response: NMFS recognizes that there are regional issues that influence fishing techniques. This final rule represents a broad-based management scheme; however, regional differences were considered when developing the final rule in consultation with the ALWTRT, which has members from Regional FMCs, coastal state fisheries that interact with large whale species or stocks protected under the ALWTRP, interstate fisheries commissions, academic and scientific organizations, environmental groups, and other interested stakeholders. NMFS believes that the final rule has an appropriate suite of conservation measures to minimize entanglements resulting in serious injury and mortality to large whales. NMFS will continue to discuss regional differences with the ALWTRT when considering future management measures.

Comment 244: One commenter stated that there are only two full time pot fishermen in Virginia Beach and two in Chincoteague. Unless there is a problem in the area, the fishermen should not be economically impacted, especially since the commenter states there are no whales in the area. Until there is more data showing that the mid-Atlantic is an important area for whales, regulations should not change.

Response: The ALWTRP was developed to reduce the level of serious injury and mortality of North Atlantic right, humpback, and fin whales. NMFS data indicate that there have been multiple sightings of right whales in the nearshore area of the Delmarva Peninsula (mostly between March–May), and humpback and fin whales are also present in the area seasonally. Thus, NMFS believes that action is appropriate in this area. Fixed gear fisheries have been documented to entangle large whales and the location where the gear was deployed is not always known. Based on NMFS gear analysis reports, between 1997 and 2003 there were 36 confirmed entanglements between large whales and pot fishery gear. Also see response to Comment 243 regarding regional differences.

Comment 245: Numerous commenters objected to the proposed gillnet regulations for North Carolina fisheries. A few commenters stated that the fishery in North Carolina is different than that farther north. One commenter stated that a 22-lb (10.0-kg) Danforth anchor is not needed in North Carolina, as no whales have been sighted close to the beach. Another commenter stated that the 22-lb (10.0-kg) anchors should not be required inside 3 nautical miles (5.6 km). Instead of the proposed regulations, several commenters recommend that North Carolina fisheries that target spot in the fall and sea mullet and weakfish in the spring and operate out to 300 yards (274.3 m or 900 ft) be allowed to use dead weights on the inshore end and anchors less than 22-lb (10.0-kg) Danforths on the offshore end, and allow 600-lb (272.2-kg) weak links. Commenters state that these changes are necessary for the following reasons: (1) the nets are short (150–200 yards (137.2 m–182.9 m or 450 ft–600 ft)) with small webbing (<3 in. (0.1 m) stretched); (2) the nets are fished close to the beach using boats 16–25 ft (4.9–7.6 m); (3) the nets are set late in evening and fished in early morning; and (4) there are safety issues with requiring any type of anchor on the inshore end.

Response: NMFS agrees that an additional anchoring and weak link option is appropriate for vessels operating within 300 yards (274.3 m or 900 ft) of the beach in North Carolina. The Mid/South Atlantic ALWTRT Subgroup agreed by consensus to an optional configuration for these fisheries. The gear requirements for gillnet gear set within 300 yards (274.3 m or 900 ft) of the coast in North Carolina will have an optional configuration: five or more weak links per net panel, depending on panel length, with a breaking strength no greater than 600 lbs (272.2 kg), to be anchored with the holding power of at least an 8-lb (3.6-kg) Danforth-style anchor on the offshore end of the string

and a 31-lb (14.1-kg) dead weight on the inshore end of the net string.

NMFS believes that the gear modifications required under the ALWTRP do not present significant additional dangers above those of normal fishing practices. However, NMFS will continue to monitor this situation through discussions with industry and the ALWTRT.

NMFS disagrees with the comment that there have been no whales seen close to the beach in North Carolina. Sightings data in the NARW Sightings Database show that there have been numerous right whale sightings throughout the Mid-Atlantic within 1 nautical mile (1.9 km) of the beach. Further, of 413 Mid-Atlantic right whale sightings in the NARW Sightings Database, over 200 were within 5 nautical miles (9.3 km) of the beach.

Comment 246: Many commenters expressed a concern for safety with the proposed gillnet regulations in North Carolina. Several commenters stated that the regulations would have the potential for loss of life and gear. One commenter stated that dead weights are needed in case there is increased wind or rough surf, so the net can be pulled into safer waters for retrieval (tough to retrieve an anchor in these conditions). Fishermen are typically within 200 yards (182.9 m or 600 ft) of the surf zone. The commenter stated that, if the proposed requirement is implemented, fishermen may stop fishing, leave their nets in the water until surf conditions subside, and risk losing gear and/or catch. One commenter states fishermen may also be forced to ignore the safety hazards and retrieve the anchor from rough water. A few commenters state that the 22-lb (10.0-kg) Danforth anchor on the inshore end is a safety risk because it is impossible to remove in the surf zone. However, they state that a 22-lb (10.0-kg) Danforth anchor can be used offshore at 200 yards (182.9 m or 600 ft).

Response: See response to Comment 245.

Comment 247: One commenter believes that the 22-lb (10.0-kg) Danforth anchor requirement is a problem on the inshore end of the string for North Carolina and Virginia, where fishing occurs for sea mullet and pan trout in the spring. However, the commenter states that a dead weight would be okay to use.

Response: See response to Comment 245. This final rule does not contain an optional anchoring configuration within 300 yards (274.3 m or 900 ft) of the beach in Virginia. However, NMFS will discuss whether this option should be extended to other areas with the ALWTRT at the next meeting.

Comment 248: One commenter stated that a 13-lb (5.9-kg) Danforth anchor is used with a 3-foot (0.9-m) chain or 25-lb (11.3-kg) Navy anchor on the offshore end and 40-lb (18.1-kg) lead weights on the inshore end. The commenter further stated that the net can get dragged offshore if conditions are bad. The commenter would be willing to use a 22-lb (10.0-kg) Danforth anchor on the offshore end along with weak links to make his gear whale-safe.

Response: See responses to Comments 245 and 247.

Comment 249: One commenter believes that the 22-lb (10.0-kg) Danforth anchor provision is a problem both inshore and offshore. According to the commenter, especially in September, fishermen fish close to the beach and haul from the bow, and pulling that anchor could cause the boat to capsize in small waves. The commenter recommends using a dead weight inshore and an 8-lb (3.6-kg) Danforth anchor offshore.

Response: See response to Comment 245.

Comment 250: One commenter suggested that NMFS not change the seasonal window from December–March 31 to September 1–May 31. If NMFS changes the time period, the commenter requested that the inshore small mesh fishery (<5 in (0.1 m), 300 yd (274.3 m or 900 ft) max. set) use a dead weight inshore and an 8-lb (3.6-kg) Danforth anchor offshore end and 600-lb (272.2-kg) weak links rather than 1,100 lb (499 kg) weak links.

Response: NMFS has analyzed the NARW Sightings Database through early 2003, supplemented by additional data on humpback and fin whale sightings, including both opportunistic and systematic survey data. The associated time frames of conservation measures included in this final rule are times where documented large whale sightings primarily occur. Thus, NMFS believes the September 1–March 31 window is appropriate for the Mid-Atlantic.

With respect to the use of various anchoring systems, please see responses to Comments 245 and 247.

Comment 251: One commenter has a problem fishing anytime or anywhere using a 22-lb (10.0-kg) anchor. The commenter states that smaller boats do not have enough room for the anchors and it is unsafe to have them. The commenter supports using a 13-lb (5.9-kg) anchor instead.

Response: NMFS agrees and has changed the anchoring requirements for smaller vessels operating within 300 yards (900 ft or 274.3 m) of the shoreline in North Carolina [see Changes From the Proposed Rule section]. See responses to Comments 245 and 247.

Comment 252: One commenter states that the proposed regulatory actions, if not modified, would be inconsistent with enforceable North Carolina Administrative Code 15 A NCAC 07H.0207 and will have an effect on Public Trust Areas and Estuarine Waters. The commenter states that, if the proposed measures are not modified, they would adversely affect the public's ability to conduct recreational and/or commercial fishing. The commenter supports DEIS Alternative 3 conditioned on modifications (below), concurrent with North Carolina's CZMA program. North Carolina proposes that the fishing season and time period required for the Mid/South Atlantic region remain unchanged. If the time period is changed, the state believes that an alternative configuration be considered as the expansion of the gear restricted period and the requirement for fishermen to use Danforth-style anchors during this period may create safety hazards for coastal fishermen setting nets in the coastal zone during the early fall/late spring. The State also requests that NMFS reconsider the mandatory use of sinking and/or neutrally buoyant line (and/or offer low cost alternatives) and extend the effective date to January 1, 2010, to reduce potential economic hardship and increase the time available to replace current gear. Finally, the State does not support the alternative marking system for fishermen who use gear in both Mid-Atlantic and Northeast waters, believing that this system would cause a financial burden on fishermen as they would have to buy another set of buoy lines for this gear. The State instead proposes a unique, individual marking system like the one currently being evaluated by Dr. Harper with the Virginia Sea Grant Marine Advisory Program. If these conditions are not met, then the State would object to the proposed rule.

Response: NMFS based the components of the final rule on numerous discussions with the ALWTRT. NMFS believes that the final rule has an appropriate combination of conservation measures to minimize entanglements resulting in serious injury and mortality to large whales.

Through this action, NMFS will finalize an expanded season in the mid-Atlantic when ALWTRP requirements are effective (see response to Comment 151). Also, see the response to Comment 245 for gear requirements, anchoring options and safety considerations. With respect to the implementation schedule

for the groundline requirements, see response to Comment 118.

NMFS reiterates that the gear marking requirements in this final rule only require buoy lines to utilize one 4-inch (10.2-cm) colored mark midway on the buoy line. A possible option for meeting this requirement is weaving the appropriate color marking into the buoy line. NMFS will continue to discuss gear marking strategies with the ALWTRT and support research and development of promising marking technologies.

Comment 253: One commenter said that there is no problem with whale interaction and gillnet gear off the North Carolina coast. Several commenters wanted to know if the 1,100-lb (499.0-kg) weak link has been tested off North Carolina in fisheries where they fish from 5 fathoms (9.1 m or 30 ft) to 70 fathoms (128 m or 420 ft) and questioned what the effects are on the nets. The commenter believes that their fisheries are being grouped with others, when one size does not fit all.

Response: While it is often difficult to identify the specific gear type involved in an entanglement, NMFS has evidence that fixed gear types, such as gillnets, have entangled large whales. Thus, it is necessary to regulate all fisheries that use this gear to ensure protection of whales. Based on NMFS gear analysis reports from 1997 to 2003, there were 23 confirmed entanglements preliminarily attributed to gillnet gear; these events involved 2 right whales, 18 humpback whales, 2 fin whales, and 1 minke whale. Of those 23, 6 were entanglements involving gillnet gear that were first sighted off the coast of North Carolina.

Testing of weak links has occurred and continues to be conducted by NMFS gear specialists and NMFS believes that weak links are a valuable tool to minimize risk to large whales.

Comment 254: One commenter provided NMFS with a description of the North Carolina black sea bass fishery. Specifically, North Carolina fishers use smaller pots than those from Virginia northward; approximately half of the NC fishers use groundline and fish overnight sets; the rest use singles, fewer pots, and do not leave them in the water overnight. Further, depending on the number of pots, fishers will fish up to 3 times a day, usually using short groundlines (<30 ft (9.1 m)). The commenter suggested that NMFS consider requiring North Carolina black sea bass fishermen to use lower profile lines, which could be created at relatively low cost by weaving lead into poly lines, and would keep lines approximately 2 ft (0.6 m) off the bottom.

Response: The gear requirements in this final rule state that Mid-Atlantic pot fishery gear, including black sea bass gear is regulated similar to lobster trap gear, and is subject to sinking and/or neutrally buoyant groundline requirements 12 months after publication of this final rule. See the response to Comment 158 with regard to low profile line, and the response to Comments 243 and 255 with regard to regional issues.

Comment 255: One commenter was concerned about sinking line between pots. The commenter said that the bass pot fishery in the Mid-Atlantic and the lobster pot fishery in the northeast (pots 100 feet (30.5 m) apart) are very different. The commenter said that, down south, they fish on bottom structures with pots 10–12 feet (3.0–3.7 m) apart with 8 pots per buoy.

Response: See response to Comment 243 regarding regional issues. Floating line between traps has been implicated in large whale entanglements; NMFS has evidence that establishes the risk associated with this gear configuration. Underwater video footage of typical lobster gear with floating groundline shows that it forms large loops in the water column between traps. Similar underwater video footage of neutrally buoyant line between traps indicated that it did not have the same vertical profile as floating line; rather, it was located on or near the bottom, thus reducing the risk of entangling a large whale. Therefore, NMFS expects that by eliminating most floating line and requiring sinking and/or neutrally buoyant groundline in the pot fisheries will remove a large percentage of the line in the water column.

Comment 256: A few commenters agreed that the red crab fishery should be exempt from regulations at depths greater than 280 fathoms (512.1 m or 1,680 ft).

Response: NMFS appreciates the comment and the support for the final rule.

Comment 257: Several commenters raised a habitat issue with using sinking/neutrally buoyant groundline. Specifically, the commenters stated that, in the snapper/grouper fishery, there are regulations prohibiting roller-rig trawls and traps for any species other than black sea bass to reduce habitat impacts. Additionally, there are closed areas to protect *Oculina* coral.

Response: See response to Comment 128.

Comment 258: One commenter stated that the hagfish fishery is much smaller than the lobster fishery and therefore poses less risk than lobster gear.

Response: NMFS acknowledges that the hagfish fishery currently represents a small percentage of fixed gear compared to the lobster fishery. Although the hagfish fishery is a relatively smaller fishery, its gear has been documented to have entangled large whales.

Comment 259: One commenter stated that when the Great South Channel is closed from April 1–June 30, fishers move around to areas closed to draggers, which means they go to the Georges Bank Closure in May and then Closed Area 1 in June. The commenter further states that hagfish are abundant during these times in these areas, possibly the most productive months of the year. The commenter believes that closing this area at these times would have devastating effects on this fishery.

Response: NMFS acknowledges and appreciates the concerns raised by the commenter. NMFS will treat other pot fisheries similar to the lobster fishery in this final rule, so the hagfish fishery will be subject to regulations to reduce the risk to endangered and threatened large whale stocks.

Comment 260: One commenter states that, by adding the hagfish fishery to the group of fisheries subject to the ALWTRP, it would be regulated like the lobster fishery. The commenter states there are differences that should be considered, such as weight of the traps (300–500 lbs. (136.1–226.8 kg)) when full, frequency of hauling the gear (every 12–18 hours), consideration of historically fished areas (like Great South Channel critical habitat), and the size of the hagfish fishery (smaller than the lobster fishery).

Response: NMFS believes it is appropriate to regulate the hagfish fishery similar to the lobster trap/pot fishery under the ALWTRP. This includes similar weak link requirements, as well as time-area restrictions (e.g., Great South Channel). NMFS believes the differences between the hagfish and lobster trap/pot fishery stated by the commenter would not justify having the hagfish fishery being treated differently.

Comment 261: One commenter requested NMFS limit entry into the shark gillnet fishery to vessels with landing history using both sink gillnet and driftnets. The commenter suggested that NMFS should distinguish between driftnets, strike nets, and small mesh sink nets. In addition, the commenter asked NMFS to define the relationship of sink gillnets with anchors on ends and shallow meshes to drifting deep gillnets.

Response: Limiting the number of fishermen in a fishery, if resulting in reduced fishing effort, may provide conservation benefits to large whales. However, such a management measure is beyond the scope of this ALWTRP final rule. NMFS may consider such action in future rulemaking regarding authorized gears and permit reform for Highly Migratory Species (HMS) fisheries. The current definitions in 50 CFR 229.2 explain the difference between anchored (e.g., sink gillnet) and driftnet gear.

Comment 262: Several shark fishermen in the Southeast said they lost 3 fishing days due to right whales being in the area and fishermen moving their gear. The commenter wanted this to be acknowledged by NMFS.

Response: NMFS appreciates the efforts of these fishermen and their participation in helping to conserve highly endangered right whales. See response to Comment 274.

Comments on Enforcement

Comment 263: Several commenters stress the need for strong enforcement and believe there is no mechanism or system (e.g., enforcement strategy) or timeframe for handling violations or monitoring compliance in the proposed rule. One commenter states that the existing regulations are under-enforced, and that adequate enforcement of existing regulations would protect whales sufficiently.

Response: Enforcement of the ALWTRP regulations is essential to their success. Current regulations are being enforced and increased enforcement would likely lead to increased compliance. The mechanism for enforcement is through a partnership between NMFS Office of Law Enforcement (OLE), the USCG, and state enforcement entities. Monitoring compliance levels at sea is challenging because of the complexity and geographic expanse of the fishing activity subject to the ALWRTP. NMFS' strategy is to partner with state entities as many states have personnel and vessel resources available for marine resources compliance monitoring. These partnerships have yielded some excellent results. For example, a short duration random survey of lobster gear was conducted by the Maine Marine Patrol along the coast of Maine in 2004. This 30 day survey demonstrated a 98-percent compliance rate with ALWTRP requirements.

Comment 264: Commenters stated that NMFS needs some kind of enforcement where either states or the federal government is able to lift these nets and make sure they are in compliance, because every time NMFS writes a rule, the commenter believes that the honest fishermen are being punished.

Response: NMFS is aware of the desire to haul gear to monitor compliance with ALWTRP requirements. Federal funds have been made available to state enforcement entities. Some of these funds have been utilized to purchase or lease/rent vessels capable of hauling trap/pot gear. Law enforcement also can board a vessel and observe as the operator retrieves gear to monitor compliance with gear requirements. NMFS seeks to identify non-compliant fishermen in its enforcement efforts.

Comment 265: One commenter suggested developing an enforcement plan that outlines agencies with authority, the role of each agency with authority, and a letter of agreement among authorities for timely and efficient enforcement.

Response: The authority and the role of individual agencies with respect to species covered by the ALWTRP is determined directly by the ESA and the MMPA. The USCG provides the resources, personnel, and expertise for enforcement at sea while NMFS provides case development and prosecution. Coastal states have assumed an increased role in enforcement at sea.

Comment 266: One commenter requested that NMFS mandate new reporting programs where fishermen report in real-time where they are placing fishing gear and where the gear is being lost.

Response: NMFS is concerned about lost gear and collects data on losses. For example, in the Federal lobster fishery, data are collected about losses that exceed the allocated gear loss allowance. The fishing gear types that the ALWTRP regulates are predominantly lobster trap and multi species sink gillnet. Federal lobster and gillnet fishery reporting requirements collect some location information through vessel trip reports. State lobster fishery management plans monitor effort by distinct fishing areas under an interstate fishery management plan. Neither of these processes is real time as suggested by the commenter.

As of November 22, 2006, all limited access Northeast multi-species vessels (which would include sink gillnet activities) are required to use real time reporting of vessel location through the vessel monitoring system (VMS). VMS is being considered for the entire groundfish fleet, which would include sink gillnet activities, under Framework 42. VMS is also utilized in the shark gillnet fishery. Presently, there is no VMS requirement for lobster trap/pot gear.

The requirements to tag lobster traps and some gillnet fishing activities allows NMFS to identify individual traps and some net panels by discreet identification numbers.

Comment 267: One commenter acknowledged and encouraged NMFS' plans to convene an ALWTRT Subgroup on monitoring.

Response: A Status Report Review Subcommittee, which will address monitoring, has been established as an outcome of the April 2005 ALWTRT Meeting.

Comment 268: One commenter stated a perceived lack of enforcement in the Gulf of Maine, which was brought up at the last NEFMC meeting. The commenter stated that the NEFMC was briefed on NMFS' enforcement efforts and cooperation with the states.

Response: NMFS has increased enforcement of ALWTRP regulations in the Gulf of Maine, George's Bank, and Southern New England. This has been done through USCG efforts and through state-Federal partnerships over the past 3 years. The states of Maine, Massachusetts, and Rhode Island have received funds to conduct at sea enforcement of ALWTRP regulations.

Comment 269: One commenter stated that NMFS should address the fact that the State of Maine has apparently not mandated compliance with the protocols used under the Atlantic Large Whale Disentanglement Network.

Response: The State of Maine has developed a conservation program that assumes a larger role, relative to many states along the eastern seaboard, in the disentanglement of large whales. NMFS has worked closely with the state on the development and evolution of the conservation plan and believes Maine is operating in accordance with the protocols.

Comment 270: One commenter believed year-round requirements in the EEZ would facilitate enforcement, whereas a three month exemption in the Mid-Atlantic (as in Alternative 3) would be problematic for enforcement.

Response: The enforcement community has experience with a large number and variety of time-area closures and gear restricted areas in the Mid-Atlantic as well as the Northeast. NMFS believes the 3-month period in question, versus year round requirements, may not be optimum in terms of enforcement but has been selected to reduce regulatory impacts on the fishing industry during periods when whales are infrequently sighted in that area.

Comment 271: One commenter said that the Commonwealth of Massachusetts will prosecute fishermen if rope is found on a whale.

Response: The Commonwealth of Massachusetts has a long history with whales and disentanglement given the unique characteristics of Cape Cod Bay and Massachusetts state waters. The primary focus of removing rope from entangled whales is to reduce the likelihood of serious injury or mortality. The secondary focus of removing ropes from whales is to learn more about how whales become entangled. This information may aid in the design of gear which can reduce the likelihood of future serious injury or mortality. Fishermen are an important resource in the study and development of gear modifications. NMFS is not aware that any fisherman has been prosecuted for the entanglement of a whale by the Commonwealth of Massachusetts.

Comment 272: Two commenters stated that enforcement will be difficult between commercial and recreational fishermen and an exemption line may increase resentment and non-compliance. One comment stated that it will be hard to distinguish between commercial and recreational gear at sea.

Response: The ALWTRP does not regulate recreational fishermen. Some states, such as the Commonwealth of Massachusetts, have regulations for the protection of right whales that apply to some of the recreational and commercial fisheries under their jurisdiction. Massachusetts prohibits recreational lobster traps in Cape Cod Bay during certain times of the year and differentiates commercial from recreational gear through a gear marking scheme. See response to Comment 237 for information on the management for marine mammal interactions with recreational fisheries.

Comment 273: One commenter expressed concern with the difficulty of enforcing weak link breaking strengths and 30-day soak time limits.

Response: NMFS recognized the difficulty in determining breaking strengths of different types of weak links when the plan was first developed. Industry outreach has been conducted demonstrating a variety of weak link types and their associated breaking strengths. Training on ALWTRP gear requirements is provided to the USCG Fisheries Training Centers and state enforcement entities. Several manufacturers have developed commercially available weak links of various breaking strengths which can be purchased at fishing supply stores. These weak links typically have the breaking strength shown in raised letters on the actual weak links. NMFS also has fishing industry outreach specialists. These individuals have experience with fishing gear and are available to evaluate weak links for the fishing industry and law enforcement agencies. Thirty-day soak limits have been enforced. Enforcement actions based on the 30-day soak time limit were taken in 10 cases in 2005.

Comment 274: One commenter states that there was an issue in the southeast regulations with shark net gear that say the gear has to be removed if right whales, humpbacks, or finbacks are located within 3 nautical miles (5.6 km). However, it is not clear to the commenter how that would be accomplished or who would identify the whales being within 3 nautical miles (5.6 km) of the gear.

Response: NMFS, consistent with recommendations from the ALWTRT, believes fishermen are motivated to avoid potential gear conflicts with whales. However, other measures are in place to aid fishermen in preventing potential whale/gear interactions. In the Southeast, an Early Warning System (EWS) is maintained by the Southeast U.S. Right Whale Recovery Plan Implementation Team (SEIT) and its partners. Near real-time data, including the number of whales, location (latitude and longitude) of whales, and direction of their travel, are transmitted to numerous interested stakeholders such as shipping agents and commercial mariners, including fishermen, via pagers and email notifications. Information is also received by operation dispatchers, who then relay the details to their vessels. General locations for animals are also broadcast over Marine VHF. NMFS believes that these measures relay critical whale information to fishermen, but will continue to work with the SEIT and its partners, as well as fishermen, to facilitate and improve the distribution of sightings information.

Comment 275: One commenter states that VMS is not 100-percent reliable, there are battery failures and mechanical failures. This commenter also believes that it costs a lot of money for nothing and that some fishermen have VMS that may not need them.

Response: NMFS believes VMS is appropriate to substitute for 100-percent observer coverage in the Southeast U.S. Monitoring Area as defined in this final rule. The system offers NMFS the ability to monitor vessel timing and location across management boundaries, enables effective, coordinated dockside or at-sea inspections, and facilitates coordination with other enforcement agencies. Although self-installation of VMS units has been permitted, subsequent problems have been noted (e.g., insufficient power supply and improper wiring). NMFS encourages fishermen to have units installed by the professionals. Power must be consistent to allow each unit to report properly, and NMFS suggests that fishermen maintain a backup battery for this reason. Once battery power has been drained, the unit will not send reports and significant damage to it may occur. NMFS law enforcement and approved vendors are improving unit models and pursuing alternatives to detect battery power and stop reporting/power usage until the unit is fully powered again. If units do malfunction, individuals should coordinate with Southeast Enforcement VMS personnel. Otherwise, fishermen are encouraged to have a vendor or electrician tend to the unit; vessel operators are advised to not leave port until the unit is repaired, in accordance with regulations.

Comment 276: One commenter said that several people in New Jersey and other places would never run a shark gillnet south of Jacksonville, but will be required to use mandatory VMS and was wondering if that was the intent of the rule and asked whether NMFS was considering the issue again and considering a change.

Response: Although monitoring shark fishermen off New Jersey and surrounding areas was not the intent of the VMS requirement, in the regulations for Highly Migratory Species (HMS), these data will allow NMFS to obtain a better understanding of the shark fishery in this area, including if fishermen move farther south into the Southeast U.S. Monitoring Area. See Comment 275.

Comment 277: Several commenters said that although there are some operational issues to consider regarding VMS, some commenters preferred this over the observer requirement in the Southeast.

Response: NMFS agrees that VMS is appropriate for the Southeast U.S. Monitoring Area as defined in this final rule, and will work with fishermen to overcome operational issues. See Comment 275.

Comment 278: Several commenters stated that the Observer Program (i.e., a fishery monitoring program where an observer goes to sea with the fisherman) and VMS (i.e., an electronic vessel tracking system) are duplicative. These commenters agreed that the VMS device is expensive as well as difficult to install, activate, and maintain. One commenter suggested that, in light of the problems associated with the VMS, fishermen should not be liable if the

VMS device does not indicate whether it is functioning properly.

Response: NMFS disagrees that VMS and observer coverage are duplicative, as each program serves a different purpose. The Observer Program is intended and designed to collect fisheries-dependent physical, biological, and economic data, which can then be used in stock assessments and also verify logbooks; the program is not meant for compliance monitoring. In contrast, VMS' primary purpose is the monitoring and enforcement of time-area closure restrictions, as well as gear compliance.

NMFS believes it is the responsibility of fishermen to make sure that their VMS units are functioning properly. If units malfunction, individuals should coordinate with Southeast Enforcement VMS personnel or contact a vendor or electrician to tend to the unit; vessel operators are advised to not leave port until the unit is functioning properly. See Comment 275.

Comments on the Shipping Industry and/or Ship Strikes

Comment 279: Numerous commenters stated that NMFS needs to address the shipping industry (e.g., tankers, freighters, large ships, and ocean liners) and the Navy, as ship strikes are the leading cause of serious injury and death to large whales (as opposed to just regulating commercial fishermen). One commenter requested that NMFS address shipping and cruise industry ship strikes before prohibiting floating groundline.

Response: NMFS acknowledges and appreciates the commercial fishing industry's involvement in the ALWTRT and the modifications already made to reduce the risk of serious injury and mortality of large whales. NMFS agrees that ship strikes and the need to mitigate the risks posed by vessel traffic is also important to large whale conservation and recovery. As such, NMFS is simultaneously pursuing other rulemaking strategies and policy discussions to address the threat of ship strike. The Northeast and Southeast Implementation Teams (NEIT/SEIT) for the recovery of the North Atlantic right whale include representatives from various Federal agencies, such as the Navy and the USCG, state agencies, port authorities, and the shipping industry. Based on information and recommendations provided by these groups, NMFS developed and published a propose rule for right whale ship strike reduction in the **Federal Register** (71 FR 36299, June 26, 2006). The proposed rule presents regulatory measures that NMFS is considering to reduce the risk of ship strike to right whales, such as speed restrictions and vessel routing measures.

The proposed rule is one component of a suite of comprehensive right whale ship strike reduction measures, which also includes education and outreach to commercial and recreational mariners, research on technologies that may help mariners avoid whales, a comprehensive program of sighting advisories to mariners, section 7 consultations to address Federal vessel activities, and the development of a Conservation Agreement with Canada.

As Federal agencies, under section 7 of the ESA, the branches of the U.S. military are required to consult with NMFS (or U.S. Fish and Wildlife Service) to ensure that their actions are not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Both the U.S. Navy and the USCG have undergone ESA section 7 consultations on various activities that may affect large whales. In addition, the U.S. Navy and USCG implement internal policies regarding marine mammals, including marine mammal observer training, restrictions on activities in protected areas and important habitats, reporting of any dead or injured whales sighted and mandatory reporting of any interactions with marine species.

NMFS recognizes both entanglement and ship strike as human-caused sources of serious injury and mortality to large whales that need to be addressed in order to recover these species. Floating groundline has been identified as an entanglement risk to whales, and is therefore being addressed in this final action.

Comment 280: Many commenters said that more should be done to reduce the mortality of whales due to commercial and military ship strikes. Commenters stated that NMFS has not found a solution to ship strikes or entanglements and little has been done. Other commenters believed that, though commercial and naval ships pose the greatest threat to whales' existence, these ships continue to operate largely unregulated. Several commenters believed that ship strikes occur more often than previously thought.

Response: NMFS agrees that ship strikes are a source of mortality to large whales that needs to be addressed in order to recover these species. See response to Comment 279. NMFS acknowledges that historic reports of ship strikes may not accurately represent the frequency of ship strikes due to the lack of a central reporting mechanism. Although current reporting practices and improved knowledge about the types of wounds inflicted by ship strikes have improved understanding of ship strikes, many ship strikes are still likely to go undetected or unreported.

Comment 281: One commenter states that more whales are hurt by ships outside three miles (5.6 km) than by rope and buoys used in fishing operations.

Response: Because many ship strike and entanglement events are unobserved at the time the incident actually occurred, it is difficult to determine where whales are struck or become entangled. In addition, many entanglement and ship strike events likely go undetected. As such, it is difficult to draw conclusions about where these events occur and whether ship strike or entanglement poses a greater threat to large whale populations. NMFS recognizes both entanglement and ship strikes as human-caused sources of serious injury and mortality to large whales that need to be addressed in order to recover these species, and is undertaking regulatory efforts to address both issues. See response to Comment 279.

Comment 282: Two commenters stated that the LNG Terminal, which is located in the summer feeding ground, will result in vessels going through the feeding grounds, which is more dangerous than entanglement risk. One of these commenters believes that it is wrong to put a proposed LNG terminal into the Critical Habitat Area. The commenter states that the big propellers on the patrol boats are more apt to kill a whale then some fishing gear.

Response: While NMFS appreciates the concern raised, the current action addresses the effects of entanglement in commercial fishing gear on large whales. The effects of other marine resource uses, such as commercial shipping and offshore LNG terminals, are being addressed through other regulatory and management processes. LNG terminals are licensed by other Federal agencies, which are subject to the requirements of section 7 consultation under the ESA. See response to Comment 279.

Comment 283: Another commenter mentioned that whales are beyond Schoodic Ridge, west of Blue Nose Buoy, and in deep water. The commenter has seen large vessels including a high speed ferry traveling at 50 knots (92.6 km) through feeding whales. The commenter believes that there should be regulations on ships, and does not understand why lobstermen are singled out.

Response: NMFS agrees that ship strikes and the need to mitigate risks posed by large, fast-moving vessels are important to large whale conservation and recovery. As such, NMFS is pursuing other rulemaking strategies and policy discussions to address the issue of ship strikes. See response to Comment 279.

Comment 284: Some commenters stated that NMFS should address all sources of endangered whale mortality. Many commenters were concerned about the level of regulation on the fishing industry relative to other causes of mortality like shipping and land based activities (e.g., water quality issues). One commenter pointed to those which endanger whales by disposing of waste at sea as another example of an unregulated group that is not reached by today's regulations. Some commenters stated that all industries should share the regulatory burden, yet some are unregulated (e.g., shipping and Canadian fishing gear). Other commenters stated that NMFS should seek a comprehensive whale protection strategy that takes other impacts into account nationally and internationally to share the responsibility of conservation efforts.

Response: NMFS realizes that other marine resource user groups are affecting large whale populations, and NMFS will continue efforts to reduce these impacts. NMFS is pursuing various regulatory and non-regulatory strategies for reducing the impact of vessel collisions on northern right whales. See response to Comment 279. Many ocean disposal and discharge activities require permits issued by other Federal agencies such as the U.S. Environmental Protection Agency and the U.S. Army Corps of Engineers. Under section 7 of the ESA, any Federal agency issuing such a permit must consult with NMFS (or U.S. Fish and Wildlife Service) to ensure that the issuance of the permit is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of critical habitat. Section 7 consultations often result in restrictions and mitigation measures that are required of the permit applicant in order to reduce impacts to endangered species.

NMFS also continues to participate in international fora that address impacts to large whales. NMFS is continuing to work with Canadian biologists and to support efforts to expand disentanglement efforts in Canadian waters. NMFS will continue to work with the government of Canada toward development of similar protective measures from fishing operations for right whales in Canadian waters. NMFS has also initiated discussions regarding an International Conservation Agreement for right whales with Canada, which would include the impacts of shipping on right whales. The Conservation Committee of the International Whaling Commission (IWC) identified ship strike as a priority item in the conservation agenda, and recently formed a ship strikes working group to assess the level of threat caused by maritime traffic worldwide and to examine policies that could be implemented to mitigate the impact of ship strikes. The International Maritime Organization (IMO) has reviewed and approved proposals to address the impacts of shipping on marine mammals, including approval of the right whale Mandatory Ship Reporting System in 1998 and the shifting of the Bay of Fundy shipping lanes in Canada in 2003. In December 2006, the IMO approved a proposal to shift the Boston Traffic Separation Scheme to reduce the overlap between heavy shipping traffic and large whales.

International organizations such as the IWC and the International Council on the Exploration of the Sea (ICES) are examining the effects of ocean noise on marine mammals, including the noise generated by shipping, oil drilling, and seismic exploration. NMFS convened the first international symposium on shipping noise and marine mammals in 2003. All of these groups are considering strategies for managing human-produced noise sources in the marine environment.

Many of NMFS' activities to promote the conservation and recovery of large whales are directed by actions outlined in recovery plans developed in accordance with the ESA. Recovery plans are designed to provide comprehensive strategies for recovering endangered species.

Comment 285: Several commenters believe that the negative impacts of the whale watch industry need to be assessed. One commenter said that there is a problem with whale watching vessels getting too close to whales.

Response: NMFS monitors the activities of the whale watch industry. NMFS has developed a set of whale watching guidelines for the Northeast, which outline appropriate speed limits and approach distances to reduce the potential for harassment of whales. NMFS also has a regulation prohibiting approaching closer than 500 yards (1500 ft, 457.2 m) to a right whale. NMFS conducts active outreach to whale watch companies to encourage compliance with these guidelines. NMFS is also working on a proposed rule to minimize the potential for future serious injury and mortality of whales from whale watch vessels.

Comment 286: One commenter asked why NMFS is not attacking the real problem, which the commenter said is cruise ships, ferries, tankers, and whale watchers. The commenter said some vessels leave Bar Harbor going 35 miles an hour (56.3 km/h), and he hears on the radio about the whales they are seeing. The commenter said that these vessels could be chasing whales into fishing gear.

Response: NMFS is currently pursuing a comprehensive strategy of regulatory and non-regulatory measures to reduce the impact of shipping on right whales. See response to Comment 279. Although it is possible that a whale could become entangled in fishing gear while attempting to escape an oncoming vessel, NMFS is not aware of such an event being documented. Researchers continue to investigate the circumstances under which whale/gear and whale/vessel interactions occur.

Comments on Gear Reduction

Comment 287: Two commenters referenced LMA 3 as an area where there was a reduction in lobster traps being fished. One commenter urged NMFS to consider the recent LMA 3 offshore historical qualification process that reduced the number of offshore permits from 968 to 133 and the number of traps from approximately 400,000 to 160,000. The other commenter stated that in LMA 3 there has been a 40-percent reduction in traps fished. The commenter stated that trap reduction is the most valuable way to stop interaction with whales. Another commenter stated that reducing the number of traps in an area, such as in LMA 3 will be better than gear modifications and it will better help protect whales. The Federal lobster management plan identifies and restricts the number of fishermen able to fish offshore, and this smaller number of fishermen will reduce their traps, buoylines, and loops. The commenter estimated a nearly 50 percent reduction over the next five to seven years. One commenter states that the overall amount of gear and fishing effort will be reduced over the next couple of years. The commenter states the number of lobstermen is declining from 3,000 to less than 150 and the amount of gear in the water will decline by more than 40 percent.

Response: NMFS acknowledges the effort reductions that are occurring in LMA 3, and agrees that this should help reduce serious injury and mortality of

large whales. NMFS believes these effort reductions will be critical to future discussions with the ALWTRT on how to reduce risk associated with vertical line. However, NMFS believes reducing risk associated with groundline through this final rule is appropriate even with the effort reductions occurring offshore. Additionally, with this final rule, NMFS intends to address all fishing gear that poses a risk to large whales similarly.

Comment 288: One commenter states that the figures in the DEIS do not reflect an additional two-year lobster gear reduction along with continual passive reductions through a proposed trap transferability plan recommended to the ASMFC. The commenter would like to see a trap buyback to further reduce the number of traps to help whales and the lobster fishery.

Response: The commenter is likely referring to Addenda IV and V to the Lobster FMP. As discussed in Chapter 9 of the FEIS, Addendum IV as initially proposed incorporated an accelerated trap reduction program and the implementation of a transferable trap program in LMA 3 (among other provisions). ASMFC deferred action on this proposal, opting instead to address this issue under Addendum V. The approach originally outlined in Addendum IV proposed an overall trap cap of 2,600 traps and a two-tiered tax on the purchase of traps, with a higher tax applied when the purchaser owns 2,100 traps or more. In response to concerns raised at public hearings that a 2,600 trap cap may be too high, the LMA 3 Lobster Conservation Management Team (LCMT) amended its original proposal under Draft Addendum V. Addendum V proposed a cap of 2,200 traps and a two-tiered tax on the purchase of traps, with a higher tax imposed when the purchaser owns 1,800 or more. Addendum V was approved by the Board at the March 2004 Board meeting and went into effect in 2005.

NMFS and others have supported buybacks of groundline. See response to Comment 93. Limiting the number of traps in a fishery, if resulting in reduced fishing effort, may provide conservation benefits to large whales. However, this management measure is beyond the scope of this final rule. NMFS is pursuing measures such as trap effort reduction through other rulemaking actions (e.g., 70 FR 24495, May 10, 2005).

Comments Regarding Canadian Gear/ Fisheries

Comment 289: Several commenters said that Maine fishermen mark balloons with fishermen's name, harbor name, and boat name. Commenters stated that most balloons picked up that are not marked come from Canada. Another commenter said that he fears being evicted from the lobster grey area because Canadian and U.S. gear is being fished side by side and one would not be able to tell whose gear is responsible for potential entanglements.

Response: NMFS disagrees with the commenters' claim that most recovered polyballs or ''balloons'' that are not marked come from Canada. Further, NMFS notes that it is not revising the ALWTRP based on the recovery of unmarked polyballs or gear that may have originated from the grey area. The need for the revisions of the ALWTRP is the continuing risk of serious injury and mortality of Atlantic large whales due to entanglement in commercial fishing gear. NMFS considered several factors when evaluating the entanglement information: (1) A mortality or injury may involve multiple factors (e.g., whales that have been both struck by a ship and entangled are not uncommon); (2) the actual gear type/ source is often uncertain; and (3) several types of gear may be involved in a given reported entanglement. NMFS limits a ''serious injury'' designation to only those reports that offer substantiated evidence that the injury is likely to lead to the whale's death. Injuries that impede the whale's locomotion or feeding are not considered serious injuries unless they are likely to be fatal in the foreseeable future.

Comment 290: One commenter expressed concern over the lack of Canadian take reduction efforts and gear modification requirements. The commenter expressed concern that all entangled whales get counted against U.S. fishermen.

Response: NMFS is issuing this final rule specifically to address commercial fishery impacts from U.S. fisheries. NMFS acknowledges that entanglements with fishing gear from Canadian fisheries may also cause serious injury and mortality to large whales. NMFS is currently addressing these threats through formal discussions with Canada. For example, NMFS is working with representatives from the Canadian DFO to develop and implement protective measures for right whales in Canadian waters. The ALWTRP is designed to respond to the threats posed by domestic fishing gear.

Comment 291: Several commenters state that NMFS should work more closely with the Canadian Government to harmonize American and Canadian fishery regulations. They state that Canadian fishing gear is a major cause of whale entanglements that lead to injuries and mortalities. Commenters encouraged NMFS to pursue parallel conservation measures with the shipping industry and military vessels in the U.S. as well as Canada. One commenter encouraged NMFS to work with the Canadian Government through the Canadian Species at Risk Act for joint efforts to protect right whales.

Response: Coordination between Canada and the U.S. concerning transboundary marine mammal and other protected species has been ongoing since mid-1990. In earlier years the coordinated efforts focused on broader issues concerning Atlantic salmon, harbor porpoise, and right whales. At that time, most of the issues regarding right whales were secondary as both countries addressed other pressing issues. Although both countries continued to work cooperatively on right whale issues, limited resources prevented both countries from meeting on a regular basis. However, in anticipation of the implementation of SARA, the group was reconstituted in January 2003. The focus of the group was still based on species-specific conservation, but the charge for the working group was expanded to include joint assessments, listing criteria, and recovery planning and implementation in a broader sense to include all transboundary marine mammal and protected species stocks (with the exception of Atlantic salmon). The working group's primary efforts are toward right whale recovery efforts. NMFS is continuing to work with the Canadian Government to develop and implement protective measures for right whales in Canadian waters. In addition, NMFS is working with Canadian whale biologists and support teams to improve and expand disentanglement efforts in Canadian waters.

Comments on the Number of Traps per Trawl

Comment 292: One commenter encourages more traps per buoy line whenever possible. For areas in eastern Maine where sinking groundline cannot be used, the commenter thinks reducing line by shifting to longer trawls where possible would be a viable option. The commenter recommends a limit on the number of traps per lobster trawls as an emergency action. Another commenter opposes putting limits on the number of traps per trawl. The commenter states that he cannot fish more than 25 traps per trawl due to boat size.

Response: In this final rule, NMFS is maintaining the status quo for the minimum number of traps/pots with a single buoy line in specific management areas. Additionally, NMFS believes that

reducing profile of groundline along the east coast, including eastern Maine, through this action is important to reduce the serious injury and mortality of large whale due to incidental entanglement in commercial fisheries. Options such as this for reducing risk associated with vertical lines will be discussed with the ALWTRT at the next meeting.

Comment 293: One commenter understands that NMFS is not proposing to move nearshore requirements into inshore waters. The commenter states that there should not be restrictions such as ''no single traps'' or ''one buoy line for less than five trawls'' in inshore waters. The commenter does not agree with nearshore regulations being expanded into inshore waters.

Response: As the commenter stated, NMFS is managing inshore and nearshore trap/pot waters differently under the plan. NMFS will be discussing options for addressing risk associated with vertical line with the ALWTRT at the next meeting, and will pass along the commenter's concerns.

Comments on Vessel Anchoring Systems

Comment 294: Many commenters requested that NMFS investigate the degree to which vessel anchoring systems pose a risk to whales. For example, according to the commenter, in 2003, a humpback whale in Stellwagen Bank National Marine Sanctuary was entangled in a small boat anchoring system. Additionally, commenters stated that two humpback whales were disentangled from anchors—one gillnet and one vessel anchoring system. These commenters stated that NMFS does not consider anchoring systems as a risk.

Response: Anchoring systems have been recognized by NMFS as a risk to large whales and have been addressed by requiring sinking line on lines leading from gillnets to the anchor. The anchoring systems of small recreational vessels in pursuit of fin fish in areas like Stellwagen Bank National Marine Sanctuary are not captured in the ALWTRP process. See response to Comment 237 for information on the management of marine mammal interactions with recreational fisheries.

Comment 295: One commenter states that NMFS should require all vessel anchoring systems to be brought back to the dock and not left unattended.

Response: NMFS is considering future rulemaking to address vertical line and will be discussing these issues with the ALWTRT at the next meeting. NMFS will discuss the practice of vessel anchoring at sea with the ALWTRT at that time.

Comments on Research

Comment 296: One commenter states that research concerning right whale behavior and its use of the water column is needed as there are gaps in information and high priority needs.

Response: NMFS agrees that more research is needed on right whale behavior and their use of the water column. To try to gather this needed information, NMFS developed a number of right whale biological needs priorities in support of the ALWTRP and included these in the 2006 NMFS Northeast Region's Request for Proposals for right whale research and Atlantic coast states right whale recovery plan programs. These priorities included the need for research on the horizontal and vertical distribution of right whales in the water column, including over rocky bottom and coral or wreck habitats, as well as research on the temporal and spatial distribution of right whales. In this final rule, NMFS is implementing broad-based measures to further reduce the risk of serious injury and mortality to large whales from interactions with commercial fishing gear. In the future, NMFS will discuss with the ALWTRT the results of any projects that study right whale behavior and their use of the water column.

Comment 297: One commenter urged NMFS to consider right whale foraging research, specifically the recommendations from the Northern Gulf of Maine Foraging Workshop. The commenter stated a need to understand if large whales forage in rocky and tidal areas before requiring the investment in new gear.

Response: NMFS agrees that more information must be collected on large whale foraging behavior in rocky and tidal areas and some of this information is currently being gathered. For example, Maine DMR is working with a number of whale research organizations to gather zooplankton data along the coast of Maine to help determine if right whales may be foraging there. Once these data are collected and analyzed, the resulting information will be presented to the ALWTRT. At the present time, for both right and humpback whales, serious injuries and mortalities resulting from interactions with commercial fishing gear regulated under the ALWTRP continue to occur, and PBR has been exceeded. PBR for the North Atlantic stock of right whales is set at zero and for the Gulf of Maine stock of humpback whales, PBR is set at 1.3 (Waring *et al.*, 2006). Therefore, NMFS is required to take additional action to further reduce serious injury and mortality to large whales resulting from interactions with commercial fishing gear regulated under the ALWTRP. Also, see response to Comment 296.

Comment 298: One commenter suggested NMFS conduct research concerning large whale prey distribution and whale foraging areas, and how these tie into effective gear marking and how to effectively reduce risk of vertical lines.

Response: This is an area that both NMFS and the ALWTRT recognize as important. A variety of organizations are already conducting research on large whale prey items; for example, Maine DMR is working in conjunction with a number of whale research organizations to gather zooplankton data in Maine waters. In addition, NMFS developed a number of right whale biological priorities in support of the ALWTRP and included these in the 2006 NMFS Northeast Region's Request for Proposals for right whale research and Atlantic coast states right whale recovery plan programs. One priority included the need for research on the vertical distributions of both the processes and the prey organisms related to right whale foraging for habitat characterization and predictive modeling. See response to Comment 307.

Comment 299: Several commenters suggested NMFS research humpback and finback whale foraging, given they feed on different prey items than right whales. One commenter said that more whale research is needed to identify foraging areas, the availability of food, how it affects whales, migration patterns, and feeding habitats.

Response: NMFS agrees and continues to conduct research, as well as support research conducted by NMFS partners, on all the above mentioned topics.

Comment 300: One commenter suggested that NMFS work with Maine DMR to periodically review whale foraging and distribution and other sources of mortality.

Response: NMFS agrees and will continue to work with Maine DMR and other entities, including the ALWTRT, to study and review factors affecting whale foraging, distribution, and other sources of mortality.

Comment 301: One commenter suggested using humpback whales as proxies for right whales when testing new technology because of the larger population (i.e., permitting may be easier).

Response: As indicated in the FEIS for the SAM interim final rule (67 FR 1142,

January 9, 2002) and this final rule, it is not feasible to conduct and evaluate experiments on right or humpback whale interactions with modified gear configurations. For obvious reasons, NMFS cannot conduct field tests or laboratory experiments on right or humpback whales to collect data to test new gear technology. However, NMFS is able to analyze past entanglement events and develop ways to modify gear in order to reduce risk of serious injury and mortality from future entanglement events. This information is discussed in the forum of the ALWTRT. In terms of gathering biological information on right whales, NMFS believes that in some cases humpback whales may be used as proxies for right whales. However, in most instances, right and humpback whales differ ecologically and behaviorally, so data collected on humpback whales may not be transferred to right whales in all cases. For example, humpback whales could not be used as a proxy to examine the entanglement risks associated with foraging behavior of right whales because the two species differ in their prey items as well as in the techniques they use to capture their prey.

Comment 302: Two commenters requested that NMFS consider the relative role of gear entanglements when compared to overall mortality estimates.

Response: Currently, there is no reliable method for estimating the number of large whales that die each year from entanglements, although recovered carcasses do provide minimum values. However, NMFS is responsible for applying the mandates and requirements set forth in the ESA and MMPA. Section 118 of the MMPA requires that NMFS reduce incidental mortality and serious injury of marine mammals resulting from interactions with commercial fishing gear. For this reason, it is not necessary to compare the relative role of fishing gear entanglements with overall large whale mortality estimates because by law, NMFS is required to address the issue of large whale interactions with commercial fishing gear. The FEIS provides a complete description of the status of the large whale stocks that are covered under the ALWTRP as well as the effects of commercial fishing on these species. Further, the PBR rate for North Atlantic right whales, as described in Waring *et al.*, 2006, is zero. The PBR for the Gulf of Maine stock of humpback whales is 1.3. For both right and humpback whales, serious injuries and mortalities resulting from interactions with commercial fishing gear regulated under the ALWTRP have occurred, and PBR has been exceeded. Therefore, NMFS is required to take additional action to further reduce serious injury and mortality to large whales resulting from interactions with commercial fishing gear regulated under the ALWTRP. NMFS is implementing this final rule to further address large whale entanglements in commercial trap/pot and gillnet fisheries along the U.S. east coast. NMFS appreciates the work of all trap/pot and gillnet fishing industry members that are involved in the ALWTRT process.

Comment 303: One commenter stated that little gear testing has been done in the Southeast.

Response: A variety of gear research and testing, in particular focusing on gillnet gear, has been conducted by NMFS from North Carolina through Florida in conjunction with commercial fishermen. For example, for the sink and shark gillnet fisheries, NMFS has collected load cell data on the strains exerted when hauling the gear, as well as load cell data on the loads exerted on buoy and anchoring systems. These data are useful in making determinations about the operational feasibility of different weak link breaking strengths in these fisheries. In addition, NMFS is continuing to work with black sea bass fishermen to assess the use of sinking and/or neutrally buoyant groundline in this fishery.

Comment 304: One commenter requested that NMFS develop and propose an evaluation method to identify those gear modifications that genuinely reduce risk and those that do not make a difference in occurrence and/or seriousness of large whale entanglements. The commenter believes this information is critical to assessing and revising, as needed, gear modifications under the ALWTRP.

Response: NMFS agrees that ALWTRP management measures should be evaluated. At the 2005 ALWTRT meeting, a ''Process for Considering Gear Modifications under the ALWTRP'' was finalized and approved by the ALWTRT. This is a formalized process that describes how NMFS and the ALWTRT would handle gear modification proposals. This process identifies a standard set of questions that would be used for evaluating and responding to gear modifications. The five categories used to evaluate gear modification proposals are: product description, feasibility, risk reduction, relationship with current requirements under the ALWTRP, and recommendation of the ALWTRT. Gear modification proposals or ideas would be evaluated by regional ALWTRT subgroups, and gear modification recommendations from these subgroups would be presented to the full ALWTRT for possible incorporation into the ALWTRP.

Comment 305: One commenter stressed the importance of gear research. Additionally, commenters encouraged NMFS to continue promoting research initiatives that explore fishing techniques that reduce entanglement risk and develop new whale safe gear (including low profile groundline).

Response: NMFS agrees that gear research is an important component of the ALWTRP. NMFS developed a number of fishing gear research priorities and included these in the 2006 NMFS Northeast Region's Request for Proposals for right whale research and Atlantic coast states right whale recovery plan programs. Such priorities include the need for reducing the risk associated with vertical line, as well as research for reducing the profile of groundline. The Right Whale Research Program specifically solicits the submission of idea projects in which a new device or process is developed, as well as pilot projects which involve developing an idea or concept and conducting at-sea testing involving one or more members of the fishing industry. The Atlantic Coast States Cooperative Planning for Right Whale Recovery Program encourages state agencies to apply for funding to further develop their right whale recovery programs, which in many cases includes conducting gear research. NMFS will continue promoting these research initiatives as funding allows and will work through the ALWTRT to maintain an updated list of gear research priorities, as well as priorities related to right whale biological needs in support of the ALWTRP. NMFS encourages the fishing industry, state partners, and others to work collaboratively with the agency to continue to develop new ideas and techniques that will reduce entanglement risk.

Comment 306: One commenter urged NMFS to work with scientists on devising an assessment program for determining how effective individual measures are for all whale species and understanding fishing practices and geography to adapt the plan accordingly.

Response: NMFS agrees that the ALWTRP management measures should be evaluated and that this should be done at the ALWTRT level, for which scientists are members. At the 2004 ALWTRT meeting, NMFS formed a Status Report Subcommittee that is responsible for discussing various issues including how the ALWTRT and NMFS should evaluate the ALWTRP. Feedback from the Status Report Subcommittee

will then be provided to the full ALWTRT. See also response to Comment 305. The ALWTRT is composed of a wide variety of participants from many different backgrounds, including state and federal managers, scientists, the fishing industry, environmentalists, fishery management organizations, and more. At each meeting, the ALWTRT is briefed with the most recent available information on a variety of topics, including the species managed by the ALWTRP, as well as information about the fisheries that are regulated under the ALWTRP. The Status Report Subcommittee is the avenue by which ALWTRP monitoring will be discussed.

Comment 307: One commenter suggested combining the results of whale-related and gear-related research. The commenter encouraged further research on the seasonal distribution of buoy lines and the number of traps fished per buoy as well as the seasonal distribution of whale sightings and their prey (i.e., look at the probability of how these overlap in real time).

Response: This is an area that both NMFS and the ALWTRT are interested in exploring. NMFS is presently supporting an analysis that is examining the seasonal and temporal distribution of vertical lines for all trap/pot and gillnet fisheries. In addition, much right whale research is being conducted and supported by NMFS at this time. NMFS' NEFSC is currently conducting research to ultimately compare the density of fishing gear to the density of whales to develop a better picture of potential overlap. Ecological work is also being carried out in the Great South Channel to see how right whales are interacting with the sea floor; results will help NMFS gain a better understanding of whale interactions with fixed fishing gear. Right whale foraging research is also being conducted and forms the foundation of critical habitat analyses currently being preformed by NMFS. Once these analyses are finalized, the results will be compiled and distributed to the ALWTRT. These results will then be used by NMFS and the ALWTRT when discussing different management options that can be used to reduce entanglement risk associated with vertical lines.

Comment 308: Commenters urged NMFS to do more research on: (1) Fishing gear that works reliably and safely, under all weather conditions; and (2) how whales interact with fishing gear in order to know what kind of gear will keep whales free of entanglement.

Response: NMFS is committed to gear research and development and will continue to develop reliable and safe gear modifications. NMFS has gear laboratories and research teams that specifically focus on gear development and testing, incorporating tides, sea conditions, weather conditions, load cell data, and the size/and or weight of gear into their analyses. Additionally, NMFS contracts with researchers, individuals and companies to develop gear solutions.

NMFS agrees that it would be useful to determine how whales directly interact with fishing gear. However this would be difficult research to conduct without endangering right whales further, and is thus, not particularly tractable at this time.

Comment 309: One commenter stated that there needs to be more research done to examine appropriate gear modifications when necessary.

Response: See response to Comment 306.

Comment 310: One commenter suggested that NMFS research include exempted areas.

Response: NMFS is working with states to help monitor exempted areas. Based on analysis of sightings data, NMFS understands that large whales may occasionally be reported in exempted waters such as bays and harbors, but believes that these occurrences are rare. If, in the future, whales are more frequently reported in exempted waters, NMFS and the ALWTRT will reevaluate the exemption lines for those particular areas to determine whether changes are needed.

Comment 311: One commenter requested that NMFS develop a prioritization scheme for granting scientific research permits that address critical bycatch, entanglement, or other conservation needs.

Response: NMFS recognizes the concern, however, it is not within the scope of this final rule.

Comment 312: One commenter questioned a NMFS study that indicated that more than 90 whales were killed between the early 1990s and 2002. The commenter asked what the cause of death was in each case and specifically whether any were linked to lobster fishing because the study mentions ship strikes as cause of death. The commenter also requested a breakdown by year to determine whether there is an upward or downward trend during the reporting period. The commenter stated that data from 2003–04 are not presented, so it is difficult to determine if current steps taken by fishermen are working since not enough time has elapsed.

Response: For updated and complete reports on large whale mortality estimates, NMFS suggests Waring *et al.*, (2006) and/or Cole *et al.*, (2006). Data the commenter cites may not have been available when the DEIS was originally formulated; the report would have since been incorporated into current analyses where feasible. See Comment 4.

Comment 313: One commenter stated that the DEIS does not address the remotely operated vehicle (ROV) research conducted in Maine.

Response: NMFS has added text to Chapter 5 in the FEIS to address this research.

Comment 314: One commenter asked if NMFS is assuming that entanglement risks occur solely during foraging since research on other cetacean behavior and entanglement risks is not suggested.

Response: While the nature of foraging behavior is consistent with the mouth entanglements recorded, NMFS does not assume this is the only cetacean behavior that leads to entanglements. The potential for entanglement as a result of different behaviors is suggested by both the diverse geographic locations in which entanglements occur (see Chapter 4 of the EIS) and the parts of the whale on which gear or scarring are found (see Chapter 2 of the EIS).

Comments on Economic and Social Impacts (of the ALWTRP)

Comment 315: Several commenters suggested that the government issue grants to fishermen to help defray costs and replace old gear.

Response: NMFS understands that there are costs associated with converting gear to become compliant with the new ALWTRP requirements. To date, NMFS has supported two floating groundline gear exchange programs, and their purpose was to provide financial aid to commercial fishermen to replace their floating groundline with sinking and/or neutrally buoyant groundline. The first took place in 2004 and early 2005 and included participation from Massachusetts-licensed inshore lobster trap/pot fishermen. The second took place in January 2006 and sought the participation of state and/or federally licensed commercial trap/pot fishermen in New Jersey, Delaware, Maryland, Virginia, and North Carolina. Approximately $200,000 was spent replacing floating groundline with sinking and/or neutrally buoyant groundline in the Mid-Atlantic. Both programs involved the collection of actively fished floating groundline and the issuance of vouchers that fishermen used toward the purchase of sinking and/or neutrally buoyant groundline. A similar floating groundline exchange program is underway for state and

Federally licensed commercial trap/pot fishermen in the State of Maine. For additional information, see responses to Comments 85 and 93.

Comment 316: One commenter asked if it is possible for environmental groups to contribute money to do more research on whales and see where they go.

Response: NMFS welcomes collaborative partnerships with any group to help fund research on large whale distribution.

Comment 317: One commenter believes financial resources should be allocated to research and development and monitoring priorities as established within the TRT working group process.

Response: NMFS agrees that gear research is an important component of the ALWTRP and that ALWTRP priorities should be monitored. See responses to Comments 305 and 306.

Comment 318: One commenter said that the fishermen need resources allocated in order to conduct a collaborative research program that will: (1) Document conditions in which fishermen work; (2) allow fishermen to work safely with no additional economic burden; and (3) find common sense answers and those applicable to areas where people fish with hybrid or other type of rope or gear that can be used.

Response: NMFS welcomes fishermen to apply for funding under the Right Whale Research Program, which requests proposals annually, contingent upon available funding, and focuses on funding projects that seek to reduce the risk of serious injury and mortality to right whales due to entanglement in commercial fishing gear. NMFS encourages the submission of proposals seeking to develop new gear modifications or pilot project designs to test newly developed or even existing gear modifications that have not yet been field tested on a larger scale. NMFS encourages applicants to work closely with NMFS in the development of ideas or concepts. Ideas or concepts that have been developed through this program, or through other means, will be presented/provided to the ALWTRT for discussion.

Comment 319: Some commenters stated that right whales are a federally protected species and, therefore, should be free of all entanglement and mortality risks due to fishing gear, regardless of the potential economic consequences for the fishing industry.

Response: NMFS is responsible for applying the mandates and requirements set forth in the ESA and MMPA. Accordingly, section 118 of the MMPA requires that NMFS reduce incidental mortality and serious injury of marine mammals resulting from interactions with commercial fishing gear. The FEIS provides a complete description of the status of the large whale stocks that are covered under the ALWTRP as well as the effects of commercial fishing on these species. Further, the PBR rate for North Atlantic right whales, as described in the most recent U.S. SAR, is set at zero. Similarly, the PBR rate for the Gulf of Maine stock of humpback whales is set at 1.3 (Waring *et al.*, 2006). For both right and humpback whales, serious injuries and mortalities resulting from interactions with commercial fishing gear regulated under the ALWTRP have occurred, and PBR has been exceeded. Therefore, NMFS is required to take additional action to further reduce serious injury and mortality to large whales resulting from interactions with commercial fishing gear regulated under the ALWTRP. NMFS is trying to find a balance between allowing the fishing industry to continue to fish and protecting the endangered large whales that are protected under the ALWTRP. The only way that right whales would be free of all entanglement and associated serious injury and mortality risks due to fishing gear would be to enact gear closure areas throughout the species' range. However, the ALWTRP regulations favor broad-based gear modifications over area closures. Movement and location of whales is often difficult to predict with certainty, making gear modifications potentially more protective than closures of limited areas. Furthermore, closures may produce undesirable consequences such as concentrations of gear just outside of closed areas, which could increase entanglement risks to large whales.

Comment 320: Some commenters argued that the economic viability of east coast fisheries is at least as important as whale protection goals. They were concerned that additional costly fishery regulations would drive the fishing industry out of business.

Response: Due to the continued entanglements of the large whale species covered under the ALWTRP, NMFS is required to make further modifications to the ALWTRP. NMFS has chosen not to move forward with implementing new area closures; therefore, the new regulations favor broad-based gear modifications. In the FEIS, NMFS examines the economic, social, and biological impacts on commercial fishermen resulting from the modifications to the ALWTRP under the final preferred alternative. In addition, the Final Regulatory Flexibility Analysis (FRFA) in the FEIS considers the impacts of the proposed as well as final preferred alternatives on small entities and examines avenues for reducing the impacts. For further information on economic issues, see response to Comment 319.

Comment 321: One commenter asked if NMFS tested the use of sinking and/or neutrally buoyant groundline on Maine's rocky sea floor to determine that it is not economically devastating.

Response: NMFS has provided a number of fishermen along the coast of Maine, from Lubec to Kittery, with neutrally buoyant groundline in order for those fishermen to test at sea the feasibility of its use in the areas they fish. NMFS received feedback from some of these fishermen who fish on a variety of bottom types, including rocky bottom, that the line was fished successfully. Other fishermen reported that they experienced problems when using this type of line. It should be noted that anywhere along the East Coast, different fishermen are going to experience different issues with the use of sinking and/or neutrally buoyant groundline based on differences in tidal and weather conditions, gear configurations, and fishing practices.

Comment 322: One commenter said that section 118 of the MMPA allows consideration for the economics of the gillnet fishery and availability of existing technology as well as state and regional FMP's.

Response: Section 118 (f)(2) of the MMPA includes both short- and long-term goals. Specifically, it states that ''the immediate goal of a take reduction plan for a strategic stock shall be to reduce, within 6 months of its implementation, the incidental mortality and serious injury of marine mammals taken incidentally in the course of commercial fishing operations to levels less than the potential biological removal level established for that stock under section 117'' (16 U.S.C. 1387). Further, it states that ''the long-term goal of the plan shall be to reduce, within 5 years of its implementation, the incidental mortality or serious injury of marine mammals incidentally taken in the course of commercial fishing operations to insignificant levels approaching a zero mortality and serious injury rate, taking into account the economics of the fishery, the availability of existing technology, and existing State or regional fishery management plans'' (16 U.S.C. 1387). To achieve these goals, NMFS determined that additional modifications to the ALWTRP were warranted based on the continued serious injury and mortality of large whales in commercial fishing gear. See response to Comment 320.

Comment 323: One commenter stated that economic impacts are similar across the board, with most impact affecting the New England lobster fishery. The commenter does not see how NMFS can justify choosing Alternatives 3 and 6 as preferred over Alternatives 2 and 4, based on economic analysis and what is known about the Mid-Atlantic as a right whale migratory corridor. Another commenter also believed New England lobstermen are also disproportionately burdened.

Response: Based on comments received on the DEIS, NMFS has developed a new preferred alternative, Alternative 6 Final, that offers significantly lower economic costs while sacrificing little protectiveness. Chapter 8 of the EIS provides an overview of the costs and benefits of all the alternatives.

Because of the geographic concentration of the lobster fishery in New England (see Chapter 7) and the relatively large size of the lobster fishery, it is true that New England vessels bear a large share of the overall estimated costs of the ALWTRP modifications. Given whale movements and behavior, however, New England waters represent important areas for entanglement risk reduction. Furthermore, the social impact analysis suggests that under Alternative 6 Final (Preferred), only a limited subset of smaller vessels are likely to experience costs that represent a significant share of per-vessel fishing revenues. Finally, groundline buyback programs will help mitigate compliance cost impacts. See Comment 137.

Comment 324: One commenter stated that vessel compliance costs assume upper and lower bounds of complying are similar between vessel classes. The commenter states that, as noted in the DEIS, this could underestimate some vessel class revenue estimates and overestimate compliance cost impacts. The commenter also believes small sample sizes of vessel revenues are insufficient in providing accurate analysis of potential compliance cost estimates by vessel class. Therefore, the commenter requests that these economic and social impact analyses be corrected to be more representative.

Response: The commenter correctly recognizes the uncertainty inherent in both the cost and revenue analyses and the efforts made to characterize this uncertainty. It should be noted, however, that the direction of this uncertainty is unknown (i.e., the figures could be biased in the opposite direction of those stated by the commenter). Furthermore, the shortcomings of the revenue data (e.g., sample sizes for certain vessel classes and fisheries) are fully documented in Chapter 7 of the EIS; no better revenue sources are available at this time.

Comment 325: One commenter questioned DEIS Exhibit 7.4.1.2, which specified that vessel revenues were derived from the 2002 NMFS dealer database, yet are compared with compliance costs under future regulations (and, therefore, the likely impacts on employment). The commenter believes analysis is needed that will project the difference between the costs and revenues following the proposed implementation date of the new rules.

Response: Consistent with the comment, the analysis of vessel impacts ideally would compare costs and revenues following the introduction of the ALWTRP modifications; instead, the analysis compares with-regulation costs to pre-regulation revenues. Little information exists to assess how the ALWTRP modifications would affect vessel revenues; however, the nature and scale of the proposed regulatory changes would likely have little impact on harvests, prices, and other factors affecting vessel revenue. Therefore, even if comparison of post-regulatory costs and revenues were feasible, it is unlikely that such an analysis would result in markedly different socioeconomic impact conclusions.

Comment 326: One commenter said that the chart in Chapter 6 about economic analysis left out several counties and ports in New Jersey (Sea Isle City, Cape May, Belford, and Point Pleasant) that should have been considered in the economic analysis. The commenter said that all fishermen affected by the rule in those regions should be considered in the analysis, even those listed above that do not meet the criteria for at risk counties.

Response: The definition of at-risk communities inherently focuses on areas where the potential for ALWTRP impacts is significant in scale, as indicated by ALWTRP landings or vessels. As suggested by the commenter, however, other counties that do not meet the threshold criteria may realize significant impacts. Although the overall scale of these impacts may not be great, their importance to specific towns, neighborhoods, or vessels should not be overlooked. This point has been highlighted in the FEIS. In addition, the county-level analysis is intended to provide a broad idea of where impacts may be centered geographically. It is separate from the cost/revenue analysis, which considers all vessels, regardless of their landing port or home port.

Comment 327: One commenter said that it would probably cost fishermen $75,000 just to switch over to the rope plus a couple weeks worth of work. The costs includes the crew and everything else.

Response: While the model vessels analyzed in Chapter 6 of the FEIS are generalized and may not reflect costs for all individual vessels, NMFS does not believe that initial gear conversion costs (costs beyond routine gear replacement costs) will typically be as high as $75,000. The analysis suggests that average initial investment costs are likely to be on the order of $39,000 for offshore vessels. While these vessels may realize high costs relative to revenues, fishermen have the option of seeking loans to finance the initial costs of converting their gear. In addition, initial conversion costs may be mitigated, at least in part, by current and future groundline buyback programs operated by NMFS and other partners.

Comment 328: One commenter expressed concern with the prices associated with changing to sinking rope. The commenter states that rope was $98 a coil last year and this year it was $113. Hence, the commenter believes that the rope price will go up. The commenter also believes that fuel is a major issue, stating that as fuel costs go up, the cost of rope will follow. It cost $10,000 for the commenter to switch over his rig in 2004 and in 2008 it may cost $15,000–20,000 or more depending on the price of fuel. The commenter also said that China is buying up all the materials needed to make this rope. The commenter asked what will happen in 2008, if the rope will be available, and the fishermen will be able to afford the rope.

Response: The commenter is correct in noting the positive relationship between oil costs and petroleum-based materials in groundline as well as the dynamic nature of oil prices. In the FEIS, the economic analysis has been revised to incorporate up-to-date prices for groundline, fuel, and other input parameters. Predicting future trends in oil prices is highly complex, however; therefore, the analysis does not attempt to forecast changes in input costs for future years.

Comment 329: One commenter stated that he spreads his expenses out over the year, and to absorb a massive expense that has been expensed over a period of 6 or 8 years does not work. A hundred percent of the burden of the expense of these requirements goes to the industry.

Response: The comment focuses primarily on the large initial investment

that may be required to convert gear. Although costs are high for some vessels, NMFS made modifications to the final rule, based on public comment, to decrease costs where possible while still meeting its goals under the MMPA and ESA (see *Changes from the Proposed Rule* section of the preamble). While these vessels may still realize high costs relative to revenues, the impacts of converting to sinking and/or neutrally buoyant groundline may be defrayed, in part, by current and future groundline buyback programs operated by NMFS and other partners. In addition, although the requirements under Alternative 6 Final (Preferred) may impose significant costs within the first year after publication of the final rule (to convert all groundline to sinking and/or neutrally buoyant groundline), fishermen may be able to distribute the cost of the new gear over its useful life by seeking a loan. After the first year, ongoing costs would be significantly lower as fishermen would only need to replace worn-out and lost gear.

Comment 330: One commenter said that NMFS needs to think about social and economic impact to fishermen themselves, including the cost to change things around for fishermen and the social and economical factors going on.

Response: NMFS is sensitive to the costs of complying with this final rule and has characterized the economic and social impacts in the FEIS. Chapter 7 of the EIS identifies vessel segments that may be heavily affected by the requirements and suggests that under Alternative 6 Final (Preferred), a limited number of small vessels are most at risk. As a result, harvest levels are unlikely to change and related industries (e.g., seafood processing) are not likely to be affected. Although costs are high for some vessels, NMFS made modifications to the final rule, based on public comment, to decrease costs where possible while still meeting its goals under the MMPA and ESA (see *Changes from the Proposed Rule* section of the preamble). While some vessels may still realize high costs relative to revenues, fishermen have some options to try to mitigate these costs. For example, the impacts of converting to sinking and/or neutrally buoyant groundline may be defrayed, in part, by current and future groundline buyback programs operated by NMFS and other partners.

Comment 331: One commenter said that it has been estimated recently that the economic benefit of the lobster fishery in Maine is 500 million dollars. This commenter stated that it was ironic that the fishermen were a week away from paying taxes and the same government that supports them is coming to them with alternatives that would severely impact, if not end, their way of life. The commenter said that Coastal Maine and coastal communities depend on the lobster fishery as part of their heritage and culture, as well as an economic base and there is nothing that can take its place.

Response: NMFS acknowledges the economic importance of the lobster industry and has attempted to characterize the harvest and processing sectors accurately in the EIS. The specific source of the commenter's $500 million figure is uncertain, but the estimate is not unreasonable given ex-vessel revenues and the regional economic contribution of industries that depend on fishing. However, the ALWTRP modifications contained in the final rule are not likely to have the severe implications suggested by the commenter. While costs may be high for some vessels, the compliance costs are generally commensurate with revenues, i.e., costs as a percent of revenue are not prohibitive. Chapter 7 identifies vessel segments that may be heavily impacted by the requirements and suggests that under Alternative 6 Final (Preferred), a limited number of small vessels are most at risk. As a result, harvest levels are unlikely to change and related industries (e.g., seafood processing) are not likely to be affected.

Comment 332: One commenter was concerned about the economic impacts of changing over from either neutrally buoyant rope or going to all sink rope. The commenter recently bought neutrally buoyant rope for $1.85/pound and does not understand where NMFS got $3,500 per boat cost. A few commenters believed that cost is too low, and that money spent on groundlines alone will be over $20,000.

Response: The per-vessel cost cited ($3,500) is the average across a variety of vessel size classes and is an annualized figure; that is, it represents the sum of annualized initial investment costs and annual maintenance costs. Consistent with the comment, the lump sum initial investment for most lobster vessels will be higher than annualized costs. Although costs are high for some vessels, NMFS made modifications to the final rule, based on public comment, to decrease costs where possible while still meeting its goals under the MMPA and ESA (see *Changes from the Proposed Rule* section of the preamble). While these vessels may still realize high costs relative to revenues, fishermen have some options to try to mitigate the costs. For example, the impacts of converting to sinking and/or neutrally buoyant groundline may be defrayed, in part, by current and future groundline buyback programs operated by NMFS and other partners. In addition, although the requirements under Alternative 6 Final (Preferred) may impose significant costs within the first year after publication of the final rule (to convert all groundline to sinking and/or neutrally buoyant groundline), fishermen may be able to distribute the cost of the new gear over its useful life by seeking a loan.

Comments on Other Species

Comment 333: One commenter states that NMFS has not looked at the impacts on other species and has little basis to assume humpbacks, finbacks, and minke whales would benefit. The commenter states that right whales, which have different prey requirements, are the main target of conservation. This leads to different feeding and distribution, which may also lead to different conservation needs. The commenter believes NMFS should not rely on closures and gear modifications that only protect right whales because the agency may omit areas that are important to other large whale species.

Response: The ALWTRP is designed to reduce the risk of mortality and serious injury to large whales (right, humpback, and fin whales), with benefits to non-endangered minke whales, due to interactions with commercial fishing gear. The ALWTRP focuses on reducing entanglements of critically endangered North Atlantic right whales, whose population contains approximately 300 animals. NMFS established the areas and seasons being implemented in this final rule by analyzing databases that included right, humpback, and fin whale sightings. NMFS believes that the gear modifications being implemented, especially the requirement to use sinking and/or neutrally buoyant groundline, will benefit all large whale species by reducing entanglement risk of commercial fishing gear. In the future, NMFS will re-evaluate the ALWTRP with the ALWTRT if information becomes available indicating that the measures being implemented in this final rule are ineffective.

Comment 334: One commenter stated that there is an increase in lobster effort (800 in 1996 and 1400 today) and gear conflicts, and a decrease in herring abundance due to expanded trawling; therefore, there are fewer humpbacks, finbacks, and minke whales in Maine according to an article published in ''Fisherman's Voice,'' April 2005.

Response: The information provided in the article in ''Fisherman's Voice''

with respect to large whales off the coast of Maine is anecdotal. NMFS does not estimate the local abundance of humpback, fin, and minke whale populations so it is difficult to determine the local abundance of these species off the coast of Maine. For further information on these species, please see the SAR (Waring *et al.*, 2006).

Comment 335: One commenter believed that the take levels for some whale species are so low that they could not be achieved. This commenter believed, therefore, that any takes resulting from whale entanglements in fishing gear would lead to more stringent fishery regulations.

Response: Under section 118 of the MMPA, NMFS is required to meet both the short and long-term take reduction plan goals of reducing serious injury or mortality from commercial fishing operations. The short-term goal is to reduce serious injury or mortality to below PBR, while the long-term goal is to achieve a level that is approaching a zero mortality and serious injury rate (i.e., ZMRG). Due to the continued entanglements of large whales in commercial fishing gear, NMFS is required to take additional action to further reduce the entanglement risk associated with commercial fishing gear. NMFS will continue to discuss with the ALWTRT any future modifications that will be made to the ALWTRP.

Comment 336: One commenter states that NMFS has not updated SARs and entanglement studies for finbacks or minke whales. Without scientific information, the commenter believes there is no way to assess impacts of entanglements on these stocks or the ALWTRP benefits to them.

Response: NMFS recently published updated SARs for all four of the large whale species affected by the ALWTRP (Waring et. al., 2006). Information from these and earlier SARs has been integrated into the FEIS.

Comments on Definitions

Comment 337: Some commenters questioned NMFS' basis for determining exempted areas. One commenter asked how ''frequently'' is defined in the DEIS. The commenter specifically referenced the DEIS language that states NMFS will re-evaluate exempted areas if right whales are frequently reported inside these areas.

Response: NMFS did not define ''frequently'' in the DEIS. NMFS believes, based on scientific data, that endangered large whales will rarely venture into bays, harbors, or inlets that have been exempted. Based on this, and other information provided in Appendix 3–A of the FEIS related to the exemption waters in final preferred alternative, NMFS believes the risk of gear to large whales in the exempted areas is minimal. However, NMFS will continue to monitor all exempted areas, and encourage states to develop contingency plans for large whales in these areas. Should new information become available that indicates that a change in the inshore or deep water exemption areas is warranted, NMFS will share the information with the ALWTRT and take appropriate action.

Comment 338: One commenter requested that NMFS define ''weighted device'' for enforcement purposes (i.e., ''include a weak link on all flotation and/or weighted devices attached to the buoy line'').

Response: NMFS agrees and has modified the regulatory text to identify acceptable ''weighted devices''. For example, a weighted device includes window weights, but does not include traps/pots, gillnets, anchors, or leadline woven into buoyline.

Comment 339: One commenter does not support the definition of a set gillnet, which is considered an anchored gillnet, and suggests a definition of a set gillnet as ''any gillnet that is weighted, but does not have an anchor(s) on either end and returns to port with the vessel''.

Response: Although various types of gillnets are included in the anchored gillnet definition, such as set and stab nets, NMFS recognizes that the nets may be fished in various ways. This issue is of particular relevance in the Mid-Atlantic. NMFS will discuss this with the ALWTRT and coordinate with other TRTs that may use this definition under section 229.2 to determine whether this type of change to the definition is appropriate.

Comment 340: One commenter stated that the proposed definition of wet storage of gear in the proposed rule at paragraph (c)(ii) on page 35922 (70 FR 35894, June 21, 2005) is not enforceable as currently written. The definition specifies that trap or pot gear must be hauled out of the water at least once every 30 days. The commenter is concerned that to prove this portion of the rule, an unsustainable amount of surveillance would be required to maintain visual proximity of a particular piece of gear.

Response: Thirty-day soak limits have been enforced. Enforcement actions based on the 30-day soak limit were taken in 10 cases in 2005.

Comment 341: NMFS received one comment regarding the definition of weak links on page 35922 (ii)(B)(1) of the proposed rule (70 FR 35894, June 21, 2005). The commenter states that USCG personnel will be unable to determine the breaking strength of any type of weak link unless the breaking strength is clearly indicated by the manufacturer.

Response: NMFS believes that the weak link requirements are enforceable. In the regulations, NMFS references a brochure that outlines the weak link techniques currently approved to assist in compliance with and enforcement of the regulations, and specifies how to obtain the brochure. NMFS has worked with the USCG in the past to provide training and tools for enforcement efforts. NMFS will continue to provide necessary additional training and tools to the USCG to support enforcement of the ALWTRP.

Comment 342: NMFS received one comment regarding the definition of tending/anchoring/weak links on page 35927, (ii)(c), of the proposed rule (70 FR 35894, June 21, 2005). This section states that all gillnets must return to port with the vessel unless the gear meets the required specifications. The commenter states that a USCG officer has no way of determining whether in-situ gear is in compliance with weak link or anchoring requirements. To enforce this, a law enforcement officer would need to be present during gear set or retrieval. Additionally, the commenter states that some requirements (*e.g.*, breaking strength) may be impossible to determine on scene, undermining the intended effect of this regulation.

Response: Although the ALWTRP regulations are complex, NMFS believes they are enforceable. NMFS has worked with the USCG in the past to coordinate during the development of regulations, and as well as to provide training as noted in the response to Comment 341. Additionally, NMFS will work with the USCG on a coordinated plan to facilitate enforcement of the ALWTRP.

Comment 343: NMFS received one comment regarding the definition of gear requirements on page 35923 (iii)(B) of the proposed rule (70 FR 35894, June 21, 2005), specifically ''No person may fish with or have available for immediate use trap/pot gear.'' The commenter suggested clearly defining the term ''available for immediate use'' for law enforcement personnel. The commenter stated that a good example is found in enforcement of Turtle Excluder Devices (TEDs), where shackling the trawl to the doors is indicative of ''available for immediate use''. Without amplifying information, the commenter believes that arbitrary and capricious enforcement may result.

Response: NMFS agrees and has modified the regulatory text to address this issue.

Comment 344: NMFS received one comment regarding the definition of ''groundline'' on page 35923 (5)(ii)(B) of the proposed rule (70 FR 35894, June 21, 2005). That section states that all groundlines must be composed entirely of sinking or neutrally buoyant line unless exempted. The commenter states that if this line is not labeled as sinking or neutrally buoyant, it will not be recognized as a violation. A USCG boarding officer will only see the line coiled on deck or under strain as it is in the process of being hauled back or set and neither condition will demonstrate compliance with the regulation.

Response: In this final rule, NMFS is amending the definitions of ''neutrally buoyant line'' and ''sinking line'' and is clarifying each definition in relation to groundlines and buoy lines. Also, to provide a clearer definition of neutrally buoyant and sinking line, NMFS has developed criteria for establishing a density standard for neutrally buoyant and sinking line and used these criteria to develop the definitions. NMFS will finalize a procedure for assessing the specific gravity of line, which NMFS will use in the future to determine whether a manufactured line meets the accepted density standard, through this final action. Additionally, NMFS is developing guidance for law enforcement officers on how to evaluate whether line is sinking/neutrally buoyant or floating in the field.

Comment 345: NMFS received one comment regarding the definition of ''anchoring system'' on page 35926 (ii)(C) of the proposed rule (70 FR 35894, June 21, 2005). The commenter believes the requirement to have a burying anchor is easily enforceable, but it will be difficult to determine if the different types that will be encountered will have a holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. The commenter suggested providing the USCG with a table that identifies all the anchoring systems of these types that meet the holding capacity requirement.

Response: NMFS believes that the anchoring requirements are enforceable. In the regulations, NMFS references a brochure that outlines how to comply with any anchoring requirements to assist in compliance with and enforcement of the regulations, and specifies how to obtain the brochure. NMFS has worked with the USCG in the past to provide training and tools for enforcement efforts. NMFS will continue to provide any necessary additional training and tools to the USCG to support enforcement of the ALWTRP.

Comment 346: NMFS received one comment regarding the definition of ''night'' on page 35932 of the proposed rule (70 FR 35894, June 21, 2005). The commenter suggests changing the definition to ''Night means, with reference to the regulated waters of Georgia and Florida, any time after official sunset and before official sunrise as determined for the date and location in the nautical Almanac, prepared by the U.S. naval Observatory''.

Response: NMFS proposed definitions of sunset and sunrise that referenced the National Almanac, prepared by the U.S. Naval Observatory. However, since proposing definitions in 50 CFR 229.2 for ''sunrise'' and ''sunset'', these definitions were added through the BDTRP (71 FR 24776, April 26, 2006). Thus, the definitions in 50 CFR 229.2 are as follows: ''*Sunrise* means the time of sunrise as determined for the date and location in the Nautical Almanac, prepared by the U.S. Naval Observatory;'' and ''*Sunset* means the time of sunset as determined for the date and location in the Nautical Almanac, prepared by the U.S. Naval Observatory.'' NMFS believes that these modifications will make the ''night'' definition clearer and more enforceable.

Comment 347: One comment was received regarding the definition of special provision for strike nets on page 35929(5)(i)(A) of the proposed rule (70 FR 35894, June 21, 2005). This paragraph states that no nets can be set at night when visibility is less than 500 yards (457.2 m or 1,500 ft). The commenter believes this would be subjectively enforced. The commenter recommended less subjective language (e.g., ''No nets may be set after official sunset as determined for the date and location in the Nautical Almanac, prepared by the U.S. Naval Observatory'').

Response: The regulations require, amongst other requirements, that no nets are set at night or when visibility is less than 500 yards (1500 ft, 457.2 m). Night is currently defined under 50 CFR 229.2 as any time between one half hour before sunset and one half hour after sunset. Through this final rule, NMFS is defining sunset and sunrise by referencing the Nautical Almanac prepared by the U.S. Naval Laboratory.

Clarification Requests for the FEIS

Comment 348: One commenter asked if the RPA measures (developed pursuant to ESA section 7) contained in the DEIS alter the reasonable and prudent measures that have previously been incorporated into the ALWTRP through past rulemakings.

Response: The measures described in the DEIS were developed by NMFS through feedback received during meetings with the ALWTRT, as well as through public scoping and comment, not as a result of a section 7 consultation on any Federal action. A section 7 consultation has been reinitiated to examine the effects of the Federal lobster fishery, as modified by the existing ALWTRP and RPA for right whales. This consultation is in progress. NMFS has also reinitiated consultation on the continued implementation of the Federal summer flounder, scup, and black sea bass fisheries that are managed under the Summer Flounder, Scup, and Black Sea Bass FMP, based on new information that suggested effects to listed species as a result of the black sea bass and scup trap/pot fisheries in a manner or to an extent not previously considered. This consultation is ongoing. NMFS will consider the provisions of this final rule during consultation on the continued implementation of the Summer Flounder, Scup, and Black Sea Bass FMP. NMFS will also consider, based on the criteria for reinitiating consultation (50 CFR 402.16), whether formal consultation for the continued implementation of the Northeast Multispecies, Monkfish, and Spiny Dogfish FMPs must be reinitiated as a result of the changes to the ALWTRP. Section 7 consultations completed June 14, 2001, on the continued implementation of these FMPs concluded that the fisheries would jeopardize the continued existence of right whales. An RPA was provided, and the regulatory components were implemented as part of the ALWTRP. NMFS has determined that the operation of other federally-managed fisheries (e.g., HMS, Coastal Pelagics, Snapper/Grouper) will not jeopardize the continued existence of right whales or any other large whale species managed under the ALWTRP.

Comment 349: One commenter asked NMFS to discuss the need for additional ESA section 7 consultations to address the potential impacts of the revised ALWTRP on right whales and other listed species in the FEIS.

Response: An informal consultation under the ESA was concluded for the rule to modify the Atlantic Large Whale Take Reduction Plan on December 21, 2004. As a result of the informal consultation, the Regional Administrator determined that the measures to modify the ALWTRP are not likely to adversely affect ESA-listed cetaceans, sea turtles, fish, or critical

habitat that occur within the area affected by the rulemaking. Modifications are being made to the ALWTRP by this final rule to more broadly address the incidental entanglement of large whales in fishing gear that result in serious injury and mortality. Some of these modifications (e.g., regulating additional trap/pot and gillnet fisheries under the ALWTRP, requiring the broad-based use of sinking and/or neutrally buoyant groundline) are expected to have an effect on ESA-listed species. However, depending on the species, all of the effects are expected to be either beneficial or negligible.

Comment 350: One commenter said that on p. 3–6 of the DEIS, the driftnet provisions needed to be clarified.

Response: NMFS has made a variety of edits and clarifications in Chapter 3 of the FEIS that may better characterize proposed changes for driftnet vessels.

Comment 351: One commenter asked NMFS to clarify DEIS pg. 5–40; as the commenter detected a contradiction between whale distribution and when the requirements are required.

Response: NMFS disagrees. The alternatives under consideration in the DEIS considered whale distribution when determining the time periods of the requirements. Although whales may be present outside a seasonal window, the sightings are rare, and the risk of gear to large whales at these times of the year is minimal. However, NMFS will continue to monitor the areas where seasonal requirements are in effect. Should new information become available that indicates that a change in seasonal window is warranted, NMFS will share the information with the ALWTRT and take appropriate action. See response to Comment 41.

Comment 352: One commenter states that the hazards to whales and areas of most risk need to be clarified.

Response: The ALWTRP regulations favor broad-based gear modifications over additional special management areas. Movement and location of whales is often difficult to predict with certainty. However, as NMFS continues to conduct rulemaking to achieve the goals of the ALWTRP, special management areas could be defined in the future.

Comment 353: Some commenters urged NMFS to include a discussion in the FEIS about the effectiveness of weak links because they are treated as an important risk reducing element, but effectiveness is still unclear. One commenter states that in the DEIS, NMFS indicates the agency believes weak links might work, but does not provide data or analysis on how frequently weak links have failed to prevent entanglements in cases for which gear was examined. Another commenter stated that the DEIS leaves a false impression that weak links are known to be effective in reducing entanglements and that using such devices would reduce bycatch to required PBR levels.

Response: NMFS has added additional clarification in the FEIS on these issues regarding weak links. Evidence that weak links help prevent whale entanglements is discussed in Chapter 5, Section 5.1.1.3 of the FEIS. Section 5.2 discusses impacts on non-whale species and explicitly acknowledges that weak links are not likely to reduce bycatch of most non-whale species; only whale species with the size/strength to break weak links are likely to benefit from weak link requirements.

Comment 354: One commenter states that the DEIS is incorrectly describing collaborative real and simulated fishing and field tests conducted by fishermen and the NMFS gear research team as ''simulated whale entanglements''.

Response: A search of the entire EIS document yielded no instances of the term ''simulated whale entanglements''. However, NMFS did find a discussion in the footnote of Chapter 5 of the DEIS describing NMFS investigations ''simulating an entanglement.'' NMFS believes that the characterization of the studies as written is appropriate.

Comment 355: One commenter referenced page 2–39 of the DEIS, in which NMFS reports that 9 fatal entanglements and 22 live entanglements of large whales were observed in 2002, after the most recent revisions of the ALWTRP. The commenter requested that NMFS address this in the FEIS, as caveats were not taken into account in the DEIS.

Response: Data on entanglements occurring since the most recent revisions to the ALWTRP have been updated using finalized figures published in the 2003 Stock Assessment Report (Waring et al., 2006). Apart from the general caveats applying to all entanglement information, additional caveats are no longer appropriate.

Comment 356: One commenter states that the DEIS does not provide the history or context of right whale status relative to federal efforts to protect whales and fails to consider cumulative effects of all sources of mortality on right whales.

Response: NMFS disagrees. The DEIS and FEIS provide a status of right whales (Chapter 4—Affected Environment), as well as a cumulative effects analysis (Chapter 9—Cumulative Effects Analysis) that considers various sources of mortality to right whales, including the following sources of mortality: commercial whaling, ship strikes, water pollution, noise pollution, climate change, and prey availability.

Changes From the Proposed Rule

NMFS made the following changes from the proposed rule published on June 21, 2005 (70 FR 35984, June 21, 2005) to the final rule:

(1) The proposed rule requirement for sinking and/or neutrally buoyant groundline by January 1, 2008, for trap pot gear (70 FR 35900, June 21, 2005) and gillnet gear (70 FR 35904, June 21, 2005) (unless otherwise required in the Cape Cod Bay Restricted Area for trap/pot (January 1–May 15) or SAM areas) is modified in this final rule to be effective twelve months after publication of the final rule. NMFS believes that the January 1, 2008, deadline will not give fishermen time to comply with this requirement. Typically, NMFS provides 30 or 60 days for fishermen to comply with gear modifications such as mesh size restrictions and other requirements. However, as evident by overwhelming public comment, given the magnitude of the time and resources needed by fishermen to change their gear to sinking and/or neutrally buoyant groundline requirement, NMFS believes giving fishermen 12 months from the publication of the final rule to comply is warranted.

Although the broad-based sinking/neutrally buoyant groundline requirement will become effective on October 6, 2008 (except in the Cape Cod Bay Restricted Area for trap/pot (January 1–May 15) and expanded SAM areas), NMFS believes the time frame allowed for this requirement will not compromise conservation efforts. As stated in the proposed rule, NMFS believes that fishermen will begin changing over their gear prior to the effective date as fishermen replace their groundline as it naturally wears out and due to previous or planned groundline exchange programs.

The early changeover is also likely to continue particularly in the northeast as fishermen respond to gear modifications required by the implementation of SAM and DAM programs, which require seasonal or temporary use of non-floating groundline. For example, some fishermen may choose to fish with SAM and/or DAM compliant gear year round, or at least during the months when SAM areas are in effect and DAM zones are most likely to be triggered, rather than having to change their gear over when a SAM area is effective or remove it

when a DAM zone is established. NMFS believes this situation will occur in other areas too, especially as fishermen replace their old line with new line, which would begin to provide increased protection of large whales from entanglement earlier than twelve months from the publication of this final rule.

(2) Modifications to the proposed exempted areas in Maine (70 FR 35906, June 21, 2005) are approved in this final rule. In 2003, the State of Maine asked NMFS to re-examine the ALWTRP exemption lines and Maine DMR submitted a suggested exemption line to the agency. As described in the proposed rule, NMFS chose what it felt at the time was a more conservative exemption line for the State of Maine. However, NMFS received a number of comments from members of the fishing industry and government agencies in support of this line, stating a lack of sightings data inside the suggested line. Based upon these comments, NMFS has further investigated the exemption line suggested by the State of Maine and its level of protection. NMFS reanalyzed the current and proposed exemption lines and analyzed large whale sightings distribution data from available sources that are more current than the information analyzed for the DEIS. NMFS re-examined dedicated survey effort and opportunistic sightings data from 1960 to mid-September 2005, obtained from the NARWC Sightings Database (curated by URI), supplemented by additional data on humpback and fin whale sightings. In addition, NMFS analyzed large whale sightings data from 2002 through 2006 that were collected through the NEFSC's systematic aerial surveys, as well as through the Northeast U.S. Right Whale Sighting Advisory System (SAS). NMFS also analyzed a right, humpback, and fin whale sightings database compiled by Maine DMR, which includes sightings reported by Maine Marine Patrol, whale watching companies, etc. Lastly, NMFS considered right whale satellite tracking data as provided in peer-reviewed papers by Mate *et al.* (1997) and Baumgartner and Mate (2005).

Sightings and satellite tracking data along the east coast indicated that endangered large whales rarely venture into bays, harbors or inlets. Based on this, and other information provided in Appendix 3–A of the FEIS related to the exempted waters under the final preferred alternative, NMFS believes large whales rarely occur inside many of Maine's bays, harbors, or inlets. Although NMFS' proposed exemption line was closer to shore in some areas, NMFS believes Maine DMR's suggested exemption line would adequately protect endangered large whales. Thus, NMFS concluded that the final exemption line for Maine (as suggested by Maine DMR) is appropriate based on the current, available information. Therefore, in this final rule, NMFS is finalizing the exemption line in Maine as the line suggested by Maine DMR, and from this point forward will refer to this line as the final exemption line for Maine.

In response to industry comments, NMFS will not use the 72 COLREGS line to mark exempted waters for Casco Bay. Also, NMFS will not use the territorial sea baselines to exempt Little River, Pleasant Bay, Narraguagus Bay, Pigeon Hill Bay, Frenchman Bay, Muscongus Bay, Johns Bay, or Saco Bay. Lastly, as proposed, to exempt Penobscot and Blue Hill Bays, NMFS will use three coordinates from NMFS' proposed exemption line for Maine that match three coordinates from the exemption line suggested by Maine DMR. For the remaining inlets in Maine, the coordinates proposed by NMFS will be removed and replaced with the coordinates of the final exemption line for Maine (Figure 4).

NMFS understands that large whales may occasionally be reported in exempted waters, which is consistent with the sightings data that were analyzed. NMFS will continue to monitor all exemption areas, and should new information become available, determine if changes to exemption areas are warranted.

In New Hampshire, waters currently exempted from the ALWTRP regulations are those landward of the first bridge over any embayment, harbor, or inlet. Through this final rule, NMFS is modifying the exempted waters for New Hampshire's three harbors, two as proposed and one slightly modified. As proposed, NMFS will exempt Rye and Hampton Harbors according to the lines drawn across the headlands that mark their entrances to the sea. Portsmouth Harbor will not be exempted according to the 72 COLREGS demarcation line (the only 72 COLREGS line found in the state) because it will be exempted through the final exemption line for Maine, as this line's final coordinate is located at Odiorne Point, New Hampshire.

(3) The proposed exemption lines for Massachusetts (70 FR 35906, June 21, 2005) are not implemented in this final rule. This is based on public comments from the Massachusetts Division of Marine Fisheries, which indicated that the proposed exemption lines are too small to benefit fishermen. In addition, Massachusetts commercial trap/pot fishermen are already using sinking and/or neutrally buoyant groundline. Thus, NMFS will not be implementing the proposed exempted lines at this time, and will revert back to the status quo for this area as depicted in Figure 5 (i.e., exempted waters are landward of the first bridge over any embayment, harbor, or inlet). If the Massachusetts Division of Marine Fisheries believes exemption lines are warranted at some point in the future, NMFS will revisit this issue with the ALWTRT.

(4) The final rule will modify the exempted areas for Long Island Sound and Gardiners Bay. Regarding the current Long Island Sound exemption line, the States of Connecticut and New York, as well as members of the fishing industry, cited safety issues and gear loss concerns with using sinking and/or neutrally buoyant groundline in an area just outside of this line, as well as lack of consistency with other exemptions lines. Thus, they supported an exemption line extending north to south through Block Island Sound from Watch Hill Point, Rhode Island, to Montauk Point, New York (following the territorial sea baseline), based on the lack of whale sightings in the area and the need for consistency with exemption lines in other areas. NMFS believes this area has infrequent whale sightings and was able to confirm this by re-examining dedicated survey effort and opportunistic sightings data from 1960 to mid-September 2005, obtained from the NARWC Sightings Database (curated by URI), supplemented by additional data on humpback and fin whale sightings. In addition, NMFS analyzed large whale sightings data from 2002 through 2006 that were collected through the NEFSC's systematic aerial surveys, as well as through the Northeast U.S. Right Whale Sighting Advisory System, and the right whale satellite tracking information provided in Mate *et al.* (1997) and Baumgartner and Mate (2005). In addition, the Riverhead Foundation for Marine Research and Preservation recently conducted aerial surveys of the waters off Long Island, New York and east of Block Island from November 2004 to April 2005 (RFMRP, 2005). No large whales were sighted near the entrance to Long Island Sound or Gardiners Bay, further confirming that this area is not important large whale habitat.

Under this final rule, NMFS will modify exempted areas for Long Island Sound and Gardiners Bay by using the territorial sea baseline that extends from Watch Hill Point, Rhode Island to Montauk Point, New York, through

Block Island Sound, as depicted in Figure 5.

(5) Components of the buoy line gear marking requirement in the proposed rule (70 FR 35905, June 21, 2005) are being implemented in this final rule. Although many commenters support the concept of gear marking, NMFS received numerous comments opposing the proposed gear marking scheme stating that it would be too time-consuming, costly, impractical to implement while at sea, and would provide limited information. Based upon these comments, under this final rule, all fisheries will mark with one mark mid-way on the buoy line in the water column (i.e., status quo scheme for previously regulated and newly regulated fisheries) and mark surface buoys. NMFS will continue to discuss gear marking strategies with the ALWTRT.

(6) The proposed rule configuration for gillnet net panel weak links (70 FR 35901, June 21, 2005), as well as the configuration suggested by the public, will be implemented under this final rule. NMFS sought comment from the public on additional configurations for gillnet net panel weak links and received numerous, consistent comments from the fishing industry, Mid-Atlantic Fishery Management Council (MAFMC), scientists, conservationists, and a state organization regarding an alternate configuration. The public proposed an alternative weak link configuration to the proposed configuration and placement of five or more weak links/gillnet net panel. This configuration is similar to the configuration agreed upon by consensus by the Mid/South Atlantic ALWTRT Subgroup at the 2005 meeting.

NMFS believes this alternative configuration is a functional equivalent to what was originally proposed. As gillnet net panels are closely strung together, a single weak link placed between the floatline tie loops between gillnet net panels would provide the same risk reduction as a single weak link placed as close as possible to each end of the gillnet net panel just before the floatline meets the up and down line. For this alternative configuration, weak links would also be required at the ends of each string where the floatline tie loop attaches to the bridle, buoy line, or groundline (depending on how the gear is configured). Thus, in addition to the proposed configuration, NMFS will allow the following: one weak link placed between the floatline tie loops between gillnet net panels; one weak link in the center of each gillnet net panel; one weak link in the up and down lines of gillnet net panels; and one weak link placed where the floatline tie loops attaches to the bridle, buoy line or groundline at each end of the string. In this final rule, NMFS will specify the two configurations options for gillnet net panel weak links where more than one weak link is required per gillnet net panel in the associated ALWTRP management areas (e.g., SAM areas, Other Northeast Gillnet Waters). The same configuration option would be required for all gillnet net panels in a string.

Based on the determination that the two net panel weak link configurations are functional equivalents, NMFS believes the optional configuration should be allowed in the current SAM areas and established DAM zones when a gear modification option is selected thirty days after publication of this final rule. This will allow fishermen to choose between options without waiting six months after publication of the final rule when the SAM area is expanded and the two configuration options are allowed in this area. Additionally, this will allow fishermen to choose between options in implemented DAM zones when a gear modification option is selected. By allowing the two configuration options in the current SAM areas earlier than six months after publication of the final rule, and in established DAM zones while the DAM program remains in effect, would reduce the burden to fishermen by giving them options for meeting the net panel weak link requirements without increasing entanglement risks.

(7) The gillnet weak link and anchoring configurations from the proposed rule, as well as an optional configuration for North Carolina, are being implemented in this final rule. In the proposed rule, NMFS sought comment on alternative weak link and anchoring configurations within 300 yards (900 ft or 274.3 m) of the beach (70 FR 35901, June 21, 2005). NMFS received numerous, consistent comments from the North Carolina Division of Marine Fisheries, North Carolina Division of Coastal Management, North Carolina Marine Fisheries Commission (NCMFC), MAFMC, fishing industry and conservationists regarding an alternate configuration for gillnet net panel weak links and anchoring systems. This configuration is similar to the configuration agreed upon by consensus by the Mid/South Atlantic ALWTRT Subgroup at the 2005 meeting. NMFS believes this alternative weak link and anchoring configuration is a functional equivalent to what was proposed. Thus, in addition to the final configuration of five or more 1,100-lb (499.0-kg) weak links per gillnet net panel depending on the length of the net anchored with the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor on each end of the net string, NMFS will allow the following within 300 yards (900 ft or 274.3 m) of the beach along the shoreline of North Carolina: five or more 600-lb (272.2-kg) weak links depending on the length of the net anchored on the offshore end of the net string with the holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg). NMFS will also clarify that the entire net string must be less than 300 yards (900 ft or 274.3 m) from shoreline for this provision.

In April 2005, the NMFS Gear Team worked with a North Carolina commercial fisherman to conduct an investigation of weak links and anchoring systems that would allow fishermen safe retrieval of gear in coastal waters within 300 yards (900 ft or 274.3 m) of the shoreline while ensuring weak links placed in gillnet net panels would perform as designed. These tests were conducted as industry expressed concern that anchors in the 22-lb (10.0-kg) Danforth range used on net strings present safety issues for small vessels. Several types of anchoring systems and weak link breaking strengths were examined during the investigation. Based on results of the testing, NMFS believes that allowing an 8-lb (3.6-kg) Danforth-style anchor on the outside end of the net string, a 31-lb (14.1-kg) dead weight on the inside end of the net string along with 600-lb (272.2-kg) weak links will allow for a safer anchoring configuration for coastal fishermen in North Carolina and provide the same level of protection to whales as a 22-lb (10.0-kg) Danforth-style anchor and 1,100-lb (499.0-kg) weak links.

(8) An exemption for gillnet net panel weak link and anchoring requirements if the depth of the float-line is in waters deeper than 280 fathoms (1,680 ft or 512.1 m) is implemented in this final rule. Based on public comments, this final rule will exempt fishermen from ALWTRP requirements in waters deeper than 280 fathoms (1,680 ft or 512.1 m) as whales are not likely to occur in those depths. Additionally, NMFS has not tested the operational feasibility of using weak links in gillnets set to those depths. This exemption is consistent with gillnet groundline exemptions deeper than 280 fathoms (1,680 ft or 512.1 m).

(9) Although NMFS proposed the use of VMS in lieu of the 100-percent call-

in requirement for observer coverage in the ''Southeast U.S. Monitoring Area,'' from 32°00′ N. lat. to 26°46.5′ N. lat., NMFS is modifying the boundaries of this area to exclude the Southeast U.S. Restricted Area. Thus, the area would extend from 27°51′ N. lat. to 26°46.5′ N. lat. landward of 80°00′ W. long. Information obtained by NMFS since the proposed rule was published indicates that distinguishing between vessels that are fishing with strikenet (referred to from this point onward as gillnet that is deployed so that it encloses an area of water) versus those that are fishing with driftnets may be more difficult using VMS-generated tracks than originally thought, and VMS tracks may be ''spoofed'' (one fishing technique deliberately made to appear like another fishing technique) making it difficult to differentiate between the two fishing techniques. Distinguishing between gillnet that is deployed so that it encloses an area of water and driftnet fishing is essential since fishing with gillnet that is deployed so that it encloses an area of water is allowed in the restricted area, but fishing with driftnets is prohibited. Therefore, NMFS believes a total reliance on VMS to enforce the time/area gillnetting and gear-type restrictions of the Southeast U.S. Restricted Area may be less risk-adverse to right whales than monitoring fishing activities using 100 percent observer coverage. Observer monitoring, while not an enforcement tool, can provide information to managers on whether regulations need to be modified to address compliance issues. This requirement is effective 30 days after the publication of the final rule rather than six months after the publication as proposed, as this would eliminate an additional requirement for fishermen in this area.

(10) The proposal for drift gillnet gear to place one 1,100-lb (499.0-kg) weak link per gillnet net panel when fishing tended drift gillnet gear at night is not accepted in this final rule. NMFS is not implementing this requirement at this time as potential safety issues were raised by the industry and the Mid-Atlantic Fishery Management Council. Thus, NMFS believes further research on this fishery, and specifically testing weak links in drift gillnet gear, is needed before weak links should be required. Thus, this final rule will implement the current drift gillnet fishing requirements for the Mid/South Atlantic and Northeast.

(11) The proposal for trawls of four or fewer traps to be allowed only one buoy line (Northern Nearshore Trap/Pot Waters, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Federal Waters of Cape Cod Bay Restricted Area (May 16—Dec. 31) (70 FR 35899, June 21, 2005)) is not approved in this final rule. NMFS believes this modification does not address the current inconsistencies regarding this requirement both within the ALWTRP regulations and with the Federal lobster regulations. NMFS will address this issue with the ALWTRT during future discussions regarding vertical line risk reduction. Thus, the final rule will continue to implement the current requirement of trawls of five or fewer traps to be allowed only one buoy line in the areas noted above.

(12) The LMA 3/5 (i.e., overlapping zone between LMA 3 and LMA 5) will be added to the regulations wherever LMA 3 is listed in this final rule. This overlap is based on the final rule published on March 14, 2006 (71 FR 13034), to amend regulations to modify the management measures applicable to the Federal American lobster fishery. The ALWTRP regulated waters in this overlap area were originally included in Lobster Management Area 3 and will be managed in the same manner. The addition of LMA 3/5 to the regulations allows NMFS to have consistency between the ALWTRP and Federal lobster management area regulations where appropriate.

(13) Changing the southern boundary of the Mid/South Atlantic Gillnet Waters and the northern boundary of the Other Southeast Gillnet Waters management areas from 32°00′ N. lat. to ''South Carolina/Georgia border'' is not approved in this final rule (70 FR 35902, June 21, 2005). NMFS believes that the 32°00′ N. lat. coordinate is more appropriate to denote the border. Thus, reverting back to the status quo for this issue is appropriate.

(14) NMFS received numerous comments from the fishing industry stating that the proposed name changes and area boundaries for Southeast gillnet management areas were confusing. Thus, the proposal to change the terminology of ''Southeast U.S. Restricted Area'' to ''Northern Monitoring & Restricted Area,'' and the portion of the ''Southeast U.S. Observer Area,'' not included in the ''Southeast U.S. Restricted Area,'' to ''Southern Monitoring Area'' (70 FR 35908, June 21, 2005) for the Southeastern U.S. Atlantic shark gillnet fishery only, is not approved in this final rule. Additionally, the proposal to have ''Other Southeast Gillnet Waters'' be a management area for the Southeast Atlantic gillnet fishery only, is not approved in this final rule. NMFS will extend management areas in the southeast to the eastern edge of the EEZ as proposed. Thus, designated waters in the Southeast will also be redefined under this final rule.

NMFS will retain Southeast U.S. Restricted Area terminology established in the June 25, 2007 final rule amending the ALWTRP (72 FR 34632) for both Southeast Atlantic and Southeastern U.S. Atlantic shark gillnet fisheries. Additionally, for the Southeastern U.S. Atlantic shark gillnet fishery, NMFS will also change ''Southeast U.S. Observer Area'' to ''Southeast U.S. Monitoring Area'' for regulated waters west of 80°00′ W. long., but this area will now only extend from 27°51′ N. lat. south to 26°46.5′ N. lat. and VMS will be substituted for the 100-percent call in requirement for this area only. Although 100-percent observer coverage would no longer be required under this final rule, NMFS would retain observer coverage sufficient to produce statistically reliable results to evaluate the impact of the fishery on protected species. In addition, this final rule will also define the waters east of 80°00′ W. long. from 32°00′ N. lat. south to 26°46.5′ N. lat. and out to the eastern edge of the EEZ as ''Other Southeast Gillnet Waters.'' NMFS will designate ''Other Southeast Gillnet Waters'' from 32°00′ N. lat. south to 27°51′ N. lat. for the Southeast Atlantic gillnet fishery, and south to 26°46.5′ N. lat. for the Southeast U.S. shark gillnet fishery. The expansion of this area east to the eastern edge of the EEZ will be consistent with the ALWTRP area boundary expansion in the Mid-Atlantic.

As designated waters have been redefined, associated requirements in some waters are being changed under this final rule. A recent analysis has found that it is unlikely that large whales, right whales in particular, extend eastward beyond 80°00′ W. long. in the Southeast region. Hence, less restrictive ALWTRP measures will be required in ''Other Southeast Gillnet Waters'' east of 80°00′ W. long. and out to the eastern edge of the EEZ. For the Southeast Atlantic gillnet fishery operating in these waters south to 27°51′ N. lat., only gear modification requirements, similar to final requirements for anchored gillnets in Mid/South Atlantic Gillnet Waters, will be approved in this final rule. For the Southeastern U.S. Atlantic shark gillnet fishery operating in these waters south to 26°46.5′ N. lat., only the following requirements will be in effect under this final rule: no net set within 3 nautical miles (5.6 km) of a right, humpback or fin whale; and if a right, humpback or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water.

(15) This final rule also incorporates the modifications to the Southeast U.S. Restricted Area implemented through a recent ALWTRP final rule (72 FR 34632, June 25, 2007). These modifications include revised management measures and boundaries for this management area, as well as associated changes to the regulations. Consequently, portions of the Mid/South Atlantic Gillnet Waters (i.e., waters within 35 nm (64.82 km) of the South Carolina coast) will be included in the Southeast U.S. Restricted Area from November 15 through April 15, during the right whale calving season. Also, based on the modifications to the June 25, 2007 final rule (72 FR 34632), NMFS will not be making the proposed regulatory changes related to the straight set and strikenet definitions in this final rule. Furthermore, this final rule will not add the straight set definition based on the deletion of the associated strikenet definition in the June 25, 2007 final rule (72 FR 34632).

(16) NMFS proposed definitions in § 229.2 for ''sunrise'' and ''sunset''; however, since that time, these definitions were added through the Bottlenose Dolphin Take Reduction Plan (71 FR 24776, April 26, 2006). Thus, these definitions are not included in this action.

Classification

This final rule has been determined to be significant for the purposes of Executive Order 12866.

This final rule identifies measures to reduce the risk of serious injury or mortality from entanglement of large whales under the ALWTRP. A DEIS was prepared for the proposed rule and was finalized based on the changes made from the proposed to final rules. NMFS considered six alternatives for this final rule; the final preferred alternative is recognized and justified in the FEIS.

As required by the Regulatory Flexibility Act, NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this final rule. The FRFA incorporates a summary of the significant issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis (IRFA), and NMFS responses to those comments provided elsewhere in the preamble to this final rule, and a summary of the analyses completed to support the final action. A copy of this analysis for this final rule is available from NMFS (see **ADDRESSES**). Cost and benefit estimates were developed and examined for six regulatory alternatives, including a status quo (no action alternative). A summary of the FRFA follows:

The objective of this final rule, issued pursuant to section 118 of the Marine Mammal Protection Act (MMPA), is to reduce the level of serious injury and mortality of right, humpback, and fin whales in commercial east coast trap/pot and gillnet fisheries. The key fisheries affected by this final rule include the American lobster trap/pot fishery, other trap/pot fisheries, and gillnetting operations. ALWTRP requirements could also potentially affect seafood dealers and processors as well as fishing gear manufacturers, suppliers, and marina operators. However, data are not readily available on the latter sectors, so the analysis does not examine them in detail.

There were six alternatives considered to modify the ALWTRP, including a status quo (no action alternative), two preferred alternatives, and three other alternatives. The final preferred alternative is a modification to one of the original preferred alternatives. All alternatives to the final rule, except for the status quo (no action alternative), were evaluated using model vessels, each of which represents a group of vessels that share similar operating characteristics and would face similar requirements under a given regulatory alternative. A summary of the analysis follows:

1. Under Alternative 1, NMFS would continue with the status quo, i.e., the baseline set of ALWTRP requirements currently in place. This would result in no changes to the current measures under the ALWTRP and, as such, would result in no additional economic effects on the fishing industry. This alternative, however, would not achieve the required reduction in incidental mortality and or serious injury of large whales in commercial fishing gear, nor meet the requirements of the ALWTRP, thus NMFS rejected this alternative.

2. NMFS considered and rejected Alternative 2, which would implement broad-based, coast-wide gear modifications year-round for all Atlantic fisheries regulated by the ALWTRP. These gear modifications would include: The use of weak links on all flotation devices; discontinuing the SAM and DAM programs and requiring the use of entirely sinking and/or neutrally buoyant groundline effective 12 months after publication of the final rule; the use of weak links and anchoring systems for gillnets; and implementing new gear marking requirements for buoy lines. This alternative would also cover several new fisheries under the ALWTRP regulations that use gear similar to gear used by those fisheries already subject to the regulations, redefine some of the regulated area boundaries, extend the scope of the ALWTRP regulations out to the eastern edge of the EEZ, and expand and clarify the areas exempted from the plan. The incremental costs that Alternative 2 would impose on the commercial fishing industry range is estimated to be approximately $19.2 million per year. NMFS concluded that the potential for entanglement of whales in Mid-Atlantic or South Atlantic waters during summer months is minor, and that year-round requirements, as proposed by this alternative, would offer a marginal risk reduction benefit to large whales. Seasonal implementation of gear conversion requirements, instead of year-round gear modifications, would also reduce compliance costs for fishermen without increasing risks to whales.

3. Alternative 3, which was identified as one of two preferred alternatives in the proposed rule, would implement all of the requirements included in Alternative 2, except that the requirements for Mid- and South Atlantic waters south of 40°00′ N. lat. would be seasonal rather than year-round. Waters north of 40°00′ N. lat. would be subject to ALWTRP gear modifications year-round. The incremental costs that Alternative 3 would impose on the commercial fishing industry is similar to costs under Alternative 2 (approximately $19.2 million per year). NMFS rejected this alternative as it did not provide immediate protection to right whales by offering an expanded SAM zone with sinking and/or neutrally buoyant groundline requirements to protect predictable aggregations of right whales.

4. NMFS considered and rejected Alternative 4, which consisted of all of the gear modifications included in Alternative 2, except that the requirements for South Atlantic waters south of the South Carolina/Georgia border would be seasonal rather than year-round. Waters north of this border would be subject to ALWTRP gear modifications year-round. The incremental costs that Alternative 4 would impose on the commercial fishing industry is similar to costs under Alternative 2 and 3 (approximately $19.2 million per year). This alternative was rejected because NMFS concluded that the potential for entanglement of whales in Mid-Atlantic waters during summer months is minor, and that year-round requirements, as proposed by this alternative, would offer a marginal risk reduction benefit to large whales. Seasonal implementation of gear conversion requirements, instead of year-round gear modifications, would also reduce compliance costs for

fishermen without increasing risks to whales.

5. NMFS considered and rejected Alternative 5, which would implement the requirements included in Alternative 3, except for the broad-based, coast-wide gear modification requirements such as the use of entirely sinking/neutrally buoyant groundline, expanded weak link requirements for gillnet gear at night in the Mid-Atlantic, and weak link and anchoring requirements for gillnet gear in the Northeast. Additionally, 6 months after publication of this final rule, this alternative would expand the SAM areas, allow for a second buoy line, allow both buoy lines to have up to one-third of the bottom portion of the buoy line to be composed of floating line in the SAM areas, and discontinue the DAM program. Alternative 5 would impose incremental compliance costs of approximately $1.3 million annually. The benefits of Alternative 5 for whale survival are likely to be significantly lower than the benefits associated with all other alternatives considered, hence NMFS did not choose this alternative.

6. NMFS considered and modified Alternative 6, which was identified as one of two preferred alternatives in the proposed rule. Alternative 6 (Draft) combines elements of Alternative 3 and Alternative 5. Buoy line weak link requirements and broad-based gear requirements (gillnet net panel weak links, sinking/neutrally buoyant groundline, anchoring, gear marking, etc.) would be introduced on the same schedule and with the same seasonal and geographic provisions as described under Alternative 3; however, DAM requirements would be eliminated six months after publication of this final rule, and the expanded SAM zone and SAM regulations described in Alternative 5 would apply from six months after publication until the broad-based groundline gear modification are in place, when the SAM zones would be eliminated. In response to comments received regarding economic and operational concerns resulting from the implementation of this alternative, NMFS formulated a final preferred alternative that builds upon Alternative 6 (Draft). Alternative 6 (Draft) would impose incremental compliance costs of approximately $19.2 million annually. NMFS rejected Alternative 6 (Draft) as it does not contain modifications that will allow NMFS to respond to the comments received while balancing risk reduction considerations.

7. NMFS selected Alternative 6 (Final Preferred) in this final rule because it builds upon Alternative 6 (Draft). This alternative will implement all of the requirements contained in Alternative 3 including the broad-based, coast-wide gear modifications and seasonal restrictions. Additionally, as in Alternative 5, this alternative would expand the SAM areas, allow for a second buoy line, allow both buoy lines to have up to one-third of the bottom portion of the buoy line to be composed of floating line in the SAM areas, and eliminate the DAM program upon expansion of the SAM areas. The SAM program will be eliminated when the broad-based groundline gear modification becomes effective. Among all the alternatives considered that achieve the required reduction in mortality and serious injury to large whales in commercial fishing gear, this final preferred alternative minimizes potential economic impacts through various regulatory modifications. Expanded exemption areas under this final alternative will lower the number of vessels affected by regulations, also reducing socioeconomic impacts of this final rule itself. Alternative 6 (Final) would impose estimated incremental costs of approximately $13.4 million per year, which is approximately $5.8 million per year less than Alternatives 2, 3, 4, and 6 (Draft). Alternatives 3 and 6 (Draft) were the preferred alternatives in the proposed rule. This final preferred alternative will provide an optional weak link configuration for gillnet fisheries, which will offer fishermen the ability to comply in a low-cost and conservation equivalent manner. Fishermen will also be able to pursue lower-cost compliance strategies through the seasonal restrictions for both the Mid- and South Atlantic regions. The risk-reduction tradeoff is minimal, given that entanglement risk in the Mid- and South Atlantic is low in the summer months. NMFS chose this alternative as it had many of the components of Alternative 6 (Draft), but incorporates modifications that will allow NMFS to respond to comments to improve the alternative while balancing risk reduction considerations. For example, Alternative 6 (Final Preferred) expands exempted waters off of Maine and Long Island Sound, based on a NMFS analysis that, amongst other reasons, concludes that large whales are sighted infrequently and do not spend significant periods of time in these waters. This change effectively reduces the number of vessels that must comply with the ALWTRP gear modification from 5,118 under the proposed, preferred Alternatives 3 (Draft) and 6 (Draft) to 4,353 under Alternative 6 (Final Preferred). The gear marking requirement of one mark midway along the buoy line, rather than every ten fathoms, is more cost effective and practical based on current technology. This change effectively reduces the total number of new gear marks to be installed by vessels that must comply with the ALWTRP gear modification from 2.2 million under the proposed, preferred Alternatives 3 (Draft) and 6 (Draft) to 0.3 million under Alternative 6 (Final Preferred). This final rule would also grant an exemption to gillnet panel weak link and anchoring requirements to any vessel fishing at depths greater than 280 fathoms. Whales are not likely to occur in waters of this depth. Additionally, allowing anchored gillnet vessels under Alternative 6 (Final Preferred) to use an alternate weak link configuration that is the functional equivalent of what was proposed enables fishermen to have more options and flexibility when configuring their gear. These and other variations to the Final Preferred Alternative (6) decrease the number of affected vessels and result in reductions in compliance costs, while sacrificing little in terms of entanglement risk reduction.

NMFS solicited public comments on both the Draft Environmental Impact Statement (DEIS) (70 FR 9306, February 25, 2005; 70 FR 15315, March 25, 2005) and proposed rule (70 FR 35894, June 21, 2005; 70 FR 40301, July 13, 2005) through several different means including written comment. The public also had the opportunity to provide oral comments at 13 public hearings held in the states of Maine, Massachusetts, Rhode Island, New Jersey, Maryland, Virginia, North Carolina, and Florida. A summary of all comments received and NMFS' responses is included in Volume II of the FEIS. Significant issues were raised by the public in response to the expected impacts of this final rule. In general, areas of concern included: (1) The implementation time for sinking and/or neutrally buoyant groundline requirements, as well as other new regulations under this final rule; (2) the delineation of exemption areas; (3) the practicality of the proposed gear marking scheme; (4) the configuration of gillnet weak links; (5) the specification of areas and times during which ALWTRP requirements would be in effect; and (6) the implementation of gillnet anchoring requirements, especially in waters within 300 yards (900 ft or 274.3 m) of the shoreline.

NMFS formulated the final preferred alternative based on these public comments and additional information received. This final alternative introduces a number of significant

changes, including: (1) Expanding exempted waters off of Maine and Long Island Sound; (2) allowing anchored gillnet vessels to use an alternate weak link configuration; and (3) allowing anchored gillnet vessels operating within 300 yards (900 ft or 274.3 m) of the shoreline of North Carolina to use an alternate anchoring configuration. These and other minor variations decrease the number of affected vessels and result in reductions in compliance costs, while sacrificing little in terms of entanglement risk reduction.

The small entities affected by this final rule are commercial trap/pot and gillnet fisherman operating in Northeast Atlantic, Mid-Atlantic, and Southeast Atlantic waters. The analysis of the final preferred alternative identified approximately 4,350 vessels that would be affected by this final rule (this number does not include Southeastern U.S. Atlantic shark gillnet vessels, as the analysis for this action concluded that these vessels would not incur significant compliance costs).

In the lobster trap/pot fishery, approximately 2,900 vessels would be affected. The analysis identified 11 vessel segments that can be considered ''heavily affected'', where estimated compliance costs exceeded 15 percent of average annual revenues. Nearly all of these segments are composed of smaller (Class I or Class II) vessels, which typically have a smaller revenue base with which to absorb compliance costs. Seven of these segments represent lobster/trap vessels.

Approximately 1,980 other vessels fell into the ''at-risk vessel'' category, where estimated compliance costs were between 5 and 15 percent of average annual revenues. The majority of at-risk vessels are Class II lobster vessels; of these, the most affected subsets are vessels in Maine, which are estimated to have greater gear loss costs. A variety of other vessels fall in the at-risk range, including northern nearshore lobster vessels, several categories of other trap/pot vessels (e.g., black sea bass, hagfish, red crab), and Class I gillnet vessels in the Mid-Atlantic.

This final rule contains collection of information requirements subject to the Paperwork Reduction Act (PRA), because of the proposed gear marking scheme. The proposed collection of information requirement was submitted to the Office of Management and Budget (OMB) for approval, and is still under review. Once the information collection has been approved, NMFS will publish a **Federal Register** notice providing the OMB approval control number. Public comment was sought regarding whether this proposed collection of information is necessary for the proper performance and function of the agency, including: The practical utility of the information; the accuracy of the burden estimate; the opportunities to enhance the quality, utility, and clarity of the information to be collected; and the ways to minimize the burden of the collection of information, including the use of automated collection techniques or other forms of information technology. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS (see **ADDRESSES**) and by e-mail to *David_Rostker@omb.eop.gov,* or fax to 202–395–7285.

This collection of information requirement applies to a total of 2,695 newly affected vessels, including 64 model vessel types. Model vessel types were developed for gillnet fisheries, lobster trap/pot fisheries, and other trap/pot fisheries. Total burden hours for all newly affected vessels is 40,702 over three years or 13,567 per year. Total cost burden for all newly affected vessels is $26,863 over three years or $8,954 per year. For more information, please see the PRA submission associated with this rulemaking.

Any information collection requirements subject to PRA and related to VMS requirements in the U.S. Southeast Atlantic shark gillnet fishery were addressed in a previous rulemaking (69 FR 51010, August 17, 2004) and approved by OMB under control number 0648–0372. Fishermen will not incur any additional costs as they currently have all the equipment required to comply with the reporting requirements.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

NMFS has determined that this final action is consistent to the maximum extent practicable with the approved coastal management program of the U.S. Atlantic coastal states. The proposed rule, RIR, RFA analysis, and DEIS were submitted to the responsible state agencies for review under section 307 of the Coastal Zone Management Act (CZMA). The following states agreed with NMFS' determination: New Hampshire, Rhode Island, New Jersey, Pennsylvania, Delaware, Virginia, South Carolina, Georgia, and Florida. Maine, Massachusetts, and Maryland did not respond, therefore, consistency is inferred. Three states, Connecticut, New York, and North Carolina conditionally concurred with NMFS' conclusion that the proposed action is consistent with the enforceable policies of the approved coastal management program for that state; however, the North Carolina conditional concurrence was treated as an objection because NMFS could not meet the state agency's conditions.

The Connecticut Department of Environmental Protection and New York State Department of Environmental Conservation concurred with NMFS' determination that the amendments to the ALWTRP are consistent to the maximum extent practicable with the enforceable policies of the states' Coastal Management Programs provided that NMFS adopt the modifications recommended by the Connecticut Marine Fisheries Division. The recommended modifications included an adjustment of the proposed ALWTRP exempted line for Long Island Sound. Without this adjustment, the Connecticut Department of Environmental Protection indicated that the proposed action would create an unjustified economic hardship on the Connecticut fishing industry, as there is an absence of whale interactions in this area. This final rule adopts the modifications suggested by the Connecticut Marine Fisheries Division and New York State Department of Environmental Conservation; therefore, in accordance with 15 CFR 930.4(a)(2), the final rule was modified pursuant to the state agency's conditions that allow the state agency to concur with the Federal action.

The NCDCM also conditionally concurred with NMFS' determination that the proposed action is consistent to the maximum extent practicable with the enforceable policies of North Carolina's coastal management program. NCDCM was concerned that the proposed action would adversely affect the public's ability to conduct recreational and/or commercial fishing, causing safety hazards as well as economic and operational burdens. Thus, NCDCM offered three conditions that the agency would have to adopt in order to be consistent with North Carolina's coastal management program. First, NCDCM recommended that the mid-Atlantic gillnet restriction season from December 1 through March 31 of any year should not be expanded to the proposed period of September 1 through May 31. Alternatively, NCDCM suggested that, if the season is expanded, the inshore small mesh gillnet fishery (<5 inches (0.1 m), 300-yard (274.3 m or 900 ft) maximum set) be allowed to use deadweight anchors on the inshore end of the net and

Danforth-style anchors with a minimum weight of 8 lb on the offshore end.

Second, NCDCM required that the proposal to implement the mandatory use of sinking and/or neutrally buoyant groundline on pots/traps be replaced with an alternative for reducing the profile of the groundline, such as weaving sections of lead core line in the groundlines currently in use.

Third, in order to be found consistent with North Carolina's coastal management program, NCDCM required that the gear marking requirement of the ALWTRP be consistent with those already implemented by other protected species take reduction plans and/or Regional Fishery Management Council or NMFS FMPs for oceanic waters.

This final rule adopts an optional anchoring requirement, and also considers gear marking requirements by other take reduction or fishery management plans as suggested by NCDCM. However, this final rule does not allow for a low profile groundline option. Thus, NMFS did not meet all the state agency's conditions. Therefore, pursuant to 15 CFR 930.4, the requirements of paragraphs (a)(1) through (3) were not met, and the NCDCM no longer concurs with the determination that the proposed measures are consistent to the maximum extent practicable with North Carolina's Coastal Management Program.

This final rule contains policies with federalism implications as that term is defined in Executive Order 13132. Accordingly, the Assistant Secretary for Legislative and Intergovernmental Affairs at the Department of Commerce provided notice of the DEIS and proposed rule to the appropriate official(s) of affected state, local, and/or tribal governments. Two letters were sent to officials in Maine, New Hampshire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Maryland, Virginia, Delaware, North Carolina, South Carolina, Georgia, and Florida, requesting a review of the DEIS and proposed rule as the proposed amendments could have a direct impact on the State. The purpose of these proposed amendments and their components were outlined, and a justification for the proposed rule was provided to each state through these letters. No concerns were raised by the states contacted; hence, NMFS will infer that these states concur with the finding that the proposed regulations for amending the ALWTRP were consistent with fundamental federalism principles and federalism policymaking criteria.

An informal consultation under the ESA for this final rule to modify the ALWTRP was concluded on December 21, 2004. As a result of the informal consultation, the Regional Administrator determined that the measures to modify the ALWTRP are not likely to adversely affect ESA-listed cetaceans, sea turtles, fish, or critical habitat that occur within the area affected by the rulemaking. Modifications are being made to the ALWTRP to more broadly address the incidental entanglement of large whales in fishing gear that result in serious injury and mortality. Some of these modifications (e.g., regulating additional trap/pot and gillnet fisheries under the ALWTRP, requiring the broad-based use of sinking and/or neutrally buoyant groundline) are expected to have an effect on ESA-listed species. However, depending on the species, all of the effects are expected to be either beneficial or negligible.

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Figure 1. ALWTRP regulated trap/pot waters.

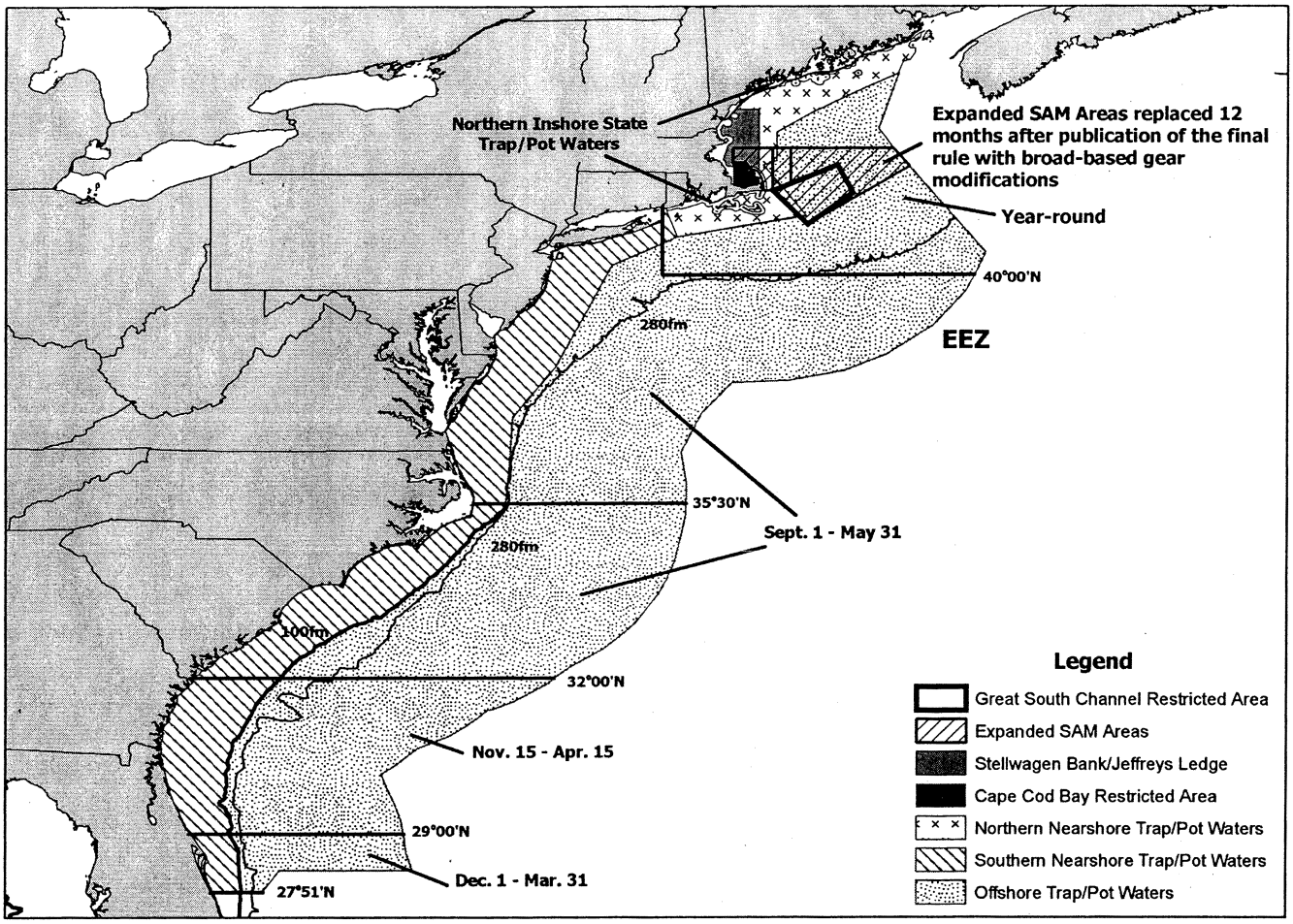
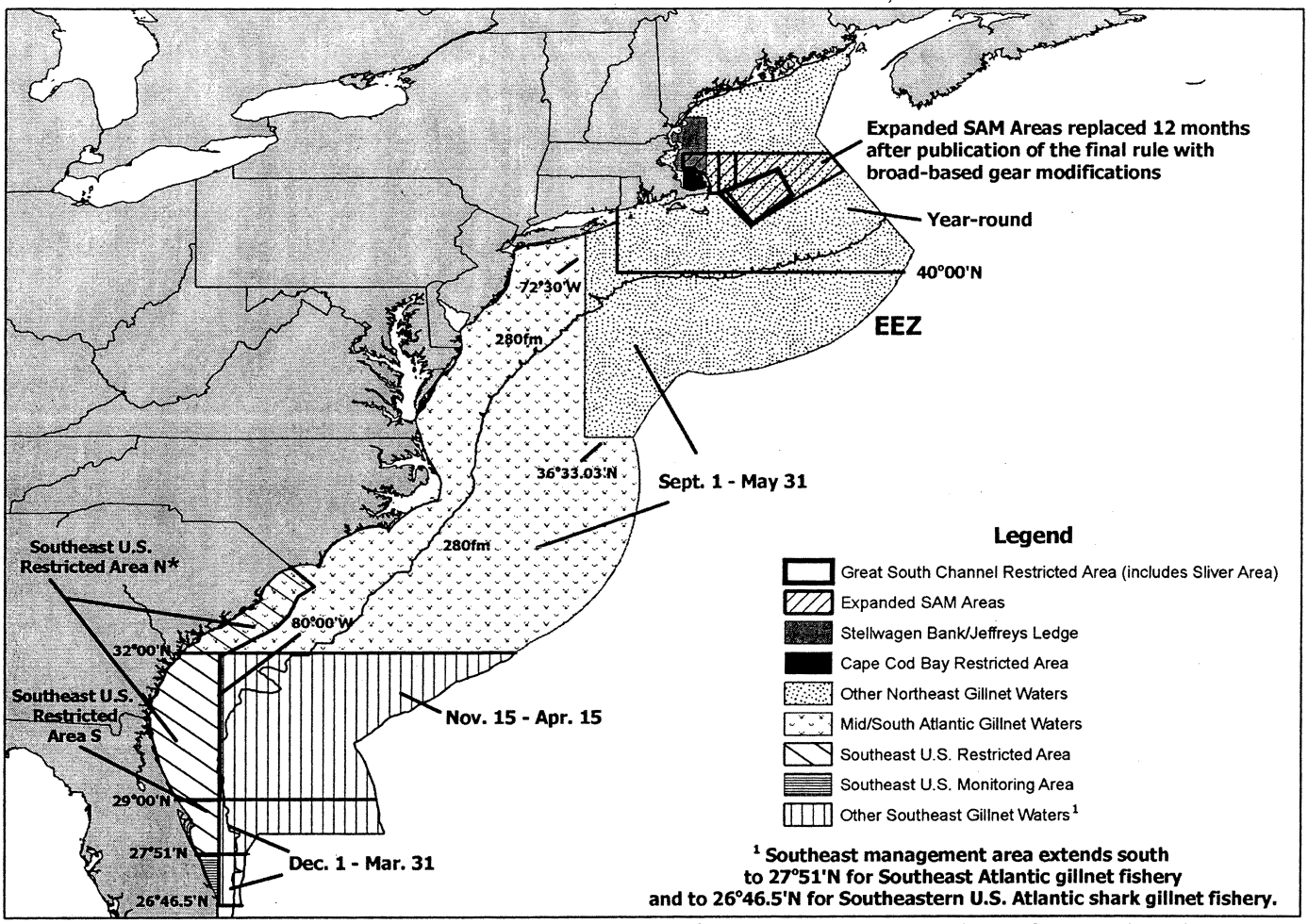
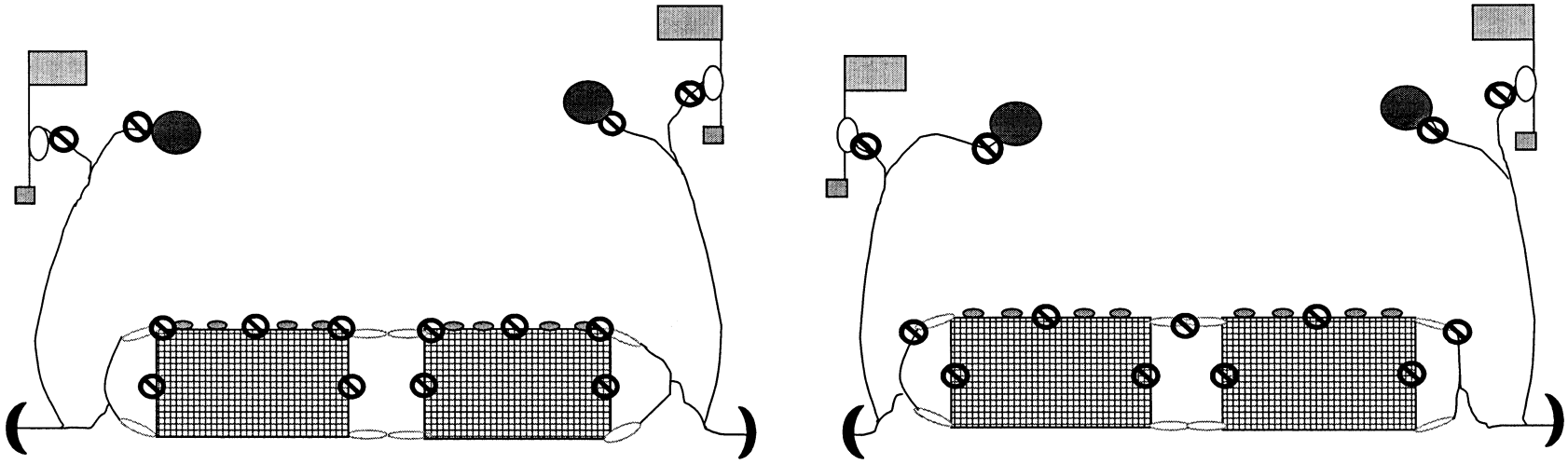


Figure 2. ALWTRP regulated gillnet waters.



* Includes area created by a recent Southeast ALWTRP action (The area north of 32°00' N lat. is included in the Southeast U.S. Restricted Area from Nov. 15 - April 15, and Mid/South Atlantic Gillnet Waters from Sept. 1 - Nov. 14 and April 16 - May 31)

Figure 3. Gillnet configurations options for net panel weak links.



Configuration 1:

For all variations in panel size:

- One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and
- One weak link must be placed as close as possible to each end of the net panels on the floatline.

For net panels 50 fathoms or less in length:

- One weak link must be placed in the center of the floatline.

For net panels greater than 50 fathoms in length:

- One weak link must be placed at least every 25 fathoms along the floatline.

Configuration 2:

For all variations in panel size:

- One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and
- One weak link must be placed between the floatline tie-loops between net panels; and
- One weak link must be placed where the floatline tie loops attach to the bridle, buoy line, or groundline at each end of a net string.

For net panels 50 fathoms or less in length:

- One weak link must be placed in the center of the floatline.

For net panels greater than 50 fathoms in length:

- One weak link must be placed at least every 25 fathoms along the floatline.

Key:

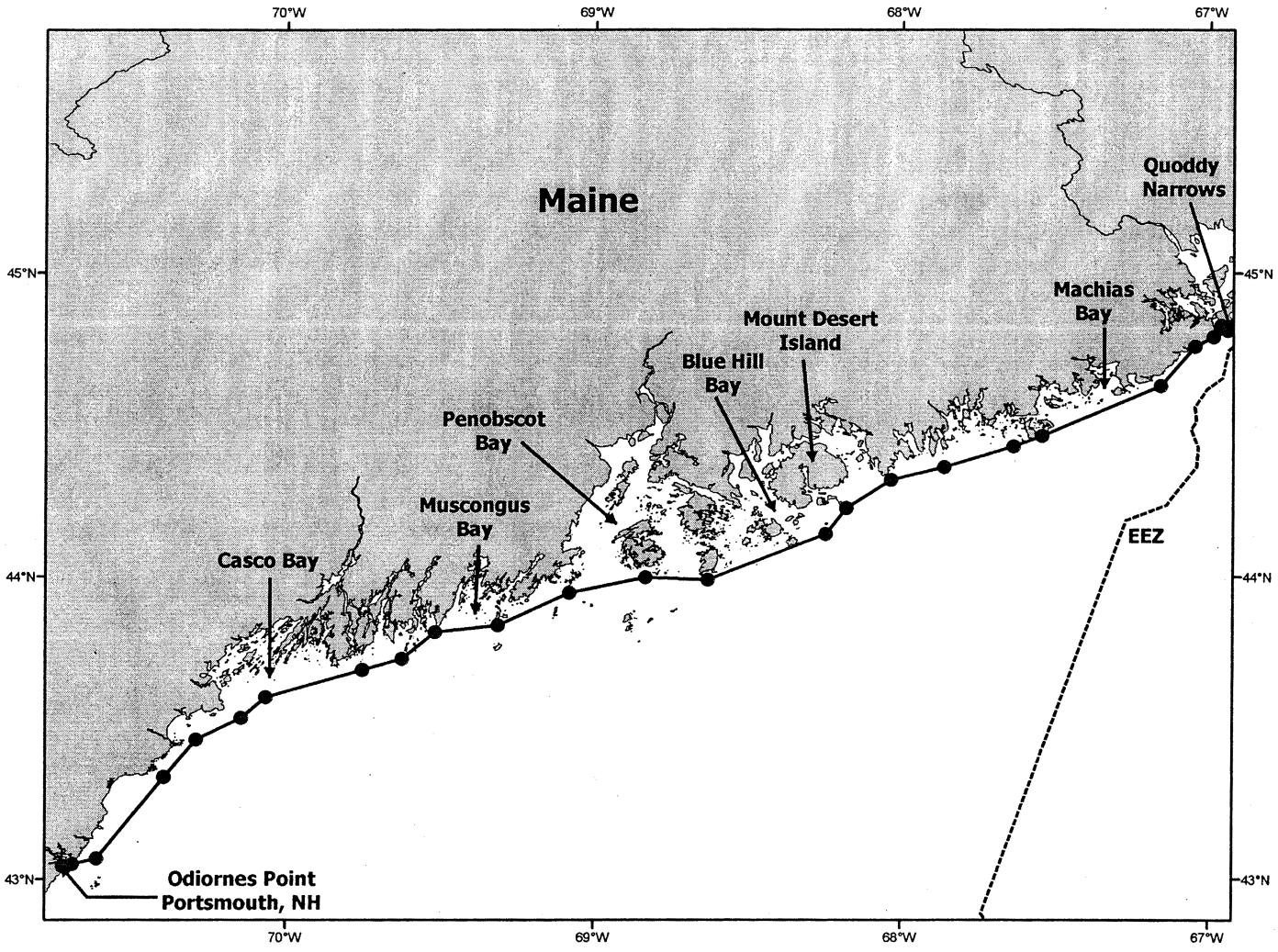
Weak links

Floats

Tie loops

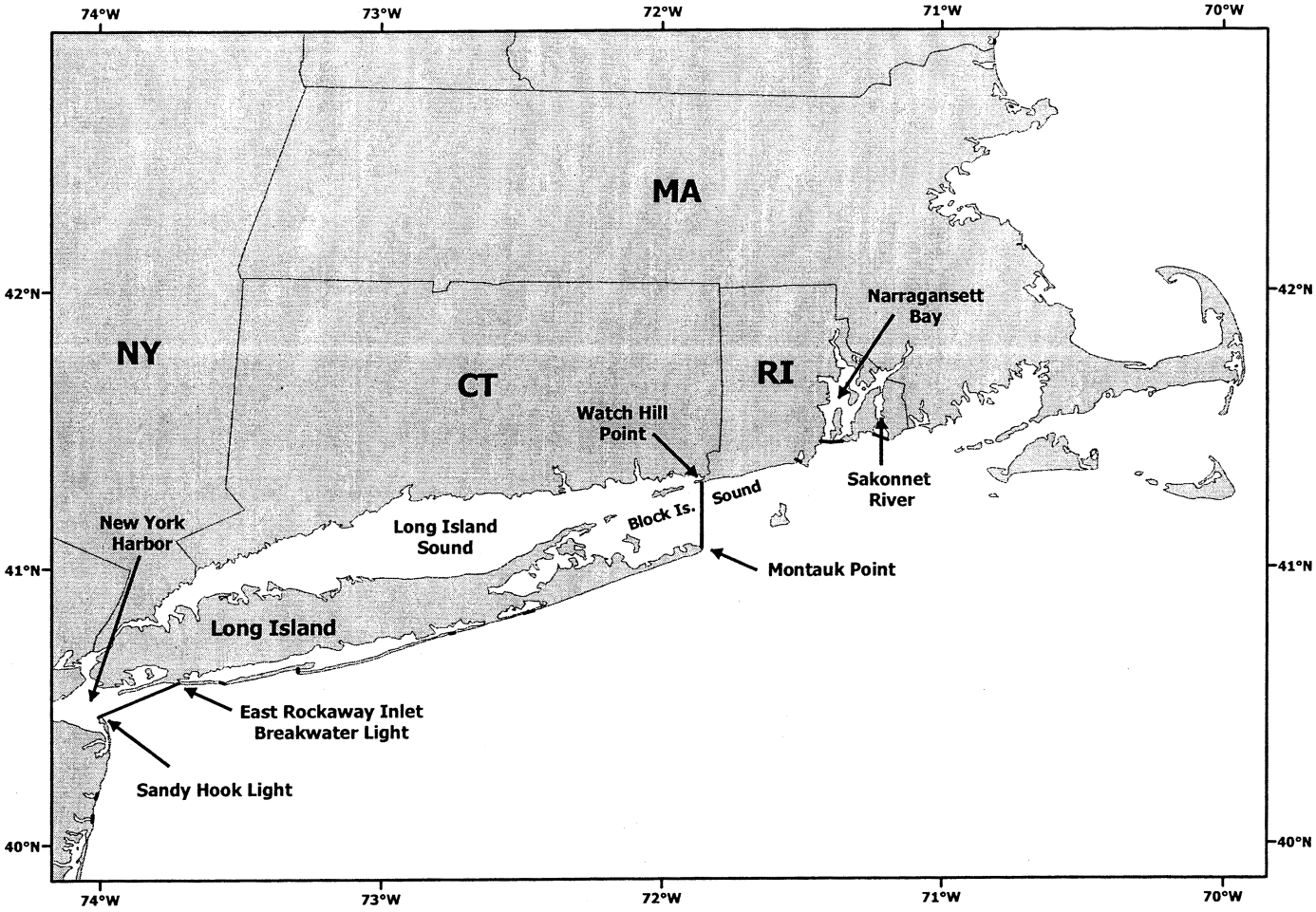
****Note: Individual weak links are not required in locations where rope of appropriate breaking strength is used. Additionally, if no up and down line is present, then weak links are not required at that location.**

Figure 4. Exemption line for the State of Maine (shown as the solid, dark line). Buoys and other landmarks are shown as points along the line. The eastern boundary of the Exclusive Economic Zone (EEZ) is represented by the dashed line.



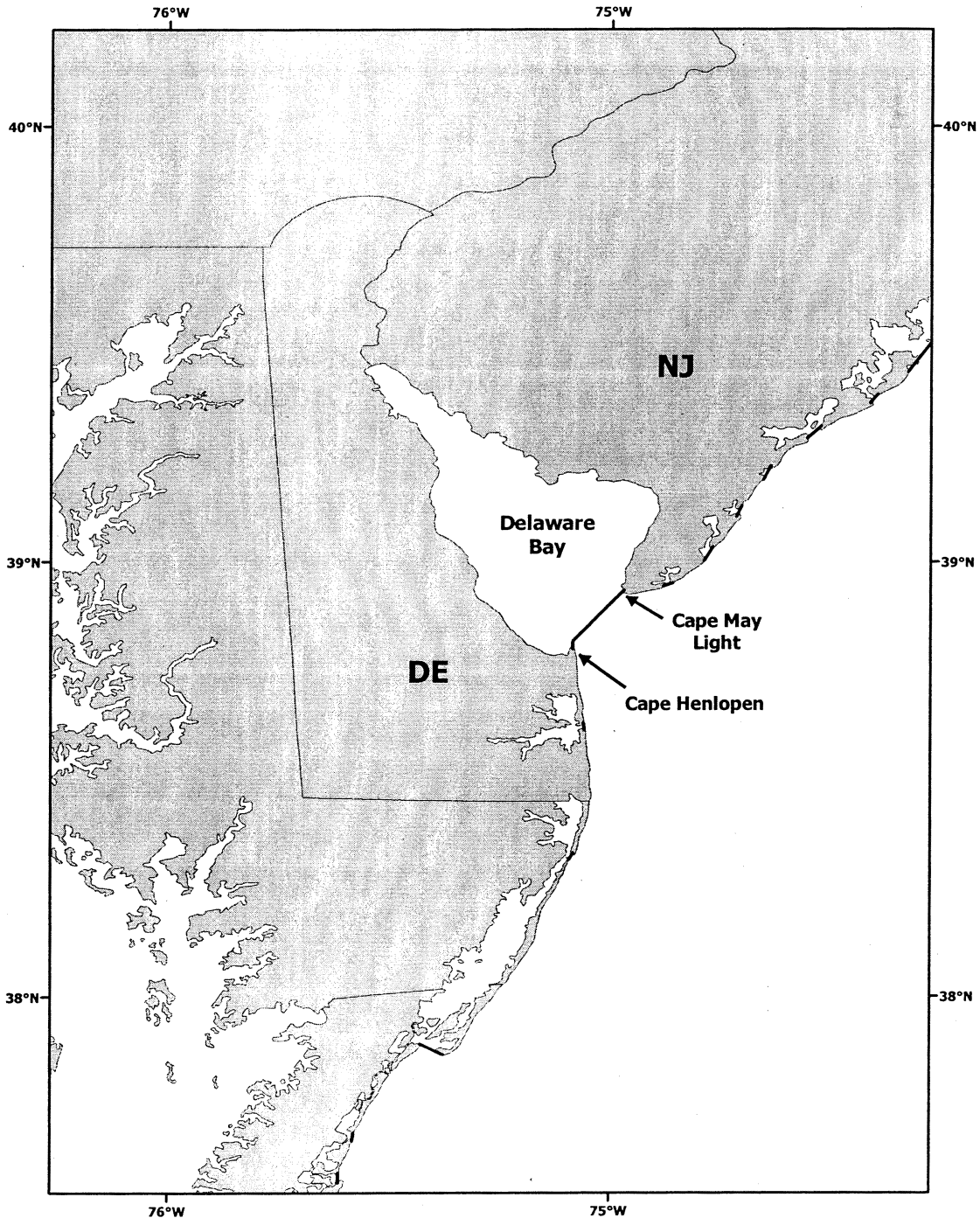
Note: See final ALWTRP regulations for exact exemption line coordinates.

Figure 5. Exemption lines for the coastal waters of Massachusetts, Rhode Island, Connecticut, and New York (shown as solid, dark lines).



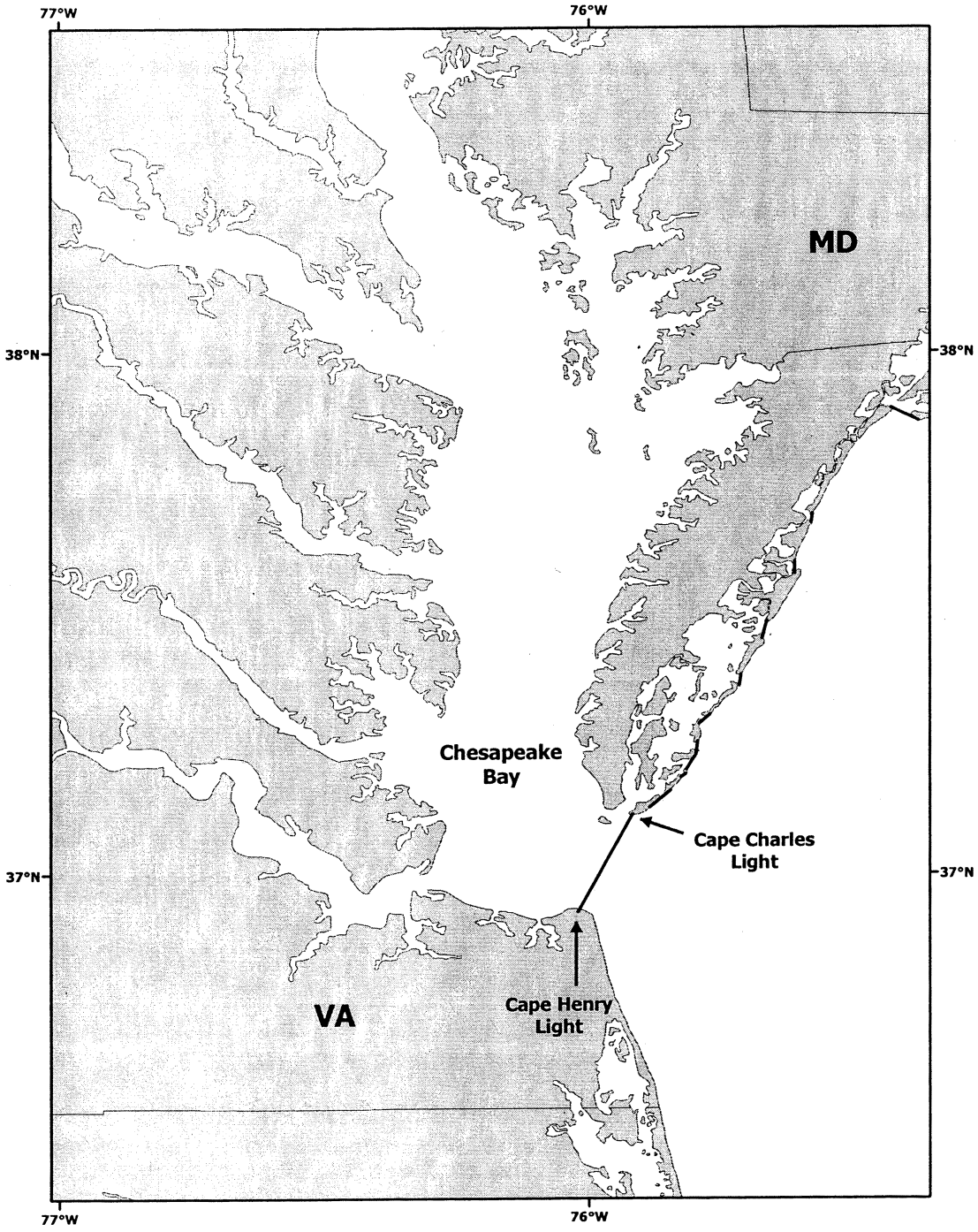
Note: See final ALWTRP regulations for exact exemption line coordinates.

Figure 6. Exemption lines for Delaware Bay and nearby inlets (shown as solid, dark lines).



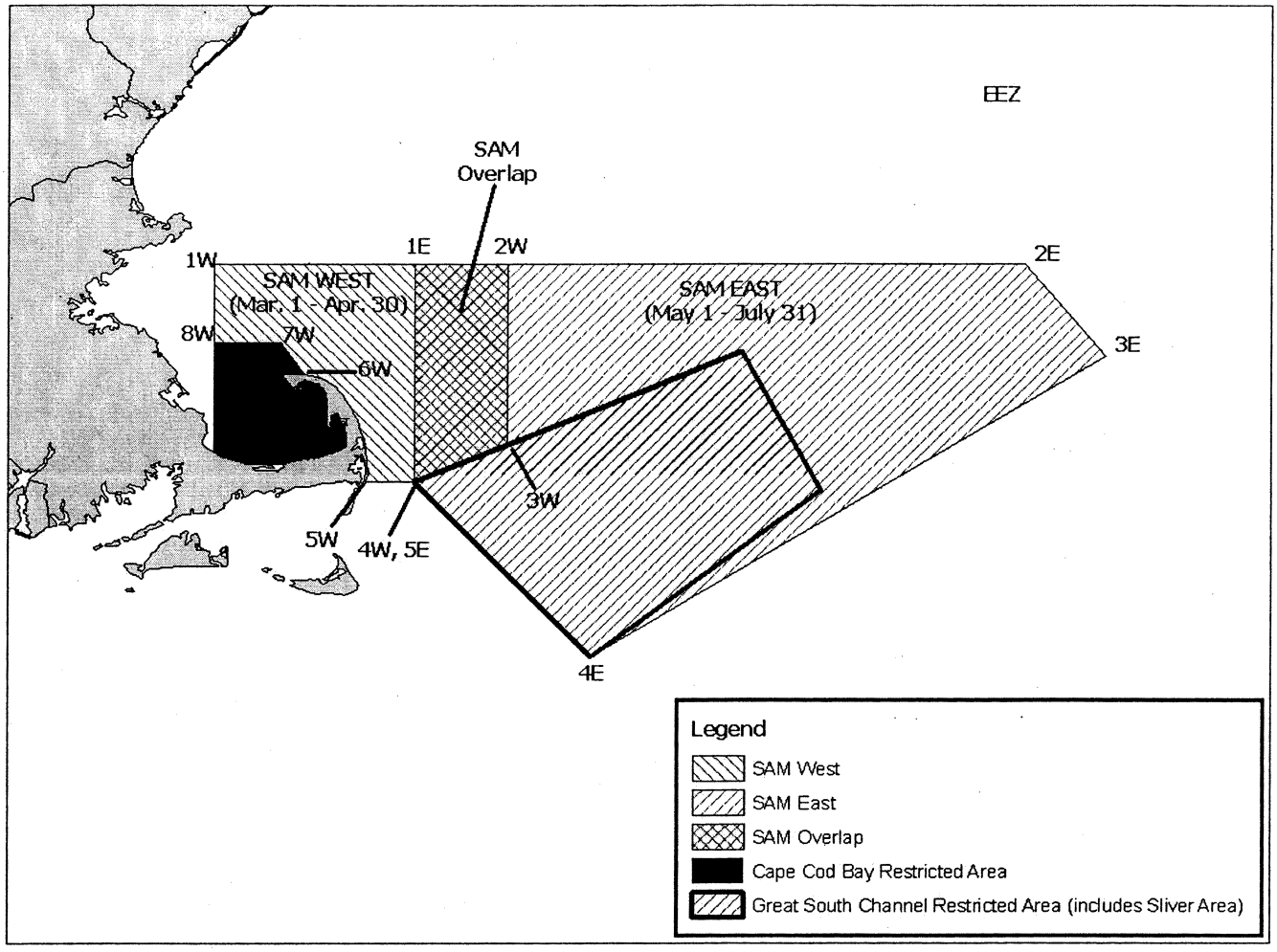
Note: See final ALWTRP regulations for exact exemption line coordinates.

Figure 7. Exemption lines for the Chesapeake Bay and nearby inlets (shown as solid, dark lines).



Note: See final ALWTRP regulations for exact exemption line coordinates.

Figure 8. Expanded ALWTRP Seasonal Area Management (SAM) Areas.



BILLING CODE 3510–22–C

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List of Subjects

50 CFR Part 229

Administrative practice and procedure, Confidential business information, Fisheries, Marine mammals, Reporting and recordkeeping requirements.

50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 21, 2007.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 229, 635, and 648 are amended to read as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for 50 CFR part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*; § 229.32(f) also issued under 16 U.S.C. 1531 *et seq.*

■ 2. In § 229.2, the definitions of ''Lobster trap'' and ''Lobster trap trawl'' are removed. The definitions of ''Anchored gillnet'', ''Gillnet'', ''Groundline'', ''Neutrally buoyant line'', ''Sinking line'', and ''Stowed'' are revised in alphabetical order to read as follows below. The definitions of ''Bitter end'', ''Bottom portion of the line'', ''Tie loops'', ''Trap/Pot'', ''Trap/pot trawl'', and ''Up and down line'' are added in alphabetical order to read as follows:

§ 229.2 Definitions.

* * * * *

Anchored gillnet means any gillnet gear, including an anchored float gillnet, sink gillnet or stab net, that is set anywhere in the water column and which is anchored, secured, or weighted to the bottom of the sea. Also called a set gillnet.

* * * * *

Bitter end means the end of a line that detaches from a weak link.

Bottom portion of the line means, for buoy lines, the portion of the line in the water column that is closest to the fishing gear.

* * * * *

Gillnet means fishing gear consisting of a wall of webbing (meshes) or nets, designed or configured so that the webbing (meshes) or nets are placed in the water column, usually held approximately vertically, and are designed to capture fish by entanglement, gilling, or wedging. The term ''gillnet'' includes gillnets of all types, including but not limited to sink gillnets, other anchored gillnets (e.g., anchored float gillnets, stab, and set nets), and drift gillnets. Gillnets may or may not be attached to a vessel.

Groundline, with reference to trap/pot gear, means a line connecting traps in a trap trawl, and, with reference to gillnet gear, means a line connecting a gillnet or gillnet bridle to an anchor or buoy line.

* * * * *

Neutrally buoyant line means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column (See also *Sinking line*).

* * * * *

Sinking line means, for both groundlines and buoy lines, line that has a specific gravity greater than or equal to 1.030, and, for groundlines only, does not float at any point in the water column (See also *Neutrally buoyant line*).

* * * * *

Stowed means traps/pots and gillnets that are unavailable for immediate use and further, all gillnets are stored in accordance with the following:

(1) All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum, and all buoys larger than 6 inches (15.24 cm) in diameter, high flyers, and anchors are disconnected; and

(2) Any other method of stowage authorized in writing by the Regional Administrator and subsequently published in the **Federal Register**.

* * * * *

Tie loops means the loops on a gillnet panel used to connect net panels to the buoy line, groundline, bridle or each other.

Trap/Pot means any structure or other device, other than a net or longline, that is placed, or designed to be placed, on the ocean bottom and is designed for or is capable of, catching species including but not limited to lobster, crab (red, Jonah, rock, and blue), hagfish, finfish (black sea bass, scup, tautog, cod, haddock, pollock, redfish (ocean perch), and white hake), conch/whelk, and shrimp.

Trap/pot trawl means two or more trap/pots attached to a single groundline.

Up and down line means the line that connects the float-line and lead-line at the end of each gillnet net panel.

* * * * *

■ 3. In § 229.3:

■ a. Redesignate paragraphs (l), (m), (n), (o), (p), (q), and (r) as paragraphs (m), (n), (o), (p), (q), (r), and (s), respectively; and

■ b. Paragraphs (h) through (k) are then revised and paragraph (l) is added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(h) It is prohibited to fish with or possess trap/pot gear in the areas and during the times specified in § 229.32 (c)(2) through (c)(9) unless the trap/pot gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (c)(1) through (c)(9), or unless the gear is stowed as specified in § 229.2.

(i) It is prohibited to fish with or possess anchored gillnet gear in the areas and during the times specified in § 229.32(d)(2) through (d)(7) unless that gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (d)(1) through (d)(7), or unless the gear is stowed as specified in § 229.2.

(j) It is prohibited to fish with or possess drift gillnet gear in the areas and during the times specified in § 229.32(e)(1) through (e)(6) unless the drift gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), and (e)(1) through (e)(6), or unless the gear is stowed as specified in § 229.2.

(k) It is prohibited to fish with or possess gillnet gear in the areas and during the times specified in § 229.32(f)(1) and (g)(1) unless the gillnet gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(ii), (b)(2)(iii), (f)(2)(ii), (f)(2)(iv), (f)(2)(v), and (g)(3), or for (g)(3) unless the gear is stowed as specified in § 229.2.

(l) It is prohibited to fish with or possess shark gillnet gear (i.e. gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the areas and during the times specified in § 229.32(f)(1), (g)(1) and (h)(1) unless the gear complies with the marking requirements, closures, modifications, and restrictions specified in § 229.32(b)(2)(i), (b)(2)(iii), (f)(2)(ii), (f)(2)(iii), (f)(2)(v), (g)(2), and (h)(2), or for the gear marking requirements for (h)(2) unless the gear is stowed as specified in § 229.2.

* * * * *

■ 4. Section § 229.32 is amended as follows:

■ A. Paragraphs (f) introductory text, (f)(2), and (f)(3) are revised effective November 5, 2007.

■ B. Amendments to § 229.32 (f)(1)(iii) and (g)(4)(i)(B)(*1*)(*vi*) are added effective November 5, 2007 to April 5, 2008.

■ C. Paragraphs (f)(1)(ii) and (g)(4)(i)(B)(*1*)(*iii*) are removed and reserved effective November 5, 2007.

§ 229.32 Atlantic large whale take reduction plan regulations.

* * * * *

(f) Restrictions applicable to the Southeast U.S. Restricted Area and the Southeast U.S. Monitoring Area—

(1) * * *

(i) * * *

(iii) *Southeast U.S. Monitoring Area—(A) Management areas and restricted periods.* From December 1 through March 31, the Southeast U.S. Monitoring Area consists of the area from 27°51′ N. lat. south to 26°46.50′ N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00′ W. long., unless the Assistant Administrator changes that area in accordance with paragraph (g) of this section.

(B) *Vessel monitoring systems and observer requirements.* No person may fish for shark with gillnet with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area during the restricted period unless the person or vessel satisfies the vessel monitoring system and observer requirements listed below.

(*1*) *Vessel monitoring systems.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area during the restricted period unless the operator of the vessel is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(*2*) *At-sea observer coverage.* NMFS may select any shark gillnet vessel (i.e., vessel fishing gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) regulated under § 229.32 to carry an observer. When selected, vessels are required to take observers on a mandatory basis in compliance with the requirements for at-sea observer coverage found in 50 CFR 229.7. Any vessel that fails to carry an observer once selected is prohibited from fishing pursuant to 50 CFR part 635.

(2) *Gear marking requirements.* From November 15 through March 31 of the following year, no person may fish with gillnet gear in the Southeast U.S. Restricted Area and Southeast U.S. Monitoring Area unless that gear is marked according to the gear marking code specified under paragraph (b) of this section. All buoy lines must be marked within 2 ft (0.6m) of the top of the buoy line and midway along the length of the buoy line. From November 15, 1999, each net panel must be marked along both the float line and the lead line at least once every 100 yards (92.4m).

(3) *Observer requirement.* No person may fish for shark with gillnet with webbing of 5 inches (12.7cm) or greater stretched mesh in the Southeast U.S. Restricted Area from December 1 through March 31 south of 29°00′ N. lat. unless the operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip, in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29° 00′ N. lat., no person may fish with such gillnet gear aboard that vessel in the Southeast U.S. Restricted Area unless an observer is on board that vessel during the trip.

* * * * *

(g) * * *

(4) * * *

(i) * * *

(B) * * *

(*1*) * * *

(*vi*) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. One weak link must be placed in the center of the floatline and one weak link must be placed in the center of each of the up and down lines at both ends of the net panel. Additionally, one weak link must be placed as close as possible to each end of the net panels on the floatline; or one weak link must be placed between floatline tie-loops between net panels and one weak link must be placed where the floatline tie-loops attach to the bridle, buoy line, or groundline at each end of a net string.

* * * * *

■ 5. Revise § 229.32, effective April 5, 2008 except for paragraphs (c)(5)(ii)(B), (c)(6)(ii)(B), (c)(7)(ii)(C), (c)(8)(ii)(B), (c)(9)(ii)(B), (d)(6)(ii)(D), and (d)(7)(ii)(D), which will be effective October 5, 2008, to read as follows:

§ 229.32 Atlantic large whale take reduction plan regulations.

(a)(1) *Purpose and scope.* The purpose of this section is to implement the Atlantic Large Whale Take Reduction Plan to reduce incidental mortality and serious injury of fin, humpback, and right whales in specific Category I and Category II commercial fisheries from Maine through Florida. The measures identified in the Atlantic Large Whale Take Reduction Plan are also intended to benefit minke whales, which are not designated as a strategic stock, but are known to be taken incidentally in gillnet and trap/pot fisheries. The gear types affected by this plan include gillnets (e.g., anchored, drift, and shark) and traps/pots.

(2) *Regulated waters.* The regulations in this section apply to all U.S. waters in the Atlantic except for the areas exempted in paragraph (a)(3) of this section.

(3) *Exempted waters.* (i) The regulations in this section do not apply to waters landward of the first bridge over any embayment, harbor, or inlet in Massachusetts.

(ii) The regulations in this section do not apply to waters landward of the 72 COLREGS demarcation lines (International Regulations for Preventing Collisions at Sea, 1972), as depicted or noted on nautical charts published by the National Oceanic and Atmospheric Administration (Coast Charts 1:80,000 scale), and as described in 33 CFR part 80 with the exception of the COLREGS lines for Casco Bay (Maine), Portsmouth Harbor (New Hampshire), Gardiners Bay and Long Island Sound (New York), and the state of Massachusetts.

(iii) *Other exempted waters.* The regulations in this section do not apply to waters landward of the following lines:

Maine

A line connecting the following points (Quoddy Narrows/U.S.-Canada border to Odiornes Pt., Portsmouth, New Hampshire):

44°49.67′ N. lat., 66°57.77′ W. long. (R N ''2'', Quoddy Narrows)
44°48.64′ N. lat., 66°56.43′ W. long. (G ''1'' Whistle, West Quoddy Head)
44°47.36′ N. lat., 66°59.25′ W. long. (R N ''2'', Morton Ledge)
44°45.51′ N. lat., 67°02.87′ W. long. (R ''28M'' Whistle, Baileys Mistake)
44°37.70′ N. lat., 67°09.75′ W. long. (Obstruction, Southeast of Cutler)
44°27.77′ N. lat., 67°32.86′ W. long. (Freeman Rock, East of Great Wass Island)
44°25.74′ N. lat., 67°38.39′ W. long. (R ''2SR'' Bell, Seahorse Rock, West of Great Wass Island)
44°21.66′ N. lat., 67°51.78'' W. long. (R N ''2'', Petit Manan Island)
44°19.08′ N. lat., 68°02.05′ W. long. (R ''2S'' Bell, Schoodic Island)
44°13.55′ N. lat., 68°10.71′ W. long. (R ''8BI'' Whistle, Baker Island)
44°08.36′ N. lat., 68°14.75′ W. long. (Southern Point, Great Duck Island)
43°59.36′ N. lat., 68°37.95′ W. long. (R ''2'' Bell, Roaring Bull Ledge, Isle Au Haut)
43°59.83′ N. lat., 68°50.06'' W. long. (R ''2A'' Bell, Old Horse Ledge)
43°56.72′ N. lat., 69°04.89′ W. long. (G ''5TB'' Bell, Two Bush Channel)

43°50.28′ N. lat., 69°18.86′ W. long. (R ''2 OM'' Whistle, Old Man Ledge)
43°48.96′ N. lat., 69°31.15′ W. long. (GR C ''PL'', Pemaquid Ledge)
43°43.64′ N. lat., 69°37.58′ W. long. (R ''2BR'' Bell, Bantam Rock)
43°41.44′ N. lat., 69°45.27′ W. long. (R ''20ML'' Bell, Mile Ledge)
43°36.04′ N. lat., 70°03.98′ W. long. (RG N ''BS'', Bulwark Shoal)
43°31.94′ N. lat., 70°08.68′ W. long. (G ''1'', East Hue and Cry)
43°27.63′ N. lat., 70°17.48′ W. long. (RW ''WI'' Whistle, Wood Island)
43°20.23′ N. lat., 70°23.64′ W. long. (RW ''CP'' Whistle, Cape Porpoise)
43°04.06′ N. lat., 70°36.70′ W. long. (R N ''2MR'', Murray Rock)
43°02.93′ N. lat., 70°41.47′ W. long. (R ''2KR'' Whistle, Kittery Point)
43°02.55′ N. lat., 70°43.33′ W. long. (Odiornes Pt., Portsmouth, New Hampshire)

New Hampshire

A line from 42°53.691′ N. lat., 70°48.516′ W. long. to 42°53.516′ N. lat., 70°48.748′ W. long. (Hampton Harbor)
A line from 42°59.986′ N. lat., 70°44.654′ W. long. to 42°59.956′ N., 70°44.737′ W. long. (Rye Harbor)

Rhode Island

A line from 41°22.441′ N. lat., 71°30.781′ W. long. to 41°22.447′ N. lat., 71°30.893′ W. long. (Pt. Judith Pond Inlet)
A line from 41°21.310′ N. lat., 71°38.300′ W. long. to 41°21.300′ N. lat., 71°38.330′ W. long. (Ninigret Pond Inlet)
A line from 41°19.875′ N. lat., 71°43.061′ W. long. to 41°19.879′ N. lat., 71°43.115′ W. long. (Quonochontaug Pond Inlet)
A line from 41°19.660′ N. lat., 71°45.750′ W. long. to 41°19.660′ N. lat., 71°45.780′ W. long. (Weekapaug Pond Inlet)

New York

A line that follows the territorial sea baseline through Block Island Sound (Watch Hill Point, RI, to Montauk Point, NY)

South Carolina

A line from 32°34.717′ N. lat., 80°08.565′ W. long. to 32°34.686′ N. lat., 80°08.642′ W. long. (Captain Sams Inlet)

(4) *Sinking and/or neutrally buoyant groundline exemption.* The fisheries regulated under this section are exempt from the requirement to have groundlines composed of sinking and/or neutrally buoyant line if their groundline is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches—Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canaveral, 1:449,659) and 11460(Cape Canaveral to Key West, 1:466,940)).

(5) *Net panel weak link and anchoring exemption.* The anchored gillnet fisheries regulated under this section are exempt from the requirement to install weak links in the net panel and anchor each end of the net string if the float-line is at a depth equal to or greater than 280 fathoms (1,680 ft or 512.1 m) (as shown on NOAA charts 13200 (Georges Bank and Nantucket Shoals, 1:400,000), 12300 (NY Approaches—Nantucket Shoals to Five Fathom Bank, 1:400,000), 12200 (Cape May to Cape Hatteras, 1:419,706), 11520 (Cape Hatteras to Charleston, 1:432,720), 11480 (Charleston Light to Cape Canaveral, 1:449,659) and 11460(Cape Canaveral to Key West, 1:466,940)).

(b) *Gear marking requirements.* (1) Specified gear consists of trap/pot gear and gillnet gear set in specified areas.

(2) *Specified areas.* The following areas are specified for gear marking purposes: Northern Inshore State Trap/Pot Waters, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Northern Nearshore Trap/Pot Waters Area, Great South Channel Restricted Trap/Pot Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, Southern Nearshore Trap/Pot Waters Area, Offshore Trap/Pot Waters Area, Other Northeast Gillnet Waters Area, Mid/South Atlantic Gillnet Waters Area, Other Southeast Gillnet Waters Area, Southeast U.S. Restricted Area, and Southeast U.S. Monitoring Area.

(i) *Requirements for Shark Gillnet Gear in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area and Other Southeast Gillnet Waters*—(A) *Color code.* Shark gillnet gear (i.e., gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area, and Other Southeast Gillnet Waters must be marked with the appropriate color code to designate gear types and areas as follows:

(1) *Gear type code.* Shark gillnet gear must be marked with a green marking.

(*2*) *Area code.* Shark gillnet gear set in the Southeast U.S. Restricted Area S, Southeast U.S. Monitoring Area, and Other Southeast Gillnet Waters must be marked with a blue marking.

(B) *Markings.* All specified gear in specified areas must be marked with two color codes, one designating the gear type, the other indicating the area where the gear is set. Each color of the two-color code must be permanently marked on or along the line or lines specified below under paragraphs (b)(2)(i)(C) and (D) of this section. Each color mark of the color codes must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long. The two color marks must be placed within 6 inches (15.2 cm) of each other. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(C) *Buoy line markings.* All buoy lines greater than 4 feet (1.22 m) long must be marked within 2 feet (0.6 m) of the top of the buoy line (closest to the surface) and midway along the length of the buoy line.

(D) *Net panel markings.* Each gillnet net panel must be marked along both the floatline and the leadline at least once every 100 yards (91.4 m), unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(ii) *Requirements for other specified areas.* Any person who owns or fishes with specified gear in the other specified areas must mark that gear in accordance with paragraphs (b)(2)(ii)(A), (b)(2)(ii)(B), and (b)(2)(iii) of this section, unless otherwise required by the Assistant Administrator under paragraph (i) of this section.

(A) *Color code.* Specified gear must be marked with the appropriate colors to designate gear-types and areas as follows:

(*1*) Trap/pot gear in the Northern Inshore State Trap/Pot Waters Area, the Cape Cod Bay Restricted Area, the Stellwagen Bank/Jeffreys Ledge Restricted Area, the Great South Channel Restricted Trap/Pot Area where it overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Northern Nearshore Trap/Pot

Waters Area must be marked with a red marking.

(*2*) Trap/pot gear in the Southern Nearshore Trap/Pot Waters Area must be marked with an orange marking.

(*3*) Trap/pot gear in the Great South Channel Restricted Trap/Pot Area where it overlaps with LMA ⅔ Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and the Offshore Trap/Pot Waters Area must be marked with a black marking.

(*4*) Anchored and drift gillnet gear in the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and Other Northeast Gillnet Waters Area must be marked with a green marking.

(*5*) Anchored and drift gillnet gear in the Mid/South Atlantic Gillnet Waters Area must be marked with a blue marking.

(*6*) Gillnet gear (except gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh) in the Southeast U.S. Restricted Area S and Other Southeast Gillnet Waters must be marked with a yellow marking.

(B) *Markings.* All specified gear in specified areas must be marked with one color code described in paragraph (b)(2)(ii)(A) of this section (which indicates the gear type and general area where the gear is set). Each color code must be permanently affixed on or along the line or lines. Each color code must be clearly visible when the gear is hauled or removed from the water. Each mark must be at least 4 inches (10.2 cm) long and be placed midway on the buoy line in the water column. If the color of the rope is the same as or similar to a color code, a white mark may be substituted for that color code. In marking or affixing the color code, the line may be dyed, painted, or marked with thin colored whipping line, thin colored plastic, or heat-shrink tubing, or other material; or a thin line may be woven into or through the line; or the line may be marked as approved in writing by the Assistant Administrator. A brochure illustrating the techniques for marking gear is available from the Regional Administrator, NMFS, Northeast Region upon request.

(iii) *Requirements for all specified areas*—(A) *Surface buoy markings.* Trap/pot and gillnet gear regulated under this section must mark all surface buoys to identify the vessel or fishery with one of the following: The owner's motorboat registration number, the owner's U.S. vessel documentation number, the federal commercial fishing permit number, or whatever positive identification marking is required by the vessel's home-port state. When marking of surface buoys is not already required by state or federal regulations, the letters and numbers used to mark the gear to identify the vessel or fishery must be at least 1 inch (2.5 cm) in height in block letters or arabic numbers in a color that contrasts with the background color of the buoy. A brochure illustrating the techniques for marking gear is available upon from the Regional Administrator, NMFS, Northeast Region upon request.

(3) *Changes to requirements.* If the Assistant Administrator revises the gear marking requirements in accordance with paragraph (i) of this section, the gear must be marked in compliance with those requirements.

(c) *Restrictions applicable to trap/pot gear in regulated waters*—(1) *Universal trap/pot gear requirements.* In addition to the area-specific measures listed in paragraphs (c)(2) through (c)(9) of this section, all trap/pot gear in regulated waters, including the Northern Inshore State Trap/Pot Waters Area, must comply with the universal gear requirements listed here.[1] The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *No buoy line floating at the surface.* No person or vessel may fish with trap/pot gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, floating line may be used between these objects.

(ii) *No wet storage of gear.* Trap/pot gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay restricted area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Area-specific gear or vessel requirements during the winter restricted period.* No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the winter restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below for the winter restricted period, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Winter restricted period.* The winter restricted period for the Cape Cod Bay Restricted Area is from January 1 through May 15 of each year unless the Assistant Administrator changes this period in accordance with paragraph (i) of this section.

(B) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The breaking strength of the weak links must not exceed 500 lb (226.8 kg).

(*2*) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(C) *Single traps and multiple-trap trawls.* Single traps and three-trap trawls are prohibited. All traps must be set in either a two-trap string or in a trawl of four or more traps. A two-trap string must have no more than one buoy line.

(D) *Buoy lines.* All buoy lines must be composed of sinking and/or neutrally buoyant line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(E) *Groundlines.* All groundlines must be comprised entirely of sinking and/or neutrally buoyant line. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Area-specific gear or vessel requirements for the other restricted period.* No person or vessel may fish with or possess trap/pot gear in the Cape Cod Bay Restricted Area during the other restricted period unless that

[1] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

gear complies with the gear marking requirements specified in paragraph (b) of this section and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section as well as the area-specific requirements listed below for the other restricted period, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section.

(B) *Gear and vessel requirements*—(*1*) *State-water portion.* No person or vessel may fish with or possess trap/pot gear in the state-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Inshore State Trap/Pot Waters Area listed in paragraph (c)(6) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(*2*) *Federal-water portion.* No person or vessel may fish with or possess trap/pot gear in the Federal-water portion of the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the requirements for the Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Restricted Trap/Pot Area*—(i) *Area.* The Great South Channel Restricted Trap/Pot Area consists of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a) unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period.* The spring restricted period for the Great South Channel Restricted Trap/Pot Area is from April 1 through June 30 of each year unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the spring restricted period, no person or vessel may fish with, set, or possess trap/pot gear in this Area unless the Assistant Administrator specifies gear modifications or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period.* The other restricted period for the Great South Channel Restricted Trap/Pot Area is July 1 through March 31, unless the Assistant Administrator revises this period in accordance with paragraph (i) of this section. During the other restricted period, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess trap/pot gear in the Great South Channel Restricted Trap/Pot Area unless that gear complies with the requirements listed for Northern Nearshore Trap/Pot Waters Area in paragraph (c)(7) of this section where the Great South Channel Restricted Trap/Pot Area overlaps with Lobster Management Area (LMA) 2 and the Outer Cape LMA (as defined in the American Lobster Fishery regulations in 50 CFR 697.18); the requirements listed for Offshore Trap/Pot Waters in paragraph (c)(5) of this section where the Great South Channel Restricted Trap/Pot Area overlaps with LMA 2/3 Overlap and LMA 3 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18); or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15′ N. lat. and west of 70°00′ W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the requirements listed for the Northern Nearshore Trap/Pot Waters Area specified in paragraph (c)(7) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Offshore Trap/Pot*[2] *Waters Area*—(i) *Area.* The Offshore Trap/Pot Waters Area includes all Federal waters of the EEZ Offshore Management Area 3 (including the area known as the Area ⅔ Overlap and Area ⅗ Overlap as defined in the American Lobster Fishery regulations at 50 CFR 697.18, with the exception of the Great South Channel Restricted Trap/Pot Area), and extending south along the 100-fathom (600-ft or 182.9-m) depth contour from 35°30′ N. lat. south to 27°51′ N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from

[2] Fishermen using red crab trap/pot gear should refer to § 229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links may not exceed 1,500 lb (680.4 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Offshore Trap/Pot Waters Area that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(5)(ii)(A) and (c)(5)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(6) *Northern Inshore State Trap/Pot Waters Area*—(i) *Area.* The Northern Inshore State Trap/Pot Waters Area includes the state waters of Rhode Island, Massachusetts, New Hampshire, and Maine, with the exception of Cape Cod Bay Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Inshore State Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted for this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other flotation devices to groundlines is prohibited.

(C) [Reserved]

(7) *Northern Nearshore Trap/Pot Waters Area*—(i) *Area.* The Northern Nearshore Trap/Pot Waters Area includes all Federal waters of EEZ Nearshore Management Area 1, Area 2, and the Outer Cape Lobster Management Area (as defined in the American Lobster Fishery regulations at 50 CFR 697.18), with the exception of the Great South Channel Restricted Trap/Pot Area, Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Northern Nearshore Trap/Pot Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from

the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links must not exceed 600 lb (272.2 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Single traps and multiple-trap trawls.* Single traps are prohibited. All traps must be set in trawls of two or more traps. All trawls up to and including five traps must have no more than one buoy line.

(C) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(D) [Reserved]

(8) *Southern Nearshore*[3] *Trap/Pot Waters Area*—(i) *Area.* The Southern Nearshore Trap/Pot Waters Area includes all state and Federal waters which fall within EEZ Nearshore Management Area 4, EEZ Nearshore Management Area 5, and EEZ Nearshore Management Area 6 (as defined in the American Lobster Fishery regulations in 50 CFR 697.18), and inside the 100-fathom (600-ft or 182.9-m) depth contour line from 35°30′ N lat. south to 27°51′ N lat. and extending inshore to the shoreline or exemption line, with the exception of those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that is east of a straight line from 41°18.2′ N. lat.,71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed here, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links may not exceed 600 lb (272.2 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements in paragraph (c)(1) of this section, requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess trap/pot gear in the Southern Nearshore Trap/Pot Waters Area that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(8)(ii)(A) and (c)(8)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise this period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(9) *Restrictions applicable to the red crab trap/pot fishery*—(i) *Area.* The red crab trap/pot fishery is regulated in the waters identified in paragraphs (c)(5)(i) and (c)(8)(i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from the U.S./Canada border south to a straight line from 41° 18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat., and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator revises these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as

[3] Fishermen using red crab trap/pot gear should refer to § 229.32(c)(9) for the restrictions applicable to red crab trap/pot fishery.

operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links may not exceed 2,000 lb (907.2 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area bounded on the north by a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, and bounded on the south by a line at 32°00′ N. lat., and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements listed in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator revises these requirements in accordance with paragraph (i) of this section.

(iv) *Seasonal area-specific gear or vessel requirements.* From November 15 to April 15, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from 32°00′ N. lat. south to 29°00′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(v) *Seasonal area-specific gear or vessel requirements.* From December 1 to March 31, no person or vessel may fish with or possess red crab trap/pot gear in the area identified in paragraph (c)(9)(i) of this section that overlaps an area from 29°00′ N. lat. south to 27°51′ N. lat. and east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal trap/pot gear requirements specified in paragraph (c)(1) of this section, and the area-specific requirements specified in paragraphs (c)(9)(ii)(A) and (c)(9)(ii)(B) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise that period and these requirements in accordance with paragraph (i) of this section.

(vi) [Reserved]

(d) *Restrictions applicable to anchored gillnet gear—(1) Universal anchored gillnet gear requirements.* In addition to the area-specific measures listed in paragraphs (d)(2) through (d)(7) of this section, all anchored gillnet gear in regulated waters must comply with the universal gear requirements listed here.[4] The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *No buoy line floating at the surface.* No person or vessel may fish with anchored gillnet gear that has any portion of the buoy line floating at the surface at any time when the buoy line is directly connected to the gear at the ocean bottom. If more than one buoy is attached to a single buoy line or if a high flyer and a buoy are used together on a single buoy line, sinking and/or neutrally buoyant line must be used between these objects.

(ii) *No wet storage of gear.* Anchored gillnet gear must be hauled out of the water at least once every 30 days.

(2) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the winter restricted period*—(A) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the winter restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Cape Cod Bay Restricted Area during the other restricted period unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2′ N. lat./69°02′ W. long., 41°43.5′ N. lat./69°36.3′ W. long., 42°10′ N. lat./68°31′ W. long., and 41°38′ N. lat./68°13′ W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (d)(4)(i) of this section. The Assistant Administrator

[4] Fishermen are also encouraged to maintain their buoy lines to be as knot-free as possible. Splices are considered to be less of an entanglement threat and are thus preferable to knots.

may change that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period.* The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator revises that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the spring restricted period, no person or vessel may set, fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 though March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements.* During the other restricted period, no person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Great South Channel Sliver Restricted Area*—(i) *Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N. lat./69°02′ W. long., 41°43.5′ N. lat./69°36.3′ W. long., 41°40′ N. lat./69°45′ W. long., and 41°00′ N. lat./69°05′ W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Great South Channel Sliver Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15′ N. lat. and west of 70°00′ W. long, and those waters exempted under paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraph (d)(6)(ii) of this section for the Other Northeast Gillnet Waters Area, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(6) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that overlaps an area from the U.S./Canada border south to a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations:

(*1*) *Configuration 1.* (*i*) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(*ii*) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(*iii*) One weak link must be placed as close as possible to each end of the net panels on the floatline; and

(*iv*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(*v*) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(*2*) *Configuration 2.* (*i*) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline or as the up and down line, or if no up and down line is present, then individual weak links are not required on the floatline or up and down line. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request; and

(*ii*) One weak link must be placed in the center of each of the up and down lines at both ends of the net panel; and

(*iii*) One weak link must be placed between the floatline tie loops between net panels; and

(*iv*) One weak link must be placed where the floatline tie loops attaches to the bridle, buoy line, or groundline at the end of a net string; and

(*v*) For net panels of 50 fathoms (300 ft or 91.4 m) or less in length, one weak link must be placed in the center of the floatline; or

(*vi*) For net panels greater than 50 fathoms (300 ft or 91.4 m) in length, one weak link must be placed at least every 25 fathoms (150 ft or 45.7 m) along the floatline.

(C) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(D) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4) of this section. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess anchored gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements listed in paragraphs (d)(6)(ii)(A) through (d)(6)(ii)(D) of this section, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(7) *Mid/South Atlantic Gillnet Waters*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess anchored gillnet gear in the Mid/South Atlantic Gillnet Waters unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the following area-specific requirements, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(A) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as operationally feasible and that meets the following specifications:

(*1*) The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) The breaking strength of the weak links must not exceed 1,100 lb (499.0 kg).

(*3*) Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision.

(B) *Net panel weak links.* The weak link requirements apply to all variations in panel size. All net panels must contain weak links that meet the following specifications:

(*1*) The breaking strength for each of the weak links must not exceed 1,100 lb (499.0 kg).

(*2*) The weak link must be chosen from the following list approved by NMFS: Plastic weak links or rope of appropriate breaking strength. If rope of appropriate breaking strength is used throughout the floatline then individual weak links are not required. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*3*) Weak links must be placed in the center of the floatline of each gillnet net panel up to and including 50 fathoms (300 ft or 91.4 m) in length, or at least every 25 fathoms (150 ft or 45.7 m) along the floatline for longer panels.

(C) *Additional anchoring system and net panel weak link requirements.* All gillnets must return to port with the vessel unless the gear meets the following specifications:

(*1*) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) *Net panel weak links.* Net panel weak links must meet the specifications in this paragraph. The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configurations found in paragraph (d)(6)(ii)(B)(*1*) or (d)(6)(ii)(B)(*2*) of this section.

(*3*) *Additional provision for North Carolina.* All gillnets set 300 yards (274.3 m) or less from the shoreline in North Carolina must meet the anchoring system and net panel weak link requirements in paragraphs (d)(7)(ii)(C)(*1*) and (d)(7)(ii)(C)(*2*) of this section, or the following:

(*i*) The entire net string must be less than 300 yards (274.3 m) from shore.

(*ii*) The breaking strength of each weak link must not exceed 600 lb (272.2 kg). The weak link requirements apply to all variations in panel size.

(*iii*) All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(*1*) or (d)(6)(ii)(B)(*2*) of this section.

(*iv*) Regardless of the number of net panels, all anchored gillnets must be secured at the offshore end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having a holding capacity equal to or greater than an 8-lb (3.6-kg) Danforth-style anchor, and at the inshore end of the net string with a dead weight equal to or greater than 31 lb (14.1 kg).

(D) *Groundlines.* On or before October 6, 2008, all groundlines must be comprised entirely of sinking and/or neutrally buoyant line unless exempted from this requirement under paragraph (a)(4). The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(8) [Reserved]

(e) *Restrictions applicable to drift gillnet gear*—(1) *Cape Cod Bay Restricted Area*—(i) *Area.* The Cape Cod Bay Restricted Area consists of the Cape Cod Bay right whale critical habitat area specified under 50 CFR 226.203(b), unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(ii) *Closure during the winter restricted period*—(A) *Winter restricted period.* The winter restricted period for this area is from January 1 through May 15 of each year, unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the winter restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in §229.2. The Assistant Administrator may waive this closure for the remaining portion of the winter restricted period in any year through a notification in the **Federal Register** if NMFS determines that right whales have left the restricted area and are unlikely to return for the remainder of the season.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the Cape Cod Bay Restricted Area is from May 16 through December 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area specific gear or vessel requirements.* During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Cape Cod Bay Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Cape Cod Bay Restricted Area during the other restricted period unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Cape Cod Bay Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(2) *Great South Channel Restricted Gillnet Area*—(i) *Area.* The Great South Channel Restricted Gillnet Area consists of the area bounded by lines connecting the following four points: 41°02.2′ N. lat./69°02′ W. long., 41°43.5′ N. lat./69°36.3′ W. long., 42°10′ N. lat./68°31′ W. long., and 41°38′ N. lat./68°13′ W. long. This area includes most of the Great South Channel right whale critical habitat area specified under 50 CFR 226.203(a), with the exception of the sliver along the western boundary described in paragraph (e)(3)(i) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Closure during the spring restricted period*—(A) *Spring restricted period.* The spring restricted period for the Great South Channel Restricted Gillnet Area is from April 1 through June 30 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Closure.* During the spring restricted period, no person or vessel may set, fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless the Assistant Administrator specifies gear restrictions or alternative fishing practices in accordance with paragraph (i) of this section and the gear or practices comply with those specifications, or unless the gear is stowed as specified in § 229.2.

(iii) *Area-specific gear or vessel requirements for the other restricted period*—(A) *Other restricted period.* The other restricted period for the Great South Channel Restricted Gillnet Area is from July 1 though March 31 of each year unless the Assistant Administrator changes that period in accordance with paragraph (i) of this section.

(B) *Area-specific gear or vessel requirements.* During the other restricted period, no person or vessel may fish with or possess drift gillnet gear in the Great South Channel Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Restricted Gillnet Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Restricted Gillnet Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(3) *Great South Channel Sliver Restricted Area*—(i) *Area.* The Great South Channel Sliver Restricted Area consists of the area bounded by lines connecting the following points: 41°02.2′ N. lat./69°02′ W. long., 41°43.5′ N. lat./69°36.3′ W. long., 41°40′ N. lat./69°45′ W. long., and 41°00′ N. lat./69°05′ W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet

gear in the Great South Channel Sliver Restricted Gillnet Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Great South Channel Sliver Restricted Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Great South Channel Sliver Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) *Stellwagen Bank/Jeffreys Ledge Restricted Area*—(i) *Area.* The Stellwagen Bank/Jeffreys Ledge Restricted Area includes all Federal waters of the Gulf of Maine, except those designated as right whale critical habitat under 50 CFR 226.203(b), that lie south of 43°15′ N. lat. and west of 70°00′ W. long. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Stellwagen Bank/Jeffreys Ledge Restricted Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Stellwagen Bank/Jeffreys Ledge Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Stellwagen Bank/Jeffreys Ledge Restricted Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(5) *Other Northeast Gillnet Waters Area*—(i) *Area.* The Other Northeast Gillnet Waters Area consists of all U.S. waters from the U.S./Canada border to Long Island, NY, at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, with the exception of the Cape Cod Bay Restricted Area, Stellwagen Bank/Jeffreys Ledge Restricted Area, Great South Channel Restricted Gillnet Area, Great South Channel Sliver Restricted Area, and exempted waters listed in paragraph (a)(3) of this section. The Assistant Administrator may change that area in accordance with paragraph (i) of this section.

(ii) *Year-round area-specific gear or vessel requirements.* No person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(iii) *Seasonal area-specific gear or vessel requirements.* From September 1 to May 31, no person or vessel may fish with or possess drift gillnet gear in the Other Northeast Gillnet Waters Area that is south of a straight line from 41°18.2′ N. lat., 71°51.5′ W. long. (Watch Hill Point, RI) south to 40°00′ N. lat. and then east to the eastern edge of the EEZ, unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in §§229.2. Additionally, no person or vessel may fish with or possess drift gillnet gear at night in the Other Northeast Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Other Northeast Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(6) *Mid/South Atlantic Gillnet Waters Area*—(i) *Area.* The Mid/South Atlantic Gillnet Waters consists of all U.S. waters bounded on the north from Long Island, NY at 72°30′ W. long. south to 36°33.03′ N. lat. and east to the eastern edge of the EEZ, and bounded on the south by 32°00′ N. lat., and east to the eastern edge of the EEZ. The Assistant Administrator may change that area in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(ii) *Area-specific gear or vessel requirements.* From September 1 through May 31, no person or vessel may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2. During that time, no person may fish with or possess drift gillnet gear at night in the Mid/South Atlantic Gillnet Waters Area unless that gear is tended, or unless the gear is stowed as specified in § 229.2. During that time, all drift gillnet gear set by that vessel in the Mid/South Atlantic Gillnet Waters Area must be removed from the water and stowed on board the vessel before a vessel returns to port. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section. When the Mid/South Atlantic Gillnet Waters Area overlaps the Southeast U.S. Restricted Area and its restricted period as specified in paragraphs (f)(1) and (f)(2), then the closure and exemption for the Southeast U.S. Restricted Area as specified in paragraph (f)(2) applies.

(7) [Reserved]

(f) *Restrictions applicable to the Southeast U.S. Restricted Area*—(1) *Area.* The Southeast U.S. Restricted Area consists of the area bounded by straight lines connecting the following points in the order stated from south to north, unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section:

Point	N. lat.	W. long.
SERA1	27°51′	(1)
SERA2	27°51′	80°00′
SERA3	32°00′	80°00′
SERA4	32°36′	78°52′
SERA5	32°51′	78°36′
SERA6	33°15′	78°24′
SERA7	33°27′	78°04′
SERA8	(2)	78°33.9′

[1] Florida shoreline.
[2] South Carolina shoreline.

(i) *Southeast U.S. Restricted Area N.* The Southeast U.S. Restricted Area N consists of the Southeast U.S. Restricted Area from 29°00′ N. lat. northward.

(ii) *Southeast U.S. Restricted Area S.* The Southeast U.S. Restricted Area S consists of the Southeast U.S. Restricted Area southward of 29°00′ N. lat.

(2) *Restricted periods, closure, and exemptions*—(i) *Restricted periods.* The restricted period for the Southeast U.S. Restricted Area N is from November 15 through April 15, and the restricted

period for the Southeast U.S. Restricted Area S is from December 1 through March 31, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i) of this section.

(ii) *Closure for gillnets.* (A) Except as provided under paragraph (f)(2)(v) of this section, fishing with or possessing gillnet in the Southeast U.S. Restricted Area N during the restricted period is prohibited.

(B) Except as provided under paragraph (f)(2)(iii) of this section and (f)(2)(iv) of this section, fishing with gillnet in the Southeast U.S. Restricted Area S during the restricted period is prohibited.

(iii) *Exemption for Southeastern U.S. Atlantic shark gillnet fishery.* Fishing with gillnet for sharks with webbing of 5 inches (12.7 cm) or greater stretched mesh is exempt from the restrictions under paragraph (f)(2)(ii)(B) if:

(A) The gillnet is deployed so that it encloses an area of water;

(B) A valid commercial directed shark limited access permit has been issued to the vessel in accordance with 50 CFR 635.4(e) and is on board;

(C) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(D) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(E) Each set is made under the observation of a spotter plane;

(F) No gillnet is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(G) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear;

(H) The gear complies with the gear marking requirements specified in paragraph (b) of this section; and

(I) The operator of the vessel calls the Southeast Fisheries Science Center Panama City Laboratory in Panama City, FL, not less than 48 hours prior to departing on any fishing trip in order to arrange for observer coverage. If the Panama City Laboratory requests that an observer be taken on board a vessel during a fishing trip at any time from December 1 through March 31 south of 29°00′ N. lat., no person may fish with such gillnet aboard that vessel in the Southeast U.S. Restricted Area S unless an observer is on board that vessel during the trip.

(iv) *Exemption for Spanish Mackerel component of the Southeast Atlantic gillnet fishery.* Fishing with gillnet for Spanish mackerel is exempt from the restrictions under paragraph (f)(2)(ii)(B) from December 1 through December 31, and from March 1 through March 31 if:

(A) Gillnet mesh size is between 3.5 inches (8.9 cm) and 4 7/8 inches (12.4 cm) stretched mesh;

(B) A valid commercial vessel permit for Spanish mackerel has been issued to the vessel in accordance with 50 CFR 622.4(a)(2)(iv) and is on board;

(C) No person may fish with, set, place in the water, or have on board a vessel a gillnet with a float line longer than 800 yards (2,400 ft, 732 m);

(D) No person may fish with, set, or place in the water more than one gillnet at any time;

(E) No more than two gillnets, including any net in use, may be possessed at any one time; provided, however, that if two gillnets, including any net in use, are possessed at any one time, they must have stretched mesh sizes (as allowed under the regulations) that differ by at least .25 inch (.64 cm);

(F) No person may soak a gillnet for more than 1 hour. The soak period begins when the first mesh is placed in the water and ends either when the first mesh is retrieved back on board the vessel or the gathering of the gillnet is begun to facilitate retrieval on board the vessel, whichever occurs first; providing that, once the first mesh is retrieved or the gathering is begun, the retrieval is continuous until the gillnet is completely removed from the water;

(G) No net is set at night or when visibility is less than 500 yards (1,500 ft, 460 m);

(H) The gillnet is removed from the water before night or immediately if visibility decreases below 500 yards (1,500 ft, 460 m);

(I) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale;

(J) The gillnet is removed immediately from the water if a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear; and

(K) The gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid/South Atlantic Gillnet Waters.

(v) *Exemption for vessels in transit with gillnet aboard.* Possession of gillnet aboard a vessel in transit is exempt from the restrictions under paragraph (f)(2)(ii)(A) of this section if: All nets are covered with canvas or other similar material and lashed or otherwise securely fastened to the deck, rail, or drum; and all buoys, high flyers, and anchors are disconnected from all gillnets. No fish may be possessed aboard such a vessel in transit.

(vi) [Reserved]

(g) *Restrictions applicable to the Other Southeast Gillnet Waters Area*—(1) *Area.* The Other Southeast Gillnet Waters Area consists of the area from 32°00′ N. lat. (near Savannah, GA) south to 27°51′ N. lat. for the Southeast Atlantic gillnet fishery, and from 32°00 N. lat. south to 26°46.50′ N. lat. (near West Palm Beach, FL) for the Southeastern U.S. Atlantic shark gillnet fishery, and extending from 80°00′ W. long. east to the eastern edge of the EEZ, for both the Southeast Atlantic gillnet and Southeastern U.S. Atlantic gillnet fisheries unless the Assistant Administrator changes this area in accordance with paragraph (i) of this section.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Other Southeast Gillnet Waters Area north of 29°00′ N. lat. (near New Smyrna Beach, FL) from November 15 through April 15 and south of 29°00′ N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, and the set restrictions listed below, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Set restrictions.* All gillnets must comply with the following set restrictions:

(A) No net is set within 3 nautical miles (5.6 km) of a right, humpback, or fin whale; and

(B) If a right, humpback, or fin whale moves within 3 nautical miles (5.6 km) of the set gear, the gear is removed immediately from the water.

(3) *Restrictions for Southeast Atlantic gillnet fishery.* No person or vessel may fish with or possess gillnet gear in the Other Southeast Gillnet Waters Area, except as provided in paragraph (g)(2) of this section, north of 29°00′ N. lat. from November 15 through April 15 and south of 29°00′ N. lat. from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, the universal anchored gillnet gear requirements specified in paragraph (d)(1) of this section, and the area-specific requirements for anchored gillnets specified in paragraphs (d)(7)(ii)(A) through (d)(7)(ii)(D) of this section for the Mid/South Atlantic

Gillnet Waters, or unless the gear is stowed as specified in § 229.2. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(4) [Reserved]

(h) *Restrictions applicable to the Southeast U.S. Monitoring Area*—(1) *Area.* The Southeast U.S. Monitoring Area consists of the area from 27°51′ N. lat. (near Sebastian Inlet, FL) south to 26°46.50′ N. lat. (near West Palm Beach, FL), extending from the shoreline or exemption line out to 80°00′ W. long., unless the Assistant Administrator changes that area in accordance with paragraph (i) of this section.

(2) *Restrictions for Southeastern U.S. Atlantic shark gillnet fishery.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area from December 1 through March 31 unless that gear complies with the gear marking requirements specified in paragraph (b) of this section, or unless the gear is stowed as specified in § 229.2, and the person or vessel satisfies the vessel monitoring system and observer requirements listed below. The Assistant Administrator may revise these requirements in accordance with paragraph (i) of this section.

(i) *Vessel monitoring systems.* No person or vessel may fish with or possess gillnet gear for shark with webbing of 5 inches (12.7 cm) or greater stretched mesh in the Southeast U.S. Monitoring Area during the restricted period unless the operator of the vessel is in compliance with the vessel monitoring system (VMS) requirements found in 50 CFR 635.69.

(ii) *At-sea observer coverage.* When selected, vessels are required to take observers on a mandatory basis in compliance with the requirements for at-sea observer coverage found in 50 CFR 229.7. Any vessel that fails to carry an observer once selected is prohibited from fishing pursuant to 50 CFR part 635.

(iii) [Reserved]

(i) *Other provisions.* In addition to any other emergency authority under the Marine Mammal Protection Act, the Endangered Species Act, the Magnuson-Stevens Fishery Conservation and Management Act, or other appropriate authority, the Assistant Administrator may take action under this section in the following situations:

(1) *Entanglements in critical habitat or restricted areas.* If a serious injury or mortality of a right whale occurs in the Cape Cod Bay Restricted Area from January 1 through May 15, in the Great South Channel Restricted Area from April 1 through June 30, the Southeast U.S. Restricted Area N from November 15 to April 15, or the Southeast U.S. Restricted Area S from December 1 through March 31 as the result of an entanglement by trap/pot or gillnet gear allowed to be used in those areas and times, the Assistant Administrator shall close that area to that gear type (i.e., trap/pot or gillnet) for the rest of that time period and for that same time period in each subsequent year, unless the Assistant Administrator revises the restricted period in accordance with paragraph (i)(2) of this section or unless other measures are implemented under paragraph (i)(2) of this section.

(2) *Other special measures.* The Assistant Administrator may revise the requirements of this section through a publication in the **Federal Register** if:

(i) NMFS verifies that certain gear characteristics are both operationally effective and reduce serious injuries and mortalities of endangered whales;

(ii) New gear technology is developed and determined to be appropriate;

(iii) Revised breaking strengths are determined to be appropriate;

(iv) New marking systems are developed and determined to be appropriate;

(v) NMFS determines that right whales are remaining longer than expected in a closed area or have left earlier than expected;

(vi) NMFS determines that the boundaries of a closed area are not appropriate;

(vii) Gear testing operations are considered appropriate; or

(viii) Similar situations occur.

(3) *Seasonal Area Management (SAM) Program.* Until October 6, 2008, in addition to existing requirements for vessels deploying anchored gillnet or trap/pot gear in the Other Northeast Gillnet Waters, Northern Inshore State Trap/Pot Waters, Trap/Pot Waters, Offshore Trap/Pot Waters, Great South Channel Restricted Gillnet Area (July 1 through July 31), Great South Channel Sliver Restricted Area (May 1 through July 31), Great South Channel Restricted Trap/Pot Area (July 1 through July 31), and Stellwagen Bank/Jeffreys Ledge Restricted Area (anchored gillnet and trap/pot area) found at § 229.32 (b)–(d), a vessel may fish in the SAM Areas as described in paragraphs (i)(3)(i)(A) and (i)(3)(ii)(A) of this section, which overlay the previously mentioned areas, provided the gear or vessel complies with the requirements specified in paragraphs (i)(3)(i)(B) and (i)(3)(ii)(B) of this section during the times specified in those paragraphs. These requirements are in addition to requirements found in § 229.32 (b)–(d). The requirements in (i)(3)(i)(B) and (i)(3)(ii)(B) of this section supercede requirements found at § 229.32 (b)–(d) when the former are more restrictive than the latter. For example, the closures applicable to trap/pot and gillnet gear in the Great South Channel found in paragraphs (c)(3)(ii) and (d)(3)(ii) of this section are more restrictive than the gear modifications described in this section and, therefore, supercede them. A copy of a chart depicting these areas is available upon request from the Regional Administrator, NMFS, Northeast Region, 1 Blackburn Drive, Gloucester, MA 01930.

(i) *SAM West*—(A) *Area.* SAM West consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM WEST

Point	N. lat.	W. long
1W	42°30′	70°30′
2W	42°30′	69°24′
3W	41°48.9′	69°24′
4W	41°40′	69°45′
5W	41°40′	69°57′
and along the eastern shoreline of Cape Cod to		
6W	42°04.8′	70°10′
7W	42°12′	70°15′
8W	42°12′	70°30′

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from March 1 through April 30, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM West unless that gear complies with the following gear modifications, or unless the gear is stowed as specified in § 229.2.

(*1*) *Anchored gillnet gear*—(i) *Groundlines.* All groundlines must be made entirely of sinking and/or neutrally buoyant line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(*ii*) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(*iii*) *Buoy line weak links.* All buoys, flotation devices and/or weights (except gillnets, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device and/or weight as

operationally feasible that has a maximum breaking strength of 1,100 lb (499.0 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*iv*) *Net panel weak links.* The breaking strength of each weak link must not exceed 1,100 lb (499.0 kg). The weak link requirements apply to all variations in panel size. All net panels in a string must contain weak links that meet one of the following two configuration specifications found in paragraph (d)(6)(ii)(B)(*1*) or (d)(6)(ii)(B)(*2*) of this section.

(*v*) *Anchoring systems.* All anchored gillnets, regardless of the number of net panels, must be secured at each end of the net string with a burying anchor (an anchor that holds to the ocean bottom through the use of a fluke, spade, plow, or pick) having the holding capacity equal to or greater than a 22-lb (10.0-kg) Danforth-style anchor. Dead weights do not meet this requirement. A brochure illustrating the techniques for rigging anchoring systems is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*2*) *Trap/pot gear*—(*i*) *Groundlines.* All groundlines must be made entirely of sinking and/or neutrally buoyant line. Floating groundlines are prohibited. The attachment of buoys, toggles, or other floatation devices to groundlines is prohibited.

(*ii*) *Buoy lines.* All buoy lines must be composed of sinking line except the bottom portion of the line, which may be a section of floating line not to exceed one-third the overall length of the buoy line.

(*iii*) *Northern Inshore State Trap/Pot Waters, Northern Nearshore Trap/Pot Waters Areas, Stellwagen Bank/Jeffreys Ledge Restricted Area, and Great South Channel Restricted Trap/Pot Area (that overlaps with LMA 2 and Outer Cape LMA only) buoy line weak links.* All buoys, flotation devices, and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 600 lb (272.2 kg). The weak link must be chosen from the following list approved by NMFS: Swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(*iv*) *Offshore Trap/Pot Waters Area and Great South Channel Restricted Trap/Pot Area (that overlaps with LMA 2/3 Overlap and LMA 3 only) buoy line weak links.* All buoys, flotation devices, and/or weights (except traps/pots, anchors, and leadline woven into the buoy line), such as surface buoys, high flyers, sub-surface buoys, toggles, window weights, etc., must be attached to the buoy line with a weak link placed as close to each individual buoy, flotation device, and/or weight as operationally feasible that has a maximum breaking strength of up to 1,500 lb (680.4 kg). The weak link must be chosen from the following list approved by NMFS: swivels, plastic weak links, rope of appropriate breaking strength, hog rings, rope stapled to a buoy stick, or other materials or devices approved in writing by the Assistant Administrator. Weak links must break cleanly leaving behind the bitter end of the line. The bitter end of the line must be free of any knots when the weak link breaks. Splices are not considered to be knots for the purposes of this provision. A brochure illustrating the techniques for making weak links is available from the Regional Administrator, NMFS, Northeast Region upon request.

(ii) *SAM East*—(A) *Area.* SAM East consists of all waters bounded by straight lines connecting the following points in the order stated:

SAM EAST

Point	N. Lat.	W. Long.
1E	42°30′	69°45′
2E	42°30′	67°27′
3E	42°09′	67°08.4′
4E	41°00′	69°05′
5E	41°40′	69°45′

(B) *Gear or vessel requirements.* Unless otherwise authorized by the Assistant Administrator, in accordance with paragraph (i)(2) of this section, from May 1 through July 31, no person or vessel may fish with or possess anchored gillnet or trap/pot gear in SAM East unless that gear complies with the gear modifications found in paragraphs (i)(3)(i)(B)(*1*) and (i)(3)(i)(B)(*2*) of this section, or unless the gear is stowed as specified in § 229.2.

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 6. The authority citation for 50 CFR part 635 continues to read as follows:

Authority: 16 U.S.C. 971 *et seq.*; 16 U.S.C. 1801 *et seq.*

■ 7. In § 635.69, paragraph (a)(3) is revised to read as follows:

§ 635.69 Vessel monitoring systems.

(a) * * *

(3) Whenever a vessel, issued a directed shark LAP, is away from port with a gillnet on board during the right whale calving season specified in the regulations implementing the Atlantic Large Whale Take Reduction Plan Regulations in § 229.32 of this title.

* * * * *

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 8. The authority citation for 50 CFR part 648 continues to read as follows:

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

■ 9. In § 648.264, paragraph (a)(6)(i) is revised to read as follows:

§ 648.264 Gear requirements/restrictions.

(a) * * *

(6) *Additional gear requirements.* (i) Vessels must comply with the gear regulations found at § 229.32 of this title.

* * * * *

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LIST OF PUBLIC LAWS

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H.R. 3668/P.L. 110–90

TMA, Abstinence Education, and QI Programs Extension Act of 2007 (Sept. 29, 2007; 121 Stat. 984)

H.J. Res. 43/P.L. 110–91

Increasing the statutory limit on the public debt. (Sept. 29, 2007; 121 Stat. 988)

H.J. Res. 52/P.L. 110–92

Making continuing appropriations for the fiscal year 2008, and for other purposes. (Sept. 29, 2007; 121 Stat. 989)

H.R. 3625/P.L. 110–93

To make permanent the waiver authority of the Secretary of Education with respect to student financial assistance during a war or other military operation or national emergency. (Sept. 30, 2007; 121 Stat. 999)

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