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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2006–25250; Amdt. No. 91–302]

RIN 2120–AI63

Special Awareness Training for the Washington, DC Metropolitan Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is requiring ''special awareness'' training for any pilot who flies under visual flight rules (VFR) within a 60-nautical-mile (NM) radius of the Washington, DC VHF omni-directional range/distance measuring equipment (DCA VOR/DME). This training has been developed and provided by the FAA on its *www.FAASafety.gov* Web site and focuses primarily on training pilots on the procedures for flying in and around the Washington, DC Metropolitan Area Defense Identification Zone (ADIZ) and the Washington, DC Metropolitan Area Flight Restricted Zone (FRZ). The rule will reduce the number of unauthorized flights into the airspace of the Washington, DC Metropolitan Area ADIZ and FRZ through education of the pilot community.

DATES: This final rule is effective on February 9, 2009. Affected parties, however, do not have to comply with the information collection requirement in § 91.161 until the FAA publishes in the **Federal Register** the control number assigned by the Office of Management and Budget (OMB) for this information collection requirement. Publication of the control number notifies the public that OMB has approved this information collection requirement under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule contact: John D. Lynch, Certification and General Aviation Operations Branch, AFS–810, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3844.

For legal questions concerning this final rule contact: Michael Chase, Air Traffic and Airman/Airport Certification Law Branch, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3073.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The Administrator of the FAA has broad authority to regulate the safe and efficient use of the navigable airspace (49 U.S.C. 40103). The Administrator also is authorized to issue air traffic rules and regulations to govern the flight of aircraft, the navigation, protection and identification of aircraft for the protection of persons and property on the ground, and for the efficient use of navigable airspace. Additionally, pursuant to 49 U.S.C. 40103(b)(3) the Administrator has the authority, in consultation with the Secretary of Defense, to ''establish security provisions that will encourage and allow maximum use of the navigable airspace by civil aircraft consistent with national security.''

List of Abbreviations and Terms Frequently Used in This Document

ADIZ—Air Defense Identification Zone
AOPA—Aircraft Owners and Pilots Association
ATC—Air Traffic Control
DCA VOR/DME—Washington, DC very high frequency omni-directional range/distance measuring equipment
FDC—Flight Data Center
FRZ—Flight Restricted Zone
HAI—Helicopter Association International
IFR—Instrument flight rules
NATA—National Air Transportation Association
NM—Nautical mile
NOTAM—Notice to Airmen
NPRM—Notice of Proposed Rulemaking
VFR—Visual flight rules

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I. Background

A. Establishment of the Washington, DC ADIZ

In February 2003, the FAA, in consultation with the Department of Homeland Security (DHS), the Department of Defense (DOD), and other Federal agencies, issued Notices to Airmen (NOTAMs) implementing an outer Air Defense Identification Zone (ADIZ) and an inner Flight Restricted Zone (FRZ) around the Washington, DC Metropolitan Area. At that time, the ADIZ closely resembled the Washington tri-area Class B airspace area. The FRZ, requiring more stringent access procedures than the ADIZ, was established within an approximately 15-nautical-mile (NM) radius from the Washington, DC very high frequency omni-directional range/distance measuring equipment (DCA VOR/DME). The NOTAMs also established radio communication, transponder, and flight plan requirements for pilots to follow. Some types of operations, such as U.S. military, law enforcement, and approved aeromedical flights, are

excluded from the requirements. The ADIZ and the FRZ, along with other security measures, enable the law enforcement and security communities to identify pilots and their intentions and to track aircraft operating in the vicinity of the nation's capital.

On August 30, 2007, the airspace restrictions in the Washington, DC area were modified by Flight Data Center (FDC) NOTAMs 07/0206 and 07/0211. While the specifications for the FRZ remain essentially the same (except that the western boundary has been moved slightly eastward), the radius of the ADIZ has been reduced to a 30-NM radius from the DCA VOR/DME, thereby reducing the number of airports affected by the airspace restrictions and making more navigable airspace available to pilots conducting operations in the area. In addition, the requirements to obtain appropriate authorization, establish two-way communication with Air Traffic Control (ATC), be equipped with an operating transponder with altitude-reporting capability, and file a flight plan remain the same. However, the revised NOTAM also added a ''maneuvering area'' for Leesburg Airport, and imposed an airspeed restriction of 180 knots or less (if capable) within the ADIZ/FRZ. For VFR aircraft operations conducted between 30 and 60 NM of the DCA VOR/DME, aircraft are restricted to an indicated airspeed of 230 knots or less, unless otherwise authorized.

Since the creation of the ADIZ, there have been over 3,000 incursions into the Washington, DC ADIZ. Between February 12, 2003 and April 30, 2008, there were approximately 3,200 reported observed incursions into the Washington, DC ADIZ. A few of these flights came so close to the Capitol and the White House that they caused mass evacuations of these buildings and other Federal office buildings. In other incidents, civilian aircraft have been intercepted by U.S. Coast Guard helicopters and U.S. Air Force fighter airplanes. Although all of the incursions were eventually determined to be non-criminal in nature, each incursion places an unnecessary burden on Federal, state, and local law enforcement resources. For instance, when an unauthorized aircraft penetrates restricted airspace, the FAA's air traffic controllers must divert necessary resources to monitor the aircraft's flight, alert security operations, and communicate information about the aircraft to appropriate military and law enforcement agencies. Several branches of the Federal government, the military, and local law enforcement are forced to respond to the situation and to execute a potentially hazardous intercept under circumstances that typically prove not to have been a threat to our national security.

B. Summary of the Special Awareness Training NPRM

On July 5, 2006, the FAA issued a Notice of Proposed Rulemaking (NPRM) entitled, ''Special Awareness Training for the Washington, DC Metropolitan Area'' (71 FR 38118). The FAA proposed that pilots flying VFR within a radius of 100 nautical miles (NM) of the DCA VOR/DME complete free online Special Awareness Training for operating in the Washington, DC metropolitan area and other Temporary Flight Restriction (TFR) areas. Pilots would be required to complete the training one time. Upon completion of the online training, a pilot would download a copy of his or her certificate of training completion. A copy of the certificate would have to be presented upon request of an authorized representative of the FAA, an authorized representative of National Transportation Safety Board (NTSB), any Federal, State, or local law enforcement officer, or an authorized representative of the Transportation Security Administration (TSA).

The comment period for the NPRM closed on September 5, 2006. The FAA is issuing this rule essentially as proposed, except that the proposed requirement that training must be completed by pilots flying within a 100-NM radius from the DCA VOR/DME has been modified in the final rule to require training for pilots flying within a 60-NM radius of the DCA VOR/DME. The FAA will place a note on the Washington Sectional, Baltimore-Washington Terminal Area Sectional, Baltimore-Washington Helicopter Route Sectional, and the CG–21 World Aeronautical Chart about the training requirement for the Washington, DC ADIZ and FRZ airspace.

In addition, the heading of § 91.161 has been modified to better describe the content of the section, and a paragraph entitled ''Special Awareness Training'' has been added to describe the training required by § 91.161 and where it is located.

C. Other Washington, DC ADIZ-Related Rulemaking Activity

On August 4, 2005, the FAA issued an NPRM entitled, ''Washington, DC Metropolitan Area Special Flight Rules Area'' (70 FR 45250) that proposed to codify current flight restrictions for certain aircraft operations in the Washington, DC metropolitan area. That rule remains in development, and this final rule is not directly related to the issues addressed in that rulemaking action.

II. Discussion of Comments

The FAA received 65 comments on the NPRM, primarily from individuals but also from the Aircraft Owners and Pilots Association (AOPA), the National Air Transportation Association (NATA), and Helicopter Association International (HAI). The FAA also received comments related to the August 4, 2005, ''Washington, DC Metropolitan Area Special Flight Rules Area'' proposed rule. Those comments are outside the scope of this rulemaking and will not be addressed here.

Commenters generally expressed opposition to the NPRM. While many agreed that training could be helpful, they did not believe that the FAA's training program would be effective. A discussion of the comments follows.

A. Application of the Training Program

Commenters had varying opinions on the FAA's proposed audience, curriculum, and testing criteria for the Special Awareness Training. After considering all these comments, the FAA has decided not to change the proposed requirements for the training program, its target audience or its frequency. The agency believes that due to the potential impact of an incursion on the pilot, Federal resources, and the public, mandatory training is necessary, even if the incursion was inadvertent. The FAA believes the training curriculum is well designed and focuses on how to fly safely in the Washington, DC ADIZ and FRZ. The training is designed to cover the correct procedures for operating near or inside the DC ADIZ. While at least one commenter would have the training also address normal, abnormal, and emergency procedures resulting from transponder failure, navigation errors, dyslexia, or accidentally hitting the wrong button on annunciator or radio panel, the FAA did not feel this was appropriate, as there are other training programs that cover this material.

1. Applicability to Pilots

With regard to whom the training requirement applied, a few commenters believed that training should be required of *all* pilots, not just those who anticipated flying within 100 NM of the DCA VOR/DME under IFR. In fact, one commenter felt that completion of training should be a prerequisite for any pilot's license renewal. Others, on the other hand, asked that the agency carve out exclusions for certain types of pilots

and operations or the training should be voluntary.

The FAA believes it is important that any pilot, whether acting as pilot in command or second in command, receive Special Awareness Training if the pilot has any intention of operating an aircraft under VFR within 60 NM of the DCA VOR/DME. Thus, § 91.161 applies when conducting operations under 14 CFR parts 91, 121, 125, 129, 133, 135 and 137. And, regardless of the type of pilot certificate held (e.g., sport, recreational, student, private, commercial, airline transport pilot (ATP), or foreign), or where the flight originated (e.g., Virginia, California, or even Canada), a pilot is subject to this Special Awareness Training requirement as a prerequisite for flying under VFR within a 60-NM radius of the DCA VOR/DME.

One commenter argued for a sport pilot exclusion because these pilots do not routinely fly in controlled airspace. He also suggested that pilots of gliders, balloons, powered parachutes, and weight-shift-control aircraft be excluded because these aircraft are limited in range. The FAA acknowledges that holders of sport pilot certificates are not permitted to operate in Class A, B, C, or D airspace, at an airport located in Class B, C, or D airspace, or at an airport having an operational control tower. However, sport pilots who hold the necessary endorsements and whose aircraft are appropriately equipped may perform those operations and hence could make unauthorized flights into the Washington, DC airspace. Therefore the FAA has determined that it is necessary to require this training of sport pilots as part of the agency's efforts to educate the pilot community and reduce the number of unauthorized flights into the Washington, DC airspace. In addition, the FAA does not agree that an aircraft's range limitations would necessarily prevent a pilot from making an unauthorized flight into the Washington, DC airspace. The FAA maintains that no matter what the pilot certificate or aircraft, if a pilot is flying under VFR in the identified area, then training should be required.

AOPA recommended exclusion for pilots who have been vetted for operations into the FRZ since they already receive special security training. The FAA is familiar with the security training requirements and finds significant differences in its curriculum versus the training required by § 91.161. The Special Awareness Training focuses on safe operating practices in the Washington, DC airspace while the security training for operating in the FRZ focuses on pre-flight and flight procedure requirements for all flight-restricted zones.

2. Size of the ''Training Zone''

As proposed, the FAA would have required pilots flying VFR within a 100-NM radius of the DCA VOR/DME to certify that they had completed the training program that is the subject of this rule.

Several commenters believed that requiring the larger training zone had the effect of extending the Washington, DC ADIZ and its operating requirements to a 100-NM radius of the DCA VOR/DME. Since publication of the NPRM, the size of the DC ADIZ itself has been reduced to 30 NM from the DCA VOR/DME by the August 30, 2007 NOTAM. Also by NOTAM (FDC NOTAM 7/0204), the FAA has implemented an additional speed restriction for VFR operations between 30 NM and 60 NM of the DCA VOR/DME. The FAA has therefore decided to reduce the size of the ''training zone'' to 60 NM from the DCA VOR/DME, which matches the 60-NM speed restriction area. While this action maintains a buffer zone, i.e., an area for which the training requirements apply that is larger than the DC ADIZ itself, establishing a training area larger than the Washington, DC ADIZ does not imply that the procedures for operating in the Washington, DC ADIZ have been expanded to cover the larger airspace.

In addition, many commenters asserted that requiring training within a 100-NM radius of the DCA VOR/DME was too prescriptive. As discussed above, the FAA has reduced the training zone to a 60-NM radius from the DCA VOR/DME under this final rule. The FAA has decided that a 30-NM distance from the outer edges of the Washington, DC ADIZ is a sufficient buffer of airspace. The agency has determined that the majority of pilots who inadvertently entered the Washington, DC ADIZ airspace departed from an airport within a 60-NM radius of the DCA VOR/DME. Therefore, reducing the training zone any further would not be prudent.

3. Frequency of Training

A minority of commenters expressed concern that the training will not be effective because it is a one-time obligation rather than a recurrent requirement. There was fear that a pilot would take the course, file his or her training certificate away, and forget the training unless the pilot flies in the Washington, DC area routinely. In contrast, one commenter urged the FAA to ensure that pilots who took the Special Awareness Training prior to the issuance of this final rule get credit for complying with the requirement.

A pilot who completed the online training prior to issuance of this final rule is not required to retake the training. The FAA is only requiring that the training obligation be met once. However, a pilot has an on-going responsibility to be competent and proficient. The FAA encourages airmen to review periodically the Special Awareness Training program. Furthermore, the procedures for operating in the Washington, DC ADIZ and FRZ are issued by NOTAM, and a pilot is already required to be familiar with any NOTAM issued in the pilot's flying area prior to any departure. (*See* § 91.103.) The training also will be emphasized during flight reviews and the FAA-sponsored pilot proficiency awards program (WINGS Program).

B. Washington, DC ADIZ Operating Requirements

Many commenters, including AOPA and HAI, said the operating procedures in the Washington, DC ADIZ are overly complex or are obscure. These commenters believed that if the FAA would fix the difficulties of operating in the ADIZ, rather than require training, incursions would decrease.

The FAA recognizes there have been difficulties with operating in the ADIZ. Since the issuance of the Special Awareness Training NPRM, the procedures for operating in the Washington, DC ADIZ have been modified through an amended NOTAM. The FAA believes that operating in the area is now less difficult. Regardless, the FAA believes that pilot education remains critical.

The FAA is issuing this final rule to establish Special Awareness Training for pilots who fly within the restricted and special-use airspace of the Washington, DC Metropolitan Area under visual flight rules. The training, which is currently available online on the *http://www.FAASafety.gov* Web site, focuses on how to avoid and operate safely within the Washington, DC Metropolitan Area ADIZ and FRZ. The FAA believes that ''pilot error'' is the biggest contributor to violations of the restricted/special-use airspaces in the Washington, DC area, and through training, the number of inadvertent incursions into this airspace will be reduced.

C. Air Traffic Control

Approximately a dozen commenters felt that pilot training would not work to reduce incursions because the training does not address inadvertent errors made by air traffic controllers.

The purpose of this rule is to ensure that pilots operating in the Washington, DC area are familiar and trained in the operating requirements. The FAA has already conducted separate education for air traffic controllers at the Potomac Terminal Radar Approach Control Facility (TRACON). Additionally, the FAA is working to standardize procedures for ATC. For example, air traffic controllers are now directing pilots not to change their transponder codes until after landing at the airport.

D. The FAA's Enforcement Policy

Many commenters, including AOPA and HAI, said that the FAA's zero-tolerance enforcement policy is not appropriate for essentially technical errors by pilots who are otherwise following ADIZ procedures. AOPA and HAI, among others, suggested that the FAA is creating ''another hook,'' to get pilots for inadvertent violations. Another commenter said that the FAA's enforcement policies do not take into account normal human error. In addition, there was concern that the training rule will ''serve to criminalize general aviation.''

The FAA is requiring this training to educate the pilot community on how to avoid making inadvertent incursions into the Washington, DC ADIZ out of concern for the pilot community and a desire to alleviate the burden on FAA and other governmental resources. Anything less than mandating the training program undermines the importance the agency places on this education. Any requirement, if not complied with, has the potential for an associated enforcement action. However, since the intent of this requirement is to reduce the number of incursions, there should be fewer enforcement proceedings related to inadvertent incursions.

Some commenters seemed to support the FAA in its endeavor and even recommended that the FAA perform ramp checks to ensure that pilots took the Special Awareness Training course. The FAA does not consider ramp checks the most efficient way to ensure that pilots have taken the Special Awareness Training or to enhance the education of pilots about flying in the Washington, DC ADIZ. The agency will emphasize safe operating practices for flying in the Washington, DC area during flight reviews, practical tests, and the FAA-sponsored pilot proficiency awards program (WINGS Program), which will cover all active pilots. The FAA will continue to review the violation history trends and modify the training where and when necessary.

NATA expressed concern about potential violations when a pilot cancels instrument-flight-rule (IFR) operation in non-emergency situations and proceeds under VFR for landing. NATA said that this benefits both the pilot and over-burdened air traffic controllers. NATA suggested that the FAA create an exception for this type of situation. The FAA recognizes that some pilots cancel their IFR clearances and proceed under VFR for landing. However, pilots who wish to do so in the airspace covered by this rule are required to take the Special Awareness Training.

As discussed in the preamble of the NPRM, the flight restrictions for the Washington, DC ADIZ and FRZ specifically exempt U.S. Department of Defense/U.S. military, law enforcement, and approved aeromedical operations from certain requirements otherwise applicable to aircraft entering the ADIZ and FRZ. (*See* FDC NOTAM 07/0206.) These operations must be handled differently because of their importance to national security and safety and for the public interest. These exceptions, proposed under § 91.161 (d), have been retained in the final rule under § 91.161 (e) ''Exceptions.'' The paragraph, however, has been modified by changing the term ''aeromedical'' to ''air ambulance'' to mirror current terminology. An air ambulance is a part 135 operator that has been issued operations specifications that authorize the operator to perform air ambulance operations in either an airplane or a helicopter. (See FAA Order 8900.1, Volume 5, Chapter 5.) The exception for air ambulance operators does not extend to other medically related flights, even if they are operated under a lifeguard call sign. In addition, paragraph (e) has been reworded to associate the exceptions with the types of flights being performed rather than the persons conducting the operations. The paragraph now states that if a flight is conducted in an aircraft of an air ambulance operator, the U.S. Armed Forces, or a law enforcement agency, the requirements of § 91.161 do not apply. The exception includes all operations, including repositioning aircraft and training flights.

E. Charting the Training Area

Many commenters, including NATA, AOPA, and HAI, argued that the Special Awareness Training zone be shown on applicable FAA aeronautical charts. Commenters felt that it was unreasonable for the FAA to put a regulation in place without physical representation on a chart. One individual even commented that the FAA's actions amounted to the creation of a new class of VFR airspace that is uncharted. In whole, these commenters did not believe that the FAA's reliance on graphics in the training curriculum would be sufficient for the pilot community. They felt that the graphics and information provided by the FAA in the NPRM and other material were of poor quality or were too vague. These deficiencies, argued some, made it difficult for pilots to plot the ''training zone'' on their own. Additionally, some commenters said, general aviation aircraft do not have distance-measuring equipment (DME) capable of receiving a VORTAC signal 100 NM away from the DCA VOR/DME.

In response to these comments, the FAA will add to the note on the Washington Sectional, Baltimore-Washington Terminal Area Sectional, Baltimore-Washington Helicopter Route Sectional, and the CG–21 World Aeronautical Chart about the training requirement for the Washington, DC ADIZ and FRZ airspace, and will depict the airspace within 60 NM of the DC VOR/DME to notify pilots about the training requirements for pilots who operate under VFR in this airspace. The FAA acknowledges that reducing the distance to 60 NM does not necessarily resolve the commenters' concern that general aviation aircraft are not able to receive the DCA VOR/DME signal while still some distance from the DCA VOR/DME. However, the agency believes that depicting the airspace on the Washington Sectional, Baltimore-Washington Terminal Area Sectional, Baltimore-Washington Helicopter Route Sectional, and the CG–21 World Aeronautical Chart will assist pilots in identifying the training area.

F. Educational Outreach

Several commenters questioned whether the pilots who really need this training will be aware of the requirement. They fear that only knowledgable, conscientious pilots who already know about the ADIZ and either avoid it or make an effort to comply will take the training, but others who are ignorant of the Washington, DC ADIZ will be unaware of the requirement to be trained. AOPA said that the FAA should have a plan for conducting aggressive educational outreach targeted at addressing the most common types of violations.

The FAA publishes its regulations in the **Federal Register**, which is official notification to the public. The FAA realizes, however, that many individuals do not monitor the **Federal Register**. The agency therefore maintains communication with aviation organizations who publicize FAA

actions to their members through their magazines, newsletters, and online Web sites. In fact, the FAA heard from one commenter that he became aware of the proposed rule through AOPA and the Experimental Aircraft Association. For this particular final rule, the FAA also can rely on the NOTAM reporting system to be a regular reminder to pilots that there is a training requirement attached to operating in the Washington, DC area. FDC NOTAMs 07/0206 and 07/0211 specifically reference the online training. It is a pilot's responsibility to be familiar with all pertinent NOTAMs, so pilots, by meeting the requirement to check NOTAMs, will be aware that training is required.

G. Impact on General Aviation Pilots

Many commenters, including AOPA, believed that the training requirement would add an unnecessary burden on the general aviation (GA) community.

The FAA recognizes the impact the training requirement has on the GA community, but the agency has minimized the burden. The course requires little time and is offered free of cost. The FAA believes the online training is the most economical means for pilots to receive training because, for most pilots, it can be performed in their own homes on their personal computers. Furthermore, in response to concerns that the proposed training zone was too large, the FAA reduced the size of the airspace from 100 NM to 60 NM from the DCA VOR/DME.

As already discussed, the FAA has reviewed the history of Washington, DC ADIZ violations, and finds that it is GA pilots who continue to make mistakes. It is only proper that the training be focused on these pilots in order to make them more aware that heightened security procedures exist in the Washington, DC metropolitan area.

H. Certificate of Training Completion

Under this final rule, each pilot who is required to complete the training course should print and maintain a certificate of training completion (the certificate can be downloaded from the *http://www.FAASafety.gov* Web site). Upon request from an authorized representative of the FAA, an authorized representative of the National Transportation Safety Board, any Federal, State, or local law enforcement officer, or an authorized representative of the Transportation Security Administration, the pilot must present the certificate of training completion. The FAA further proposed that a pilot did not have to necessarily carry the certificate of completion document in his or her personal possession, but would be required to provide it to a requesting official in a reasonable time period. This latter provision raised concerns with at least one commenter. That commenter believed that if he were asked to present the certificate but he did not have it in his personal possession that a follow-up investigation would immediately follow.

The FAA notes that, because the agency's database identifies pilots (by pilot number) who complete the training, the agency would check the FAA Safety Database to verify a pilot's claim that he or she completed the course.

I. The FAA's Web Site

One commenter pointed out that Windows software is not free and suggested that the FAA make its Web site accessible to other free and open-source browsers. He said this will enable Linux and Macintosh (Mac) users to access the training regardless of model and operating systems. The FAA has designed the accessibility for taking this online training via the most accessible system that is being used throughout the world. Most PC- and Mac-based browsers will be able to access the site using Microsoft Internet Explorer 5.5 or above. Internet Explorer 6.0 or above is preferred. Internet Explorer browsers can be downloaded for free at: *http://www.microsoft.com/windows/ie/downloads/critical/ie6sp1/default.asp*.

Another commenter said that not everyone has computers and that the FAA is 10 to 20 years ahead of itself. The FAA considered that not everyone owns a personal computer, although the number of pilots who may not have access to their own personal computers and Internet is small. In addition, public libraries provide access to computers and the Internet. Thus, the FAA believes that establishing this training online is the most economical and efficient means to provide this training to the pilot community.

J. Adopting a Training Requirement Based On a NOTAM

AOPA expressed concern that adopting the training rule while the ''Washington, DC Metropolitan Area Special Flight Rules Area'' rulemaking action is pending suggests that the codification of the NOTAM is preordained despite overwhelming objections. The FAA disagrees that adopting the training rule suggests that codification of the Washington, DC NOTAMs is preordained. Whether the airspace restrictions around Washington, DC exist via NOTAM or via codified regulation in 14 CFR, the FAA has determined that training is required to safely fly in the Washington, DC area.

III. Differences Between the NPRM and the Final Rule

The provisions proposed as new § 91.161 are adopted with the following modifications.

- All references in § 91.161 to ''100 nautical miles of the DCA VOR/DME'' have been changed to ''60 nautical miles of the DCA VOR/DME;''
- Captions have been added to each lettered paragraph;
- Proposed paragraphs (b) through (d) have been redesignated as (c) through (e);
- New paragraph (b) has been added to describe the content of the Special Awareness Training and information about where the training can be obtained;
- Paragraph (e) (proposed as (d)) has been reworded as discussed in ''II.D'' above.

IV. Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA submitted a copy of the new (or amended) information collection requirement(s) in this final rule to the Office of Management and Budget (OMB) for its review. Affected parties do not have to comply with the information collection requirements until the FAA publishes in the **Federal Register** the control number assigned by OMB for these information requirements. Publication of the control number notifies the public that OMB has approved these information collection requirements under the Paperwork Reduction Act of 1995.

A description of the annual burden is shown below.

Description of Respondents: The FAA estimates that approximately 87,000 persons that fly under VFR within 60 NM of the DCA VOR/DME will be affected by the rule, and that the population of affected persons will grow by approximately 0.14 percent per year.

Estimated Burden: The FAA assumes that each person will spend a total of 1 hour (40 minutes taking the online training and 20 minutes taking the test), at a cost of time of $31.50 per hour.

Based on that assumption, the first-year cost will be $2,740,500 ((87,000 persons × $31.50) × 1 hour), and time spent during the first year would be 87,000 hours (87,000 persons × 1 hour). The FAA estimates that in subsequent years (2009–2017), the per-year costs will be $3,843 (122 persons × $31.50 per 1 hour), and time spent during

subsequent years would be 122 hours (122 persons × 1 hour).

The total cost over 10 years is expected to be $2,775,087 ($2,740,500 + (9 × $3,843)), with an average cost per year of $277,509 (($2,740,500 + (9 × $3,843)) ÷ 10).

The total number of hours over 10 years is expected to be 88,098 hours (87,000 + (9 × 122)), with an average number of hours per year of 8,809.80 hours ((87,000 + (9 × 122)) ÷ 10).

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 Office of Management and Budget (OMB) control number.

V. International Compatibility

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

VI. 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 final rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this final rule: (1) Has benefits that justify its costs, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is not ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will not have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will not impose an unfunded mandate on state, local, or tribal governments, or on the private sector by exceeding the threshold identified above.

Total Costs and Benefits of this Rule

The FAA has determined that from 2008 to 2017, the total cost of the rule will be approximately $2.78 million ($2.77 million, discounted). The total derives from the cost of requiring pilots who fly under VFR within a 60-NM radius from the DCA VOR/DME to take the training. If the rule were 100% effective in reducing the number of unauthorized flights into the Washington DC, Metropolitan Area ADIZ, the potential benefits of the rule over 10 years would be approximately $35.7 million ($26.8 million, discounted). The FAA recognizes that a 100% rate is unrealistic because there is no way to predict the effectiveness of the rule. However, the FAA needs only a 10% success rate in reducing the number of incursions, resulting in benefits of approximately $2.7 million, for this rule to be cost-beneficial.

The FAA notes the aviation community would receive training at no direct monetary cost. Also, this analysis does not calculate the benefit of avoiding the use of force against aircraft that improperly enter the Washington, DC, ADIZ or FRZ.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective 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 that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. 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 proposed or final 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 Act.

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.

For the most part, this rule will impact only individual persons, who are not considered as entities under RFA, flying VFR within 60 NM of the DCA VOR/DME. However, for the few small entities that could be impacted by this rule, the additional costs are negligible. The FAA estimates that the training requires only an hour of a pilot's time (estimated at a cost of time of about $32) and there is no charge for the training. Therefore, as the Acting FAA Administrator, I certify that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Statement

The Trade Agreements Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and has determined that it primarily will have an impact on domestic operations, although it could affect some international pilots. For example, there could be some Canadian pilots affected when they fly between Canada and the Southern United States. However, this rulemaking will have negligible impact on foreign firms that provide goods or services in the United States.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates

on State, local, and tribal governments. Title II of the Act 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) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $136.1 million in lieu of $100 million.

This final rule does not contain such a mandate. The requirements of Title II do not apply.

VII. Executive Order 13132, Federalism

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

VIII. Environmental Analysis

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

IX. Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The FAA has 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.

X. Availability of Rulemaking Documents

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

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

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

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

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

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

XI. Small Business Regulatory Enforcement Fairness Act

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

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Noise control, Reporting and recordkeeping requirements.

The Amendment

■ In consideration of the foregoing, the Federal Aviation Administration amends 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, 44704, 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. Add § 91.161 to read as follows:

§ 91.161 Special awareness training required for pilots flying under visual flight rules within a 60-nautical mile radius of the Washington, DC VOR/DME.

(a) *Operations within a 60-nautical mile radius of the Washington, DC VOR/DME under visual flight rules (VFR).* Except as provided under paragraph (e) of this section, no person may serve as a pilot in command or as second in command of an aircraft while flying within a 60-nautical mile radius of the DCA VOR/DME, under VFR, unless that pilot has completed Special Awareness Training and holds a certificate of training completion.

(b) *Special Awareness Training.* The Special Awareness Training consists of information to educate pilots about the procedures for flying in the Washington, DC area and, more generally, in other types of special use airspace. This free training is available on the FAA's Web site. Upon completion of the training, each person will need to print out a copy of the certificate of training completion.

(c) *Inspection of certificate of training completion.* Each person who holds a certificate for completing the Special Awareness Training must present it for inspection upon request from:

(1) An authorized representative of the FAA;

(2) An authorized representative of the National Transportation Safety Board;

(3) Any Federal, State, or local law enforcement officer; or

(4) An authorized representative of the Transportation Security Administration.

(d) *Emergency declared.* The failure to complete the Special Awareness Training course on flying in and around the Washington, DC Metropolitan Area is not a violation of this section if an emergency is declared by the pilot, as described under § 91.3(b), or there was a failure of two-way radio communications when operating under IFR as described under § 91.185.

(e) *Exceptions.* The requirements of this section do not apply if the flight is being performed in an aircraft of an air ambulance operator certificated to conduct part 135 operations under this chapter, the U.S. Armed Forces, or a law enforcement agency.

Issued in Washington, DC on August 5, 2008.

Robert A. Sturgell,

Acting Administrator.

[FR Doc. E8–18619 Filed 8–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 944

[SATS No. UT–044–FOR; Docket ID: OSM–2007–0014]

Utah Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We are approving an amendment to the Utah regulatory program (the Utah program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Utah proposed revisions to its statute and rules regarding permit application requirements which may be waived with a written determination that they are unnecessary by the Division of Oil Gas and Mining (the Division), permit applications being filed in a local public office for public inspection, and extensions to permitted area being processed as significant revisions or applications for new permits. Utah is revising its program to be consistent with the corresponding Federal regulations and SMCRA, clarify ambiguities, and improve operational efficiency. This amendment package contains changes proposed previously under UT–042–FOR and UT–043–FOR.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: James F. Fulton, Chief, Denver Field Division, Office of Surface Mining Reclamation and Enforcement, 1999 Broadway, suite 3320, Denver, CO 80202–5733, Telephone: (303) 844–1400, extension 1424, E-mail: *jfulton@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Utah Program
II. Submission of the Proposed Amendment
III. Office of Surface Mining Reclamation and Enforcement's (OSM's) Findings
IV. Summary and Disposition of Comments
V. OSM's Decision
VI. Procedural Determinations

I. Background on the Utah Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, ''a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' See 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Utah program on January 21, 1981. You can find background information on the Utah program, including the Secretary's findings, the disposition of comments, and conditions of approval of the Utah program in the January 21, 1981, **Federal Register** (46 FR 5899). You can also find later actions concerning Utah's program and program amendments at 30 CFR 944.15, 944.20, 944.25 and 944.30.

II. Submission of the Proposed Amendment

By letter dated August 31, 2007, Utah sent us an amendment to its program (Administrative Record No. [1] OSM–2007–0014–0004 & OSM–2007–0014–0005) under SMCRA (30 U.S.C. 1201 *et seq.*). Utah sent the amendment in response to concern letters sent by OSM regarding changes proposed under UT–042–FOR (Administrative Record No. UT–1181 dated February 21, 2003) and UT–043–FOR (Administrative Record No. UT–1193 informal concern letter dated February 14, 2006), and to include changes made at its own initiative. Concerns regarding section 40–10–10(2)(d) of the Utah Code Annotated (UCA) and UCA 40–10–10(5) as submitted under UT–042–FOR are addressed here and the remainder of the UT–042–FOR package is being processed through a separate **Federal Register** notice. Utah formally withdrew the amendment to Administrative Rule R645–303–222 proposed under UT–043–FOR in a letter dated February 16, 2006 (Administrative Record No. UT–1194), and we approved the remainder of that amendment package on June 8, 2006 (71 FR 33249; Administrative Record No. UT–1195).

We announced receipt of this proposed amendment in the October 22, 2007, **Federal Register** (72 FR 59489). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. OSM–2007–0014–0001). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on November 21, 2007. We received comments from two Federal agencies and one private citizen.

[1] This final rule notice contains references to documents assigned Administrative Record numbers through our old record system and those assigned through the new regulations.gov system. OSM is transitioning to regulations.gov and all administrative record numbers will be assigned through this system in the future.

III. OSM's Findings

The following are our findings concerning the amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. We are approving the amendment.

A. Utah proposes to amend UCA 40–10–10(2)(d) to read:

40–10–10(2)(d)(i) A permit application will also include the following information:

(A) the result of test borings or core samples from the permit area, including logs of the drill holes;

(B) the thickness of the coal seam found;

(C) an analysis of the chemical properties of the coal;

(D) the sulfur content of any coal seam;

(E) chemical analysis of potentially acid or toxic-forming sections of the overburden; and

(F) chemical analysis of the stratum lying immediately underneath the coal to be mined.

(ii) Application requirements of Subsection (2)(d)(i) may be waived by the division if there is a written determination that these requirements are unnecessary.

Utah proposes to revise its statute at UCA 40–10–10(2)(d) to include recodification and language changes that are intended to increase accessibility and readability, limit the requirements to permit applications rather than permit applications and reclamation plans, and clarify which permit application requirements may be waived with a written determination by the Department that they are unnecessary.

UCA 40–10–10(2)(d) is being recodified as UCA 40–10–10(2)(d)(i)(A) through (F), and (ii). This proposed change will increase accessibility and readability of the section by identifying each requirement set forth in a separate subsection rather than having all requirements stated in one sentence. The recodification and minor language changes necessary to create separate sentences do not change the meaning or effectiveness of this provision.

The proposed language change at UCA 40–10–10(2)(d)(i) will replace the phrase ''A statement of'' with ''A permit application will also include the following''. This change has the effect of limiting the requirements set forth under 40–10–10(2)(d) to only permit

applications. The remainder of UCA 40–10–10(2) applies to both permit applications and reclamation plans. Reclamation plans must always be submitted as part of permit applications under State and Federal law. Utah's reclamation plan requirements are included in but not limited to UCA 40–10–10 and Administrative Rules R645–301–240, R645–301–340, R645–301–540, and R645–301–550.

The Federal counterpart language at SMCRA section 507(b)(15) contains the same requirements for permit applications only. Specific reclamation plan requirements are set forth under SMCRA section 508 and 30 CFR parts 780 and 784.

Utah Administrative Rule R645–300–133.710 requires the applicant to demonstrate that reclamation as required by the Program can be accomplished according to information given in the permit application. Informational requirements set forth under UCA 40–10–10(2)(d) will be considered in the reclamation plan by inclusion in the permit application.

Both Federal and State laws require the operator to demonstrate to the satisfaction of the regulatory authority that reclamation can be accomplished in the area proposed for mining. With the proposed change, UCA 40–10–10(2)(d) is substantively identical to its Federal counterpart, SMCRA section 507(b)(15). We find this change to be no less stringent than SMCRA.

The addition of the reference to ''(2)(d)(i)'' in subsection (2)(d)(ii) has the effect of limiting the requirements which may be waived by Utah with a written determination that they are unnecessary. With the proposed addition, both State and corresponding Federal provisions at SMCRA section 507(b)(15) call for but allow the regulatory authority to waive the requirements for reports on test borings or core samplings from the permit area including logs of the drill holes; thickness of the coal seam found; an analysis of the chemical properties of the coal; the sulfur content of any coal seam; chemical analysis of potential acid or toxic forming sections of the overburden; and chemical analysis of the stratum lying immediately underneath the coal to be mined.

In amendment UT–042–FOR, Utah proposed a provision under which it could waive the information required in paragraph (2) rather than restricting this waiver to (2)(d)(i). This interpretation would allow Utah to waive the required information pertaining to ownership, maps and plans, hydrology and probable hydrologic consequences, as well as the test borings, core samples, and the physical and chemical characteristics of the coal, overburden, and the stratum underlying the coal. This interpretation is inconsistent with Federal requirements under SMCRA and was raised as a concern in a letter from OSM to Utah on February 21, 2003 (Administrative Record No. UT–1180). This addition in UT–044–FOR clarifies the ambiguity and specifically defines which informational requirements may be waived with a written finding by Utah that they are unnecessary. It is also consistent with counterpart section 507(b)(15) of SMCRA.

The final change to this provision replaces the phrase ''with respect to the specific application by'' with ''if there is'' (a written determination * * *). This change is intended to increase the readability of the provision by writing in plain language without altering the provision's meaning. Moreover, we interpret this provision to mean that written determinations to waive application requirements will be made on a case-by-case basis. This interpretation was confirmed with Utah on December 3, 2007 (Administrative record No. OSM–2007–0014–0010). We approve the change with this understanding.

For the reasons discussed above, we find that Utah's proposed revisions to UCA 40–10–10(2)(d) are in accordance with and no less stringent than SMCRA.

B. Utah proposes to amend UCA 40–10–10(5) to read:

40–10–10(5) An applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county, or an appropriate public office approved by the division where the mining is proposed to occur, except for information pertaining to the coal seam itself.

Utah previously proposed changes to its statute at UCA 40–10–10(5) (October 22, 2002 Administrative Record No. UT–1171; processed under SATS No. UT–042–FOR) including deletion of the term ''for public inspection'' from the provision. This raised a concern in that the proposed deletion would remove the provision's purpose of making permit applications available for public inspection near the area where mining is proposed to occur. A concern letter was sent by OSM to Utah February 21, 2003 (Administrative Record No. UT–1180) and we never formally approved the proposed changes.

The current amendment to UCA 40–10–10(5) resubmits the other minor editorial changes to the statute while retaining the phrase ''for public inspection''. The provision's Federal counterpart at SMCRA section 507(e) contains the same language. Additional proposed changes are minor editorial revisions that are intended to improve readability and do not alter the provision's meaning or effectiveness. For these reasons, we find the provision to be no less stringent than SMCRA and we approve Utah's proposed changes.

C. Utah proposes to amend UCA 40–10–12(1)(c) to read:

UCA 40–10–12(1)(e) Any extensions to the area covered by the permit, except incidental boundary revisions, must be made by:

(i) An application for a significant revision of the permit; or

(ii) An application for another permit.

Utah proposes to change the way extensions to area covered by a permit are made from exclusively requiring an application for another permit to either requiring an application for a significant permit revision or an application for another permit. By changing this statute, Utah has addressed our concerns raised in the February 14, 2006 concern letter (Administrative Record No. UT–1193). With this statute change, Utah is now able to amend the implementing Administrative Rule R645–303–222 originally proposed on November 28, 2005 (SATS No UT–043–FOR; Administrative Record No. UT–1181) and formally withdrawn February 16, 2006 (Administrative Record No. UT–1194). This rule change has been resubmitted and is discussed below in Finding III(D).

Section 511 of SMCRA requires that extensions to an area covered under a permit be made through applications for new permits. Significant permit revisions and new permit applications have the same information and public notice requirements. The fundamental difference between significant permit revisions and applications for new permits is the amount of time Utah has to process the application. Significant permit revisions are processed in 120 days as opposed to applications for new permits which are processed in 360 days. Because the information and public notice requirements for significant permit revisions are the same as for new permits, we find this rule change to be no less stringent than SMCRA. We approve this change.

D. Utah proposes to amend Administrative Rule R645–303–222 to read:

R645–303–222. The operator will obtain approval of a permit change by making application in accordance with 645–303–220 for changes in the method of conduct of mining or reclamation operations or in the conditions authorized or required under the approved permit; provided, however, that any extensions to the approved permit area,

except for Incidental Boundary Changes, must be processed and approved using the procedural requirements of R645–303–226.

Proposed Utah Administrative Rule R645–303–222 would allow Utah to process and approve permit area extensions (except incidental boundary changes, or IBCs) using procedures for significant permit revisions at R645–303–226 instead of new permit procedures. The proposed rule implements changes to UCA § 40–10–12(1)(c), which require ''[a]ny extensions to the area covered by the permit, except incidental boundary revisions must be made by: (i) an application for a significant revision of the permit; or (ii) an application for another permit.''

The proposed rule appears, on its face, to be less effective than the counterpart Federal regulation at 30 CFR 774.13(d) which requires extensions to the area covered by the permit, except incidental boundary revisions, to be made by an application for a new permit. However, a review of Utah's referenced rules shows otherwise. SMCRA and the Federal regulations require such permit extensions to be processed as new permit applications. Referenced Utah Administrative Rule R645–303–226 requires Utah to review and process significant permit revisions, and as proposed, permit extensions, in accordance with the requirements of Utah Administrative Rules R645–300–100 and R645–300–200 and the information requirements of R645–301 and R645–302. The requirements of those rules also apply to new permits.

By imposing the requirements of R645–300–100, R645–300–200, R645–301, and R645–302 on significant permit revisions, the proposed rule would subject extensions to the permit area, when processed and reviewed as significant permit revisions, to the same requirements as new permits except for a shorter review period. This is true notwithstanding the obvious difference between the plain wording of the proposed rule and the provisions of SMCRA and the Federal regulations. This proposed change is not inconsistent with the counterpart Federal regulation and is in accordance with SMCRA.

The proposed rule would require Utah to process applications for permit area extensions (except IBC's) within 120 days of receipt of a complete application (same as for significant permit revisions). That would reduce Utah's review and processing time for such permit area extensions by 67 percent compared to the existing 1-year period it has under the current rules to process them as new permit applications. Utah's existing rule at R645–300–131.111.1 requires it to process significant permit revisions within 120 days, and such revisions must meet the same requirements as new permit applications as noted above. The State may choose to impose on itself the same 120-day deadline for permit area extensions. This aspect of the change does not make the proposed rule less effective than or inconsistent with the Federal regulation or less stringent than or not in accordance with SMCRA. For the reasons discussed above, we approve these changes.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on this amendment (Administrative Record No. OSM–2007–0014–0001). Three nonsubstantive comments were received; two from Federal agencies and one from a private citizen.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Utah program (Administrative Record No. OSM–2007–0014–0008).

On September 21, 2007 we received a letter from the Natural Resource Conservation Service dated September 17, 2007 (Administrative Record No. OSM–2007–0014–0002) declining to comment on this amendment.

On October 26, 2007 a representative from EPA Region 8 contacted OSM via telephone and stated that the EPA has no substantive comments on this amendment (Administrative Record No. OSM–2007–0014–0009).

Private Citizen Comment

On October 23, 2007 we received a citizen comment stating that the amendment is ''interesting'' (Administrative Record No. OSM–2007–0014–0003). While we agree, we consider this to be a nonsubstantive comment that does not require further response.

V. OSM's Decision

Based on the above findings, we approve Utah's August 31, 2007 amendment.

To implement this decision, we are amending the Federal regulations at 30 CFR part 944, which codify decisions concerning the Utah program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503(a) of SMCRA requires that the State's program demonstrates that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

Effect of OSM's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any change of an approved State program be submitted to OSM for review as a program amendment. Federal regulations at 30 CFR 732.17(g) prohibit any changes to approved State programs that are not approved by OSM. In the oversight of the Utah program, we will recognize only the statutes, regulations and other materials we have approved, together with any consistent implementing policies, directives and other materials. We will require Utah to enforce only those approved provisions.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to ''establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations.'' Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be ''in accordance with'' the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations ''consistent with'' regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13175—Consultation and Coordination With Indian Tribal Governments

In accordance with Executive Order 13175, we have evaluated the potential effects of this rule on Federally recognized Indian Tribes and have determined that the rule does not have substantial direct effects 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. The rule does not involve or affect Indian Tribes in any way.

Executive Order 13211—Regulations That Significantly Affect The Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 CFR U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C) *et seq*).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior 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.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), of the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

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

c. Does 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.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 944

Intergovernmental relations, Surface mining, Underground mining.

Dated: July 21, 2008.

Allen D. Klein,

Regional Director, Western Region.

■ For the reasons set out in the preamble, 30 CFR part 944 is amended as set forth below:

PART 944—UTAH

■ 1. The authority citation for part 944 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

■ 2. Section 944.15 is amended in the table by adding a new entry in chronological order by ''Date of Final Publication'' to read as follows:

§ 944.15 Approval of Utah regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
*	*	* * *
August 31, 2007	August 12, 2008	Utah Code Annotated 40–10–10(2)(d), (5), 40–10–12(1)(e). Utah Admin R 645–303–222.

[FR Doc. E8–18496 Filed 8–11–08; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2006–OS–0091; RIN 0720–AB00]

32 CFR Part 199

TRICARE; Reserve and Guard Family Member Benefits

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule implements sections 704 and 705 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. These provisions apply to eligible family members who become eligible for TRICARE as a result of their Reserve Component (RC) sponsor (including those with delayed effective date orders up to 90 days) being called or ordered to active duty for more than 30 days in support of a federal/contingency operation and choose to participate in TRICARE Standard or Extra, rather than enroll in TRICARE Prime. The first provision gives the Secretary the authority to waive the annual TRICARE Standard (or Extra) deductible, which is set by law (10 U.S.C. 1079(b)) at $150 per individual and $300 per family ($50/$100 for families of members in pay grades E–4 and below). The second provision gives the Secretary the authority to increase TRICARE payments up to 115 percent of the TRICARE maximum allowable charge, less the applicable patient cost share if not previously waived under the first provision, for covered inpatient and outpatient health services received from a provider that does not participate (accept assignment) with TRICARE. These provisions help ensure timely access to health care and maintain clinically appropriate continuity of health care to family members of Reservists and Guardsmen activated in support of a federal/contingency operation; limit the out-of-pocket health care expenses for those family members; and remove potential barriers to health care access by Guard and Reserve families.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Jody W. Donehoo, TRICARE Policy and Operations, TRICARE Management Activity, telephone (703) 681–0039.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

A. On November 5, 2001, the Department of Defense (DoD) published notice of a nationwide TRICARE Demonstration Project (66 FR 55928–55930). This demonstration was conducted under the authority of 10 U.S.C. 1092. In this demonstration project, DoD addressed unreasonable impediments to the continuity of health care encountered by certain family members of Reservists and National Guard called to active duty in support of a federal contingency operation for more than 30 days.

On November 12, 2003, DoD published a notice (68 FR 64087) to extend through October 31, 2004, the demonstration project which was scheduled to end on November 1, 2003.

On October 1, 2004, the DoD published another notice (69 FR 58895) extending the demonstration project, previously scheduled to end on October 31, 2004, to October 31, 2005.

On October 12, 2005, DoD published a notice (70 FR 59320) to extend the demonstration project, previously scheduled to end on October 31, 2005, to October 31, 2007.

On June 19, 2007, the Department published a notice (72 FR 33742) to extend the demonstration through October 31, 2008.

On April 18, 2008, the Department published a notice (73 FR 21120) to extend the demonstration through October 31, 2009.

The continued deployment of RC members in support of Operation Noble Eagle/Operation Enduring Freedom and Operation Iraqi Freedom warrants making permanent the Secretary's authority to exercise certain components of this demonstration project. Sections 704 and 705 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 provide DoD authority to make two components of the demonstration project permanent and amend section 1095d(a) and section 1079(h) of Title 10, United States Code, as appropriate. In accordance with these two statutory provisions, DoD is implementing this discretionary authority.

B. Public Comments. The proposed rule was published in the **Federal Register** on August 22, 2006 (71 FR 48864). We received no public comments. The final rule is consistent with the proposed rule, with the exception of two technical corrections. In the proposed rule, the family deductible for E–4s and below was stated as $150. That amount is incorrect. Under 10 U.S.C. 1079(b)(3), the family deductible for dependents of E–4s and below is $100. The correct amount is reflected in this final rule.

Also, in the proposed rule, the allowable charge authorized for non-participating providers was described incorrectly. The proposed rule used the phrase ''the lower of the billed amount or the applicable balance billing limit under paragraph (j)(l)(i)(C) of this section, less the applicable beneficiary cost share.'' The correct phrase to describe the allowable charge authorized for non-participating providers is ''the CMAC level as established in paragraph (j)(l)(i)(B) of this section plus any balance billing amount up to the balance billing limit as referred to in paragraph (j)(l)(i)(C) of this section.'' This phrase, which is more consistent with the statutory language, is used in this final rule.

II. Permanent Benefits Offered To Reserve Component Families

A. *Waiver of deductible* (paragraph 199.4(f)(2)(i)(H)). Eligible family members of RC sponsors called or ordered to active duty for more than 30 days in support of a federal contingency operation, who choose to participate in TRICARE Standard, may not be responsible for paying the annual TRICARE Standard deductible. By law, the TRICARE Standard deductible for active duty family members is $150 per individual, $300 per family ($50/$100 for E–4s and below) each fiscal year. Exercise of the authority to waive this annual deductible appropriately limits out-of-pocket expenses for many Reserve and Guard family members, in consideration of the fact that many may have already paid annual deductibles under their civilian health plan.

B. *Increased payment to providers* (paragraph 199.14(j)). Executive authority contained in this program allows an increase in TRICARE payments up to 115 percent of the TRICARE maximum allowable charge, less the applicable patient cost share if not previously waived under the first provision, for inpatient and outpatient care received from a provider that does not participate (accept assignment) under TRICARE. This helps Reserve and Guard family members to be able to continue to see civilian providers with whom they have established relations and promotes access and clinically appropriate continuity of care.

III. Regulatory Procedures

Executive Order 12866 requires certain regulatory assessments for any significant regulatory action that results in an annual effect on the economy of $100 million or more. The Congressional Review Act establishes certain procedures for major rules, defined as those with similar major impacts. The Regulatory Flexibility Act (RFA) requires that each Federal agency prepare, and make available for public comment, a regulatory flexibility

analysis when the agency issues a regulation that has significant impact on a substantial number of small entities. This final rule does not have an annual effect on the economy of $100 million or more. According to an independent government cost estimate, the annual cost for both of these provisions will be less than $30 million.

This rule, however, does address a novel policy issue relating to waiving the deductibles for one category of family member beneficiaries and not others, as well as allowing providers who treat this same group of beneficiaries to receive reimbursement at a higher rate than providers who treat similar beneficiaries. Thus this rule has been reviewed by the Office of Management and Budget under E.O. 12866.

This rule will not have a significant impact on a substantial number of small entities for purposes of the RFA.

This rule does not contain a Federal mandate that may result in the expenditure by State, local and tribunal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

This rule will not impose additional information collection requirements on the public under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3511).

We have examined the impact(s) of the final rule under Executive Order 13132 and it does not have policies that have federalism implications that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, therefore, consultation with State and local officials is not required.

List of Subjects in 32 CFR Part 199

Claims, Dental health, Health care, Health insurance, Individuals with disabilities, Military personnel.

■ Accordingly, 32 CFR part 199 is amended as follows:

PART 199—[AMENDED]

■ 1. The authority citation for part 199 continues to read as follows:

Authority: 5 U.S.C. 301; 10 U.S.C. chapter 55.

■ 2. Section 199.4 is amended by revising paragraph (f)(2)(i)(H) to read as follows:

§ 199.4 Basic program benefits.

* * * * *

(f) * * *

(2) * * *

(i) * * *

(H) The Director, TRICARE Management Activity, may waive the annual individual or family fiscal year deductible for dependents of a Reserve Component member who is called or ordered to active duty for a period of more than 30 days or a National Guard member who is called or ordered to fulltime federal National Guard duty for a period of more than 30 days in support of a contingency operation (as defined in 10 U.S.C. 101(a)(13)). For purposes of this paragraph, a dependent is a lawful husband or wife of the member and a child is defined in paragraphs (b)(2)(ii)(A) through (F) and (b)(2)(ii)(H)(1), (2), and (4) of § 199.3.

* * * * *

■ 3. Section 199.14 is amended by adding paragraph (j)(1)(i)(E) to read as follows:

§ 199.14 Provider reimbursement methods.

* * * * *

(j) * * *

(1) * * *

(i) * * *

(E) *Special rule for certain TRICARE Standard Beneficiaries.* In the case of dependent spouse or child, as defined in paragraphs (b)(2)(ii)(A) through (F) and (b)(2)(ii)(H)(1), (2), and (4) of § 199.3, of a Reserve Component member serving on active duty pursuant to a call or order to active duty for a period of more than 30 days in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of title 10, United States Code, the Director, TRICARE Management Activity, may authorize non-participating providers the allowable charge to be the CMAC level as established in paragraph (j)(l)(i)(B) of this section plus any balance billing amount up to the balance billing limit as referred to in paragraph (j)(l)(i)(C) of this section.

* * * * *

Dated: August 6, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E8–18597 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 65

[Docket No. FEMA–B–7797]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the Base (1% annual-chance) Flood Elevations (BFEs) is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified BFEs for new buildings and their contents.

DATES: These modified BFEs are currently in effect on the dates listed in the table below and revise the Flood Insurance Rate Maps (FIRMs) in effect prior to this determination for the listed communities.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Mitigation Assistant Administrator of FEMA reconsider the changes. The modified BFEs may be changed during the 90-day period.

ADDRESSES: The modified 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 Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3151.

SUPPLEMENTARY INFORMATION: The modified BFEs are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified BFE determinations are available for inspection is provided.

Any request for reconsideration must be based on knowledge of changed conditions or new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified BFEs are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program (NFIP).

These 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 the other Federal, State, or regional entities. The changes BFEs are in accordance with 44 CFR 65.4.

National Environmental Policy Act. This interim 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 interim 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 interim rule involves no policies that have federalism implications under Executive Order 13132, Federalism.

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

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

■ Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

■ 1. The authority citation for part 65 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.

§ 65.4 [Amended]

■ 2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Alabama: Jefferson	City of Birmingham (08–04–2759P).	June 20, 2008; June 27, 2008; *The Birmingham News*.	The Honorable Larry P. Langford, Mayor, City of Birmingham, 710 North 20th Street, Birmingham, AL 35203.	July 28, 2008	010116
Colorado: Adams	City of Thornton (08–08–0377P).	June 5, 2008; June 12, 2008; *Northglenn-Thornton Sentinel*.	The Honorable Erik Hansen, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	October 10, 2008	080007
Connecticut: Hartford	City of Bristol (08–01–0505P).	June 25, 2008; July 2, 2008; *The Hartford Courant*.	The Honorable Arthur Ward, Mayor, City of Bristol, City Hall, 111 North Main Street, Bristol, CT 06010.	June 11, 2008	090023
Florida: Seminole	City of Winter Springs (08–04–4157P).	June 18, 2008; June 25, 2008; *Orlando Sentinel*.	The Honorable John F. Bush, Mayor, City of Winter Springs, 21 Tarpon Circle, Winter Springs, FL 32708.	October 23, 2008	120295
Hawaii: Maui	Unincorporated areas of Maui County (07–09–1848P).	February 21. 2008; February 28, 2008; *Maui News*.	The Honorable Charmaine Tavares, Mayor, Maui County, 200 South High Street, Wailuku, HI 96793.	February 12, 2008	150003
Idaho: Madison	Unincorporated areas of Madison County (08–10–0206P).	July 3, 2008; July 10, 2008; *Standard Journal*.	The Honorable Ralph Robison, Chairman, Madison County, Board of Commissioners, P.O. Box 389, Rexburg, ID 83440.	June 16, 2008	160217
Illinois:					
Lake	Unincorporated areas of Lake County (08–05–1098P).	June 5, 2008; June 12, 2008; *Lake County News-Sun*.	The Honorable Suzi Schmidt, Chair, Lake County Board, 18 North County Street, Room 1001, Waukegan, IL 60085.	October 10, 2008	170357
Lake	Village of Lake Barrington (08–05–1098P).	June 5, 2008; June 12, 2008; *Lake County News-Sun*.	The Honorable Kevin Richardson, President, Village of Lake Barrington, 23860 Old Barrington Road, Lake Barrington, IL 60010.	October 10, 2008	170372
Lake	Village of North Barrington (08–05–1098P).	June 5, 2008; June 12, 2008; *Lake County News-Sun*.	The Honorable Bruce J. Sauer, President, Village of North Barrington, 111 Old Barrington Road, North Barrington, IL 60010.	October 10, 2008	170383
Minnesota: Anoka	City of Blaine (08–05–1446P).	June 6, 2008; June 13, 2008; *Blaine-Spring Lake Park Life*.	The Honorable Thomas Ryan, Mayor, City of Blaine, 10801 Town Square Drive Northeast, Blaine, MN 55449.	October 13, 2008	270007
Missouri:					
St. Charles County.	Unincorporated areas of St. Charles County (08–07–0068P).	June 25, 2008; July 2, 2008; *St. Charles Journal*.	The Honorable Steve Ehlmann, County Executive, St. Charles County, St. Charles County Courthouse, 100 North Third Street, St. Charles, MO 63301.	October 30, 2008	290315
St. Charles County.	City of St. Peters (08–07–0068P).	June 25, 2008; July 2, 2008; *St. Charles Journal*.	The Honorable Len Pagano, Mayor, City of St. Peters, One St. Peters Centre Boulevard, St. Peters, MO 63376.	October 30, 2008	290319
Montana: Flathead	Unincorporated areas of Flathead County (08–08–0430P).	June 13, 2008; June 20, 2008; *Daily Inter Lake*.	The Honorable Gary D. Hall, Chairman, Flathead County, Board of Commissioners, 800 South Main Street, Kalispell, MT 59901.	June 2, 2008	300023

State and county	Location and case No.	Date and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Nevada: Clark	Unincorporated areas of Clark County (07–09–1612P).	July 8, 2008; July 15, 2008; *Las Vegas Review-Journal*.	The Honorable Rory Reid, Chair, Clark County Board of Commissioners, 500 South Grand Central Parkway, Las Vegas, NV 89106.	November 12, 2008	320003
Pennsylvania:					
Lackawanna	City of Scranton (07–03–0177P).	April 28, 2008; May 5, 2008; *The Scranton Times Tribune*.	The Honorable Christopher A. Doherty, Mayor, City of Scranton, 340 North Washington Avenue, Scranton, PA 18503.	September 2, 2008	420538
Lackawanna	Borough of Taylor (07–03–0177P).	April 28, 2008; May 5, 2008; *The Scranton Times Tribune*.	The Honorable Richard Bowen, Mayor, Borough of Taylor, 122 Union Street, Taylor, PA 18517.	September 2, 2008	420539
Tennessee:					
Coffee	City of Tullahoma (07–04–5627P).	May 14, 2008; May 21, 2008; *The Tullahoma News*.	The Honorable Troy Bisby, Mayor, City of Tullahoma, 201 West Grundy Street, Tullahoma, TN 37388.	September 18, 2008	470036
Wilson	City of Lebanon (08–04–1439P).	May 28, 2008; June 4, 2008; *The Wilson Post*.	The Honorable Robert Dedman, Mayor, Wilson County, 228 East Main Street, Room 104, Lebanon, TN 37087.	May 16, 2008	270208
Texas:					
Bexar	City of San Antonio (07–06–0823P).	June 26, 2008; July 3, 2008; *San Antonio Express News*.	The Honorable Phil Hardberger, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	October 31, 2008	480045
Collin	City of McKinney (07–06–1407P).	June 26, 2008; July 3, 2008; *McKinney Courier Gazette*.	The Honorable Bill Whitfield, Mayor, City of McKinney, 222 North Tennessee Street, McKinney, TX 75069.	October 31, 2008	480135
Ellis	City of Waxahachie (08–06–0662P).	May 28, 2008; June 4, 2008; *Waxahachie Daily Light*.	The Honorable Joe Jenkins, Mayor, City of Waxahachie, P.O. Box 757, Waxahachie, TX 75165.	October 2, 2008	480211
Harris	Unincorporated areas of Harris County (07–06–2077P).	July 2, 2008; July 9, 2008; *Houston Chronicle*.	The Honorable Ed Emmett, Harris County Judge, 1001 Preston Street, Suite 911, Houston, TX 77002.	October 30, 2008	480287
Tarrant	City of Fort Worth (07–06–2613P).	May 30, 2008; June 6, 2008; *Fort Worth Star-Telegram*.	The Honorable Michael J. Moncrief, Mayor, City of Fort Worth, 1000 Throckmorton Street, Fort Worth, TX 76102.	September 29, 2008	480596
Virginia: Independent City.	City of Winchester (08–03–0801P).	May 8, 2008; May 15, 2008; *The Winchester Star*.	The Honorable Elizabeth Minor, Mayor, City of Winchester, 231 East Piccadilly Street, Suite 310, Winchester, VA 22601.	September 12, 2008	510173
Wisconsin:					
Dodge	Unincorporated areas of Dodge County (07–05–4832P).	June 19, 2008; June 26, 2008; *Watertown Daily Times*.	The Honorable Russell E. Kottke, Chairman, Dodge County, Board of Supervisors, 127 East Oak Street, Beaver Dam, WI 53039.	October 24, 2008	550094
Dodge	City of Watertown (07–05–4832P).	June 19, 2008; June 26, 2008; *Watertown Daily Times*.	The Honorable Ron Krueger, Mayor, City of Watertown, P.O. Box 477, Watertown, WI 53094.	October 24, 2008	550107
Ozaukee	Unincorporated areas of Ozaukee County (08–05–1362P).	June 5, 2008; June 12, 2008; *Ozaukee Press*.	The Honorable Robert Brooks, Chairman, Ozaukee County Board, P.O. Box 994, Port Washington, WI 53074–0994.	October 10, 2008	550310

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

Dated: July 25, 2008.

Edward L. Connor,

Deputy Assistant Administrator for Insurance, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–18530 Filed 8–11–08; 8:45 am]

BILLING CODE 9110–12–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 Branch, 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 Assistant Administrator of the Mitigation Directorate 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
Codington County, South Dakota and Incorporated Areas Docket No.: FEMA–B–7755			
East Branch Roby Creek	Approximately 200 feet east of 11th Street Northeast	+1,767	Unincorporated Areas of Codington County, City of Watertown.
	14th Avenue Northeast	+1,777	
East Branch Roby Creek	Approximately 400 feet west of 7th Street Northeast	+1,760	City of Watertown.
	Approximately 200 feet west of 11th Street Northeast	+1,765	Unincorporated Areas of Codington County.
Lake Kampeska	Approximately 200 feet northeast of intersection of 448th Avenue and U.S. Highway 212.	+1,725	Unincorporated Areas of Codington County, City of Watertown.
Lake Kampeska	Approximately 100 feet west of intersection of 452nd Avenue and Stadheim Drive.	+1,725	City of Watertown, Unincorporated Areas of Codington County.
Pelican Lake	Approximately 700 feet north of intersection of 174th Street and 452nd Avenue.	+1,717	Unincorporated Areas of Codington County, City of Watertown.
Pelican Lake	Junction of 21st Street SW and 12th Avenue SW	+1,717	City of Watertown, Unincorporated Areas of Codington County.
Roby Creek	Approximately 4,500 feet downstream from U.S. Highway 212.	+1,715	City of Watertown.
	Approximately 100 feet east of U.S. Highway 81	+1,770	

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

ADDRESSES

City of Watertown

Maps are available for inspection at the Watertown City Hall, 23 Second St., NE., Watertown, South Dakota 57201.

Unincorporated Areas of Codington County

Maps are available for inspection at the Codington County Planning and Zoning Department, Codington County Extension Complex, 1910 West Kemp Avenue, Watertown, South Dakota 57201–3048.

Flooding source(s)	Location of referenced elevation	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground. Modified	Communities affected
Grainger County, Tennessee, and Incorporated Areas Docket No.: FEMA B–7749			
Lea Creek	Approximately 2,800 feet upstream U.S. Highway 11	+913	Unincorporated Areas of Grainger County.
	Approximately 4,200 feet upstream U.S. Highway 11	+913	
Norris Lake	Approximately 5,200 feet downstream of the confluence of Black Fox Creek.	+1032	Unincorporated Areas of Grainger County.
	Approximately 2,500 feet downstream of U.S. Highway 25	+1032	

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

ADDRESSES

Unincorporated Areas of Grainger County

Maps are available for inspection at Grainger County Courthouse, P.O. Box 126, Rutledge, TN 37861.

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

Dated: July 25, 2008.

Edward L. Connor,

Deputy Assistant Administrator for Insurance, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–18527 Filed 8–11–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Chapter 2

RIN 0750–AG00

Defense Federal Acquisition Regulation Supplement; Small Business Program Name Change (DFARS Case 2008–D001)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect the redesignation of the ''Office of Small and Disadvantaged Business Utilization'' to the ''Office of Small Business Programs'' within DoD. The redesignation resulted from Section 904 of the National Defense Authorization Act for Fiscal Year 2006.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0289; facsimile 703–602–7887. Please cite DFARS Case 2008–D001.

SUPPLEMENTARY INFORMATION:

A. Background

Section 904 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109–163) redesignated the ''Office of Small and Disadvantaged Business Utilization'' to the ''Office of Small Business Programs'' for DoD. This final rule amends the DFARS to reflect the redesignation.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008–D001.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 219 and 252 and Appendix I to chapter 2 are amended as follows:

■ 1. The authority citation for 48 CFR parts 219 and 252 and Appendix I to subchapter I continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

219.201 [Amended]

■ 2. Section 219.201 is amended in paragraph (d) introductory text, and in paragraph (f) in the first and second sentences, by removing ''Small and Disadvantaged Business Utilization'' and adding in its place ''Small Business Programs''.

219.1007 [Amended]

■ 3. Section 219.1007 is amended in paragraph (b)(1), in the first sentence, by removing ''Small and Disadvantaged Business Utilization'' and adding in its place ''Small Business Programs''.

219.7102 [Amended]

■ 4. Section 219.7102 is amended in paragraph (d)(1)(ii) by removing ''Small and Disadvantaged Business Utilization (SADBU)'' and adding in its place ''Small Business Programs (SBP)''.

219.7103–1 [Amended]

■ 5. Section 219.7103–1 is amended in the second sentence by removing ''SADBU'' and adding in its place ''SBP''.

219.7103–2 [Amended]

■ 6. Section 219.7103–2 is amended in paragraphs (d)(1), (e)(3), and (f) by removing ''SADBU'' and adding in its place ''SBP''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 7. Section 252.219–7004 is amended by revising the clause date and paragraph (c)(1) to read as follows:

252.219–7004 Small Business Subcontracting Plan (Test Program).

* * * * *

SMALL BUSINESS SUBCONTRACTING PLAN (TEST PROGRAM) (AUG 2008)

* * * * *

(c) * * *

(1) One copy of the SF 295 and attachments shall be submitted to Director, Small Business Programs, Office of the Under Secretary of Defense (Acquisition, Technology, and Logistics), 201 12th Street South, Suite 406, Arlington, VA 22202; and

* * * * *

Appendix I to Chapter 2—Policy and Procedures for the DOD Pilot Mentor-Protege Program

I–102 [Amended]

■ 8. Appendix I to chapter 2 is amended in section I–102 as follows:

■ a. In paragraph (a)(1) by removing ''Small and Disadvantaged Business Utilization (SADBU)'' and adding in its place ''Small Business Programs (SBP)''; and

■ b. In paragraph (f)(3) by removing ''SADBU'' and adding in its place ''SBP''.

I–103 [Amended]

■ 9. Appendix I to chapter 2 is amended in section I–103, in paragraph (b)(3), by removing ''SADBU'' and adding in its place ''SBP''.

I–105 [Amended]

■ 10. Appendix I to chapter 2 is amended in section I–105 as follows:

■ a. In paragraph (a), in the first sentence, by removing ''SADBU'' and adding in its place ''SBP''; and

■ b. In paragraph (c) by removing ''*http://www.acq.osd.mil/sadbu/mentor_protege*'' and adding in its place ''*http://www.acq.osd.mil/osbp/mentor_protege/*''.

I–107 [Amended]

■ 11. Appendix I to chapter 2 is amended in section I–107, in paragraph (j) in the second sentence, by removing ''SADBU'' and adding in its place ''SBP''.

I–108 [Amended]

■ 12. Appendix I to chapter 2 is amended in section I–108, in paragraphs (c), (e), and (f), by removing ''SADBU'' and adding in its place ''SBP''.

I–109 [Amended]

■ 13. Appendix I to chapter 2 is amended in section I–109, in paragraph (c) in the second sentence, and in paragraph (d) in the first and second sentences, by removing ''SADBU'' and adding in its place ''SBP''.

I–110.2 [Amended]

■ 14. Appendix I to chapter 2 is amended in section I–110.2, in paragraph (a) introductory text, in paragraph (b) introductory text in the second sentence, and in paragraph (c), by removing ''SADBU'' and adding in its place ''SBP''.

I–111 [Amended]

■ 15. Appendix I to chapter 2 is amended in section I–111, in paragraph (a), by removing ''SADBU'' and adding in its place ''SBP''.

I–112.2 [Amended]

■ 16. Appendix I to chapter 2 is amended in section I–112.2 as follows:

■ a. In paragraph (d) by removing ''*http://www.acq.osd.mil/sadbu/mentor_protege*'' and adding in its place ''*http://www.acq.osd.mil/osbp/mentor_protege/*''; and

■ b. In paragraphs (g)(1) and (2) by removing ''SADBU'' and adding in its place ''SBP''.

I–113 [Amended]

■ 17. Appendix I to chapter 2 is amended in section I–113, in paragraph (b), by removing ''*http://www.acq.osd.mil/sadbu/mentor_protege*'' and adding in its place ''*http://www.acq.osd.mil/osbp/mentor_protege/*.''

[FR Doc. E8–18508 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 203, 250, and 252

RIN 0750–AG01

Defense Federal Acquisition Regulation Supplement; Conforming Changes—Standards of Conduct and Extraordinary Contractual Actions (DFARS Case 2008–D004)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update text addressing contractor standards of conduct and the handling of extraordinary contractual actions. The DFARS changes are consistent with changes made to the Federal Acquisition Regulation.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2008–D004.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule updates DFARS text for consistency with changes made to the Federal Acquisition Regulation (FAR) as follows:

○ Removes DFARS Subpart 203.70, Contractor Standards of Conduct, and the corresponding contract clause at 252.203–7002, since policy on this subject was added to the FAR at 72 FR 65873 on November 23, 2007.

○ Adds DFARS 203.1004 to provide address information for use in completion of the clause at FAR 52.203–14, Display of Hotline Poster(s).

○ Revises DFARS Part 250 for consistency with the structure of FAR Part 50, as revised at 72 FR 63027 on November 7, 2007. The DFARS changes update headings, numbering, and cross-references, and reflect the dollar threshold currently specified in the FAR with regard to delegation of authority for approval of extraordinary contractual actions.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment under 41 U.S.C. 418b is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2008-D004.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 203, 250, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 203, 250, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 203, 250, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 203—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

■ 2. Subpart 203.10 is added to read as follows:

Subpart 203.10—Contractor Code of Business Ethics and Conduct

203.1004 Contract clauses.

(b)(2)(ii) Insert the following address in paragraph (b)(3) of the clause at FAR 52.203–14, Display of Hotline Poster(s): DoD Inspector General, ATTN: Defense Hotline, 400 Army Navy Drive, Washington, DC 22202–2884.

Subpart 203.70 [Removed]

■ 3. Subpart 203.70 is removed.

■ 4. Part 250 is revised to read as follows:

PART 250—EXTRAORDINARY CONTRACTUAL ACTIONS AND THE SAFETY ACT

Subpart 250.1—Extraordinary Contractual Actions

Sec.

250.100 Definitions.
250.101 General.
250.101–2 Policy.
250.101–2–70 Limitations on payment.
250.101–3 Records.
250.102 Delegation of and limitations on exercise of authority.
250.102–1 Delegation of authority.
250.102–1–70 Delegations.
250.102–2 Contract adjustment boards.
250.103 Contract adjustments.
250.103–3 Contract adjustment.
250.103–5 Processing cases.
250.103–6 Disposition.
250.104 Residual powers.
250.104–3 Special procedures for unusually hazardous or nuclear risks.
250.104–3–70 Indemnification under contracts involving both research and development and other work.

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

Subpart 250.1—Extraordinary Contractual Actions

250.100 Definitions.

Secretarial level, as used in this subpart, means—

(1) An official at or above the level of an Assistant Secretary (or Deputy) of Defense or of the Army, Navy, or Air Force; and

(2) A contract adjustment board established by the Secretary concerned.

250.101 General.

250.101–2 Policy.

250.101–2–70 Limitations on payment.

See 10 U.S.C. 2410(b) for limitations on Congressionally directed payment of a request for equitable adjustment to contract terms or a request for relief under Public Law 85–804.

250.101–3 Records.

Follow the procedures at PGI 250.101–3 for preparation of records.

250.102 Delegation of and limitations on exercise of authority.

250.102–1 Delegation of authority.

(b) Authority under FAR 50.104 to approve actions obligating $55,000 or less may not be delegated below the level of the head of the contracting activity.

(d) In accordance with the acquisition authority of the Under Secretary of Defense (Acquisition, Technology, and Logistics (USD (AT&L)) under 10 U.S.C. 133, in addition to the Secretary of Defense and the Secretaries of the military departments, the USD (AT&L) may exercise authority to indemnify against unusually hazardous or nuclear risks.

250.102–1–70 Delegations.

(a) *Military departments.* The Departments of the Army, Navy, and Air Force will specify delegations and levels of authority for actions under the Act and the Executive Order in departmental supplements or agency acquisition guidance.

(b) *Defense agencies.* Subject to the restrictions on delegations of authority in 250.102–1(b) and FAR 50.102–1, the directors of the defense agencies may exercise and redelegate the authority contained in the Act and the Executive Order. The agency supplements or agency acquisition guidance shall specify the delegations and levels of authority.

(1) Requests to obligate the Government in excess of $55,000 must be submitted to the USD (AT&L) for approval.

(2) Requests for indemnification against unusually hazardous or nuclear risks must be submitted to the USD(AT&L) for approval before using the indemnification clause at FAR 52.250–1, Indemnification Under Public Law 85–804.

(c) *Approvals.* The Secretary of the military department or the agency director must approve any delegations in writing.

250.102–2 Contract adjustment boards.

The Departments of the Army, Navy, and Air Force each have a contract adjustment board. The board consists of a Chair and not less than two nor more than six other members, one of whom may be designated the Vice-Chair. A majority constitutes a quorum for any purpose and the concurring vote of a majority of the total board membership constitutes an action of the board. Alternates may be appointed to act in the absence of any member.

250.103 Contract adjustments.

250.103–3 Contract adjustment.

(a) Contractor requests should be filed with the procuring contracting officer (PCO). However, if filing with the PCO is impractical, requests may be filed with an authorized representative, an administrative contracting officer, or the Office of General Counsel of the applicable department or agency, for forwarding to the cognizant PCO.

250.103–5 Processing cases.

(1) At the time the request is filed, the activity shall prepare the record described at PGI 250.101–3(1)(i) and forward it to the appropriate official within 30 days after the close of the month in which the record is prepared.

(2) The officer or official responsible for the case shall forward to the contract adjustment board, through departmental channels, the documentation described at PGI 250.103–5.

(3) Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.103–6. The memorandum of decision shall not contain any information classified ''Confidential'' or higher. The board's decision will be sent to the appropriate official for implementation.

250.103–6 Disposition.

For requests denied or approved below the Secretarial level, follow the disposition procedures at PGI 250.103–6.

250.104 Residual powers.

250.104–3 Special procedures for unusually hazardous or nuclear risks.

250.104–3–70 Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer shall insert an appropriate clause using the authority of both 10 U.S.C. 2354 and Public Law 85–804.

(a) The use of Public Law 85–804 is limited to work which cannot be indemnified under 10 U.S.C. 2354 and is subject to compliance with FAR 50.104.

(b) Indemnification under 10 U.S.C. 2354 is covered by 235.070.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.203–7002 [Removed]

■ 5. Section 252.203–7002 is removed.

[FR Doc. E8–18504 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 208

RIN 0750–AG03

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From Federal Prison Industries (DFARS Case 2008–D015)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2008. Section 827 requires the use of competitive procedures in the acquisition of items for which Federal Prison Industries has a significant market share.

DATES: *Effective date:* August 12, 2008.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before October 14, 2008, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2008–D015, using any of the following methods:

○ *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

○ *E-mail: dfars@osd.mil.* Include DFARS Case 2008–D015 in the subject line of the message.

○ *Fax:* 703–602–7887.

○ *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

Comments received generally will be posted without change to *http://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, 703–602–1302.

SUPPLEMENTARY INFORMATION:

A. Background

Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) amended 10 U.S.C. 2410n to require the use of competitive procedures in the acquisition of items for which Federal Prison Industries (FPI) has a significant market share. Section 827 provides that FPI shall be treated as having a significant share of the market for a product if DoD, in consultation with the Office of Federal Procurement Policy, determines that the FPI share of the DoD market for the category of products including that product is greater than 5 percent.

DoD has determined that FPI presently has a significant market share of the items in the following Federal Supply Classes (FSC). DoD will update the following list as necessary.

FSC	Description
3510	Laundry and Dry Cleaning Equipment.
5340	Miscellaneous Hardware.
5935	Connectors, Electrical.
5975	Electrical Hardware and Supplies.
5995	Cable, cord, wire assemblies; communications equipment.
6145	Wire and cable, Electrical.
7110	Office Furniture.
7210	Household Furnishings.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to provide for competition in the acquisition of items for which FPI has a significant market share. The legal basis for the rule is 10 U.S.C. 2410n, as amended by Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). The rule is expected to benefit small business concerns that offer items for which FPI has a significant market share, by permitting those concerns to compete for additional DoD contract awards. The rule also could adversely impact small business concerns that provide supplies and services to FPI relative to the affected items. The rule deviates from the policy in Subpart 8.6 of the Federal Acquisition Regulation with regard to the acquisition of items from FPI. This alternate DoD policy is necessary to implement Section 827 of Public Law 110–181.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008–D015.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule

prior to affording the public an opportunity to comment. This interim rule implements Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 827 requires DoD to use competitive procedures in the acquisition of items for which FPI has a significant share of the DoD market. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 208

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 208 is amended as follows:

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 208 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Subpart 208.6 is added to read as follows:

Subpart 208.6—Acquisition From Federal Prison Industries, Inc.

208.602–70 Acquisition of items for which FPI has a significant market share.

(a) *Scope.* This subsection implements Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(b) *Definition. Item for which FPI has a significant market share*, as used in this subsection, means an item for which FPI's share of the DoD market for the federal supply class including that item is greater than 5 percent, as determined by DoD in consultation with the Office of Federal Procurement Policy. A list of the federal supply classes of items for which FPI has a significant market share is maintained at *http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison.*

(c) *Policy.*

(1) When acquiring an item for which FPI has a significant market share—

(i) Acquire the item using—

(A) Competitive procedures (e.g., the procedures in FAR 6.102, the set-aside procedures in FAR Subpart 19.5, or competition conducted in accordance with FAR Part 13); or

(B) The fair opportunity procedures in FAR 16.505, if placing an order under a multiple award delivery-order contract; and

(ii) Include FPI in the solicitation process, consider a timely offer from FPI, and make an award in accordance with the policy at FAR 8.602(a)(4)(ii) through (v).

(2) When acquiring an item for which FPI does not have a significant market share, acquire the item in accordance with the policy at FAR 8.602.

[FR Doc. E8–18506 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 208, 236, and 252

Defense Federal Acquisition Regulation Supplement; Technical Amendments

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update a subpart heading, a cross-reference, and a form title.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

SUPPLEMENTARY INFORMATION:

This final rule amends DFARS text as follows:

○ *Subpart 208.7.* Updates the subpart heading for consistency with the heading of the corresponding Federal Acquisition Regulation subpart.

○ *236.570.* Updates a cross-reference.

○ *252.235–7003.* Updates Alternate I to reflect the current title of DD Form 1494.

List of Subjects in 48 CFR Parts 208, 236, and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 208, 236, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 208, 236, and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. The heading of Subpart 208.7 is revised to read as follows:

Subpart 208.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

236.570 [Amended]

■ 3. Section 236.570 is amended in paragraph (b)(5) by removing ''236.213–70'' and adding in its place ''236.213''.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.235–7003 [Amended]

■ 4. Section 252.235–7003 is amended in Alternate I as follows:

■ a. By revising the Alternate I date to read ''(AUG 2008)''; and

■ b. In the introductory text and in paragraph (c) by removing ''Application for Frequency Authorization'' and adding in its place ''Application for Equipment Frequency Allocation''.

[FR Doc. E8–18492 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 209, 217, and 246

RIN 0750–AF86

Defense Federal Acquisition Regulation Supplement; Ship Critical Safety Items (DFARS Case 2007–D016)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 130 of the National Defense Authorization Act for Fiscal Year 2007. Section 130 requires DoD to establish a quality control policy for the procurement, modification, repair, and overhaul of ship critical safety items.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062

Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–1302; facsimile 703–602–7887. Please cite DFARS Case 2007–D016.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 73 FR 1826 on January 10, 2008, to implement Section 130 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364). Section 130 requires DoD to prescribe in regulations a quality control policy for the procurement of ship critical safety items and the modification, repair, and overhaul of those items. The interim rule amended DFARS 209.270–1 through 209.270–4 and related text to address quality control of ship critical safety items.

DoD received one comment on the interim rule. The respondent stated that DoD contracting personnel have misinterpreted the term ''certificate of conformance,'' as used in DFARS 246.504 with regard to limitation on its use, to mean a manufacturer's certificate that its products conform to quality requirements. This misinterpretation has led buying office quality representatives to take a position that products presented for inspection at source, or ''origin,'' are not acceptable if presented with a corresponding manufacturer's certificate of conformance (to its quality requirements). The intent of the DFARS term is to refer to approval given under the clause at FAR 52.246–15, Certificate of Conformance, which enables a DoD quality assurance specialist to allow a contractor to ship items without inspection under certain circumstances. Therefore, the respondent recommended that DFARS 246.504 be clarified by adding a reference to the clause at FAR 52.246–15.

DoD does not believe the clarification is necessary. The text at DFARS 246.504 must be read in conjunction with the corresponding text at FAR 46.504, which specifies the appropriate conditions for use of a certificate of conformance and includes a reference to the prescription for the clause at FAR 52.246–15. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule primarily relates to internal DoD responsibilities for ensuring quality control of ship critical safety items. In addition, the Navy already has implemented stringent quality control programs with regard to ship critical safety items.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 209, 217, and 246

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

Accordingly, the interim rule amending 48 CFR parts 209, 217, and 246, which was published at 73 FR 1826 on January 10, 2008, is adopted as a final rule without change.

[FR Doc. E8–18510 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750–AF89

Defense Federal Acquisition Regulation Supplement; Trade Agreements—New Thresholds (DFARS Case 2007–D023)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to incorporate increased dollar thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0328; facsimile 703–602–7887. Please cite DFARS Case 2007–D023.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim DFARS rule at 73 FR 4115 on January 24, 2008, to reflect increased dollar thresholds for application of the trade agreements. Every two years, the trade agreement thresholds are escalated according to a pre-determined formula set forth in the agreements.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the trade agreement threshold changes are designed to keep pace with inflation and thus maintain the status quo.

C. Paperwork Reduction Act

This rule affects the certification and information collection requirements in the provisions at DFARS 252.225–7020 and 252.225–7035, currently approved under Office of Management and Budget Control Number 0704–0229. The impact, however, is negligible. The dollar threshold changes are in line with inflation and maintain the status quo.

List of Subjects in 48 CFR Part 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 225, which was published at 73 FR 4115 on January 24, 2008, is adopted as a final rule without change.

[FR Doc. E8–18501 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750–AF73

Defense Federal Acquisition Regulation Supplement; Item Identification and Valuation Clause Update (DFARS Case 2007–D007)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to update and clarify requirements for unique identification and valuation of items delivered under DoD contracts. The rule revises the applicable contract clause to reflect the current requirements.

DATES: *Effective Date:* August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–1302; facsimile 703–602–7887. Please cite DFARS Case 2007–D007.

SUPPLEMENTARY INFORMATION:

A. Background

The contract clause at DFARS 252.211–7003, Item Identification and Valuation, requires unique identification for all delivered items for which the Government's unit acquisition cost is $5,000 or more, and for other items designated by the Government. In addition, the clause requires identification of the Government's unit acquisition cost for all delivered items, and provides instructions to contractors regarding the identification and valuation processes.

This final rule updates and clarifies the requirements of the clause at DFARS 252.211–7003. The changes include: Update of references to standards and other documents; clarification of the definition of unique item identifier; specifically addressing the DoD recognized unique identification equivalent, where applicable; clarification of data submission requirements for end items and embedded items; clarification of requirements for inclusion of the clause in subcontracts; and update of referenced Internet addresses.

DoD published a proposed rule at 72 FR 42367 on August 2, 2007. Two respondents submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* ''Type designation'' should be added to the list of information to be reported by the contractor, in paragraph (d) of the clause, and a definition of ''type designation'' should be added to the clause.

DoD Response: DoD does not believe it is necessary to address type designation in the contract clause. Contractors are required to report Item Unique Identification (IUID) data elements through use of the Wide Area WorkFlow (WAWF) Material Inspection and Receiving Report or by direct submission to the DoD IUID Registry using electronic XML, flat files, or user-defined formats. The WAWF Material Inspection and Receiving Report presently does not have the capability to report the Mark Content data elements, which include type designation. Therefore, relatively few items will have a type designation assigned. However, when required to do so, contractors can report type designation and other relevant Mark Content data elements using the ''Guidelines for Registering Government Serialization, Type Designation and Ownership of Major End Items, Assemblies and Subassemblies and Capital Equipment in the IUID Registry'' at *http://www.acq.osd.mil/dpap/pdi/uid/guides.html.*

2. *Comment:* The clause should include more clarification of the IUID data elements. For the most part, clarification is needed for vendors that use WAWF to create a Material Inspection and Receiving Report and enter IUID data on the WAWF UID data entry forms.

DoD Response: The clause refers vendors to the data submission procedures at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html*, which has descriptions of the data elements and how to submit them. It is not necessary to repeat these procedures in the contract clause.

3. *Comment:* With regard to the requirement for ''original part number (if there is serialization within the original part number),'' vendors are confused as to whether they can enter the delivered item's part number when UID Type 1 is the construct used (UID Type 1 is concatenated Issuing Agency Code + Enterprise Identifier + Serial Number). The clause should address the following:

(1) Is the original part number only provided when there is serialization within the original part number (*i.e.*, UID Type 2)?

(2) Can the vendor enter the original part number in the WAWF form (or direct entry to the Registry) when it does not use UID Type 2 (*e.g.*, using UID Type 1, ESN, VIN)? WAWF will allow data entry of the original part number when any UID type is used, including ESN, VIN, GRAI, GIAI, etc.

DoD Response: DoD does not believe clarification is necessary in the contract clause. The original part number must be submitted to the IUID Registry when serialization is unique within the part number (*i.e.*, it is a component of the Unique Item Identifier (UII)). It is permissible to submit the original part number when not required by the clause (*i.e.*, it is not a component of the UII). WAWF will allow the entry of the original part number with IUID types other than UID Type 2.

4. *Comment:* Clarification is needed with regard to the word ''original.'' For example, a vendor will be delivering an item with a company part number of 123ABC–005. The item has evolved over the years; the true original part number was 123ABC–001. At the time the UII is assigned to the asset, the UID original part number is the company's current part number as recorded in its configuration management system. That is, for an item delivered today, the UID original part number would be 123ABC–005, not 123ABC–001. If this is correct, the definition of ''original part number'' should be clarified.

DoD Response: DoD does not believe the clarification is necessary. The rule defines ''original part number'' as a combination of numbers or letters assigned by the enterprise at item creation to a class of items with the same form, fit, function, and interface. The key to the meaning of ''original part number'' is ''* * * at item creation to a class of items with the same form, fit, function, and interface.'' Thus, the original part number used in a UII Construct #2 must be that part number assigned to the class of items with the same form, fit, function, and interface that the UII item has. For new items (*i.e.*, the items covered by this rule) the part number of the delivered item will be the original part number.

5. *Comment:* Can a lot or batch number be entered if UID Type 2 is not used? WAWF allows entry of both the original part number and lot/batch number when UID Type 2 is chosen. Should this be allowed? If not, the clause should state that only the original part number or lot/batch number may be used.

DoD Response: The clause requires that the part, lot, *or* batch number be

used. As stated in the DoD Guide to Uniquely Identifying Items, Appendix C, Business Rule #13, available at *http://www.acq.osd.mil/dpap/pdi/uid/guides.html*, data elements not required to construct the concatenated UII shall remain discrete but may be contained within the same mark or media as the UII-required elements, as long as all the data elements contained in the mark or media are properly identified with a data qualifier. The UII data elements should appear first in the sequence. This means that a lot number can be included in the data matrix as long as the data qualifier used to define it is not one that is used for a UII data element. In the case of a lot number, the data qualifiers that can be used in the UII construct are the data identifier ''1T'' or the text element identifiers ''LOT'', ''LTN'', or ''BII''. These data qualifiers cannot be used to describe an additional data element not part of the Construct #2 UII when the original part number is used in the UII. The data identifier for current lot number ''30T'' can be used to describe the lot number when either ''1P'' or ''1T'' is used in the UII Construct #2. There is no other data qualifier for current lot number other than ''30T''.

6. *Comment:* The clause should provide a clear definition of ''current part number'' and should clarify when a current part number must be reported and submitted.

DoD Response: MIL–STD–130N, Table IV, UII construct business rules and supplemental data, states that ''In instances where the part number changes with new configurations (also known as part number roll), the current part number shall be included on the item for traceability purposes and may be included as a separate data element.'' For new items (*i.e.*, the items covered by this rule), the part number of the delivered item will be the current part number as well as the original part number.

7. *Comment:* The clause does not mention the increase in value to an asset because of a change in the current part number. In WAWF, this value is called the ''current part cost.'' In the IUID Software User's Manual Version 3.4, it is called ''acquisition value'' (not to be confused with acquisition cost). The Manual states that acquisition value is the cost incurred by DoD when a part number changes, the value added to an item when it is updated. The IUID Flat File Specification, Version 2, June 19, 2007, defines ''acquisition value'' as the cost incurred by DoD when the part number changes. The IUID XML Data Submission Guide calls this value ''current acquisition value'' and defines it as the cost incurred by DoD when a part number changes. The clause, the IUID software manual, and WAWF should be consistent, and the DFARS clause should include the value added because of a part number change.

DoD Response: The cost captured by the IUID Registry is the unit acquisition cost at the time of delivery of the item. Any additional cost added to the item after delivery is determined in the military equipment valuation process. DoD will revise the Software User's Manual to remove the phrase ''the value added to an item when it is updated'', since that is determined by the military equipment valuation rules.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not significantly change requirements relating to the identification and valuation of items delivered under DoD contracts. The rule updates and clarifies existing requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Section 252.211–7003 is amended as follows:

■ a. By revising the clause date;

■ b. In paragraph (a), by revising the definitions of ''DoD recognized unique identification equivalent'', ''Issuing agency'', ''Unique item identifier'', and ''Unique item identifier type'';

■ c. By revising paragraphs (c) through (g); and

■ d. In Alternate I, by revising the Alternate I date and paragraph (d) to read as follows:

252.211–7003 Item Identification and Valuation.

* * * * *

ITEM IDENTIFICATION AND VALUATION (AUG 2008)

(a) * * *

DoD recognized unique identification equivalent means a unique identification method that is in commercial use and has been recognized by DoD. All DoD recognized unique identification equivalents are listed at *http://www.acq.osd.mil/dpap/pdi/uid/iuid_equivalents.html*.

* * * * *

Issuing agency means an organization responsible for assigning a non-repeatable identifier to an enterprise (*i.e.*, Dun & Bradstreet's Data Universal Numbering System (DUNS) Number, GS1 Company Prefix, or Defense Logistics Information System (DLIS) Commercial and Government Entity (CAGE) Code).

* * * * *

Unique item identifier means a set of data elements marked on items that is globally unique and unambiguous. The term includes a concatenated unique item identifier or a DoD recognized unique identification equivalent.

Unique item identifier type means a designator to indicate which method of uniquely identifying a part has been used. The current list of accepted unique item identifier types is maintained at *http://www.acq.osd.mil/dpap/pdi/uid/uii_types.html*.

* * * * *

(c) *Unique item identifier.*

(1) The Contractor shall provide a unique item identifier for the following:

(i) All delivered items for which the Government's unit acquisition cost is $5,000 or more.

(ii) The following items for which the Government's unit acquisition cost is less than $5,000:

Contract line, subline, or exhibit line item No.	Item description

(iii) Subassemblies, components, and parts embedded within delivered items as specified in Attachment Number __.

(2) The unique item identifier and the component data elements of the DoD unique item identification shall not change over the life of the item.

(3) *Data syntax and semantics of unique item identifiers.* The Contractor shall ensure that—

(i) The encoded data elements (except issuing agency code) of the unique item identifier are marked on the item using one of the following three types of data qualifiers, as determined by the Contractor:

(A) Application Identifiers (AIs) (Format Indicator 05 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(B) Data Identifiers (DIs) (Format Indicator 06 of ISO/IEC International Standard 15434), in accordance with ISO/IEC International Standard 15418, Information Technology—EAN/UCC Application Identifiers and Fact Data Identifiers and Maintenance and ANSI MH 10.8.2 Data Identifier and Application Identifier Standard.

(C) Text Element Identifiers (TEIs) (Format Indicator 12 of ISO/IEC International Standard 15434), in accordance with the Air Transport Association Common Support Data Dictionary; and

(ii) The encoded data elements of the unique item identifier conform to the transfer structure, syntax, and coding of messages and data formats specified for Format Indicators 05, 06, and 12 in ISO/IEC International Standard 15434, Information Technology—Transfer Syntax for High Capacity Automatic Data Capture Media.

(4) *Unique item identifier.*

(i) The Contractor shall—

(A) Determine whether to—

(1) Serialize within the enterprise identifier;

(2) Serialize within the part, lot, or batch number; or

(3) Use a DoD recognized unique identification equivalent; and

(B) Place the data elements of the unique item identifier (enterprise identifier; serial number; DoD recognized unique identification equivalent; and for serialization within the part, lot, or batch number only: original part, lot, or batch number) on items requiring marking by paragraph (c)(1) of this clause, based on the criteria provided in the version of MIL–STD–130, Identification Marking of U.S. Military Property, cited in the contract Schedule.

(ii) The issuing agency code—

(A) Shall not be placed on the item; and

(B) Shall be derived from the data qualifier for the enterprise identifier.

(d) For each item that requires unique item identification under paragraph (c)(1)(i) or (ii) of this clause, in addition to the information provided as part of the Material Inspection and Receiving Report specified elsewhere in this contract, the Contractor shall report at the time of delivery, either as part of, or associated with, the Material Inspection and Receiving Report, the following information:

(1) Unique item identifier.

(2) Unique item identifier type.

(3) Issuing agency code (if concatenated unique item identifier is used).

(4) Enterprise identifier (if concatenated unique item identifier is used).

(5) Original part number (if there is serialization within the original part number).

(6) Lot or batch number (if there is serialization within the lot or batch number).

(7) Current part number (optional and only if not the same as the original part number).

(8) Current part number effective date (optional and only if current part number is used).

(9) Serial number (if concatenated unique item identifier is used).

(10) Government's unit acquisition cost.

(11) Unit of measure.

(e) For embedded subassemblies, components, and parts that require DoD unique item identification under paragraph (c)(1)(iii) of this clause, the Contractor shall report as part of, or associated with, the Material Inspection and Receiving Report specified elsewhere in this contract, the following information:

(1) Unique item identifier of the parent item under paragraph (c)(1) of this clause that contains the embedded subassembly, component, or part.

(2) Unique item identifier of the embedded subassembly, component, or part.

(3) Unique item identifier type.**

(4) Issuing agency code (if concatenated unique item identifier is used).**

(5) Enterprise identifier (if concatenated unique item identifier is used).**

(6) Original part number (if there is serialization within the original part number).**

(7) Lot or batch number (if there is serialization within the lot or batch number).**

(8) Current part number (optional and only if not the same as the original part number).**

(9) Current part number effective date (optional and only if current part number is used).**

(10) Serial number (if concatenated unique item identifier is used).**

(11) Description.

** Once per item.

(f) The Contractor shall submit the information required by paragraphs (d) and (e) of this clause in accordance with the data submission procedures at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html.*

(g) Subcontracts. If the Contractor acquires by subcontract, any item(s) for which unique item identification is required in accordance with paragraph (c)(1) of this clause, the Contractor shall include this clause, including this paragraph (g), in the applicable subcontract(s).

(End of clause)

Alternate I (AUG 2008)

* * * * *

(d) The Contractor shall submit the information required by paragraph (c) of this clause in accordance with the data submission procedures at *http://www.acq.osd.mil/dpap/pdi/uid/data_submission_information.html.*

[FR Doc. E8–18502 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106671–8010–02]

RIN 0648–XJ66

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA). This action is necessary because the third seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 7, 2008, through 1200 hrs, A.l.t., September 1, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The third seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA is 200 metric tons as established by the 2008 and 2009 harvest specifications for groundfish of the GOA (73 FR 10562, February 27, 2008), for the period 1200 hrs, A.l.t., July 1, 2008, through 1200 hrs, A.l.t., September 1, 2008.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2008 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA. The

species and species groups that comprise the shallow-water species fishery are pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, skates and ''other species.'' This inseason action does not apply to fishing for pollock by vessels using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This inseason action does not apply to vessels fishing under a cooperative quota permit in the cooperative fishery in the Rockfish Pilot Program for the Central GOA.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of the shallow-water species fishery by vessels using trawl gear in the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of August 6, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.21 and is exempt from review under Executive Order 12866.

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

Dated: August 6, 2008.

James P. Burgess

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

[FR Doc. E8–18605 Filed 8–7–08; 12:36 pm]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 73, No. 156
Tuesday, August 12, 2008

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0858; Directorate Identifier 2008–NM–054–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, and DC–8–43 Airplanes; Model DC–8–50 Series Airplanes; Model DC–8F–54 and DC–8F–55 Airplanes; Model DC–8–60 Series Airplanes; Model DC–8–60F Series Airplanes; Model DC–8–70 Series Airplanes; and Model DC–8–70F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all McDonnell Douglas airplanes identified above. This proposed AD would require repetitive inspections of the lower skin and stringers at stations Xw = 408 and Xw = −408 and corrective actions if necessary. This proposed AD results from reports of cracks in the skins and stringers at the end fasteners common to the stringer end fittings at station Xw = 408 and Xw = −408 wing splice joints. We are proposing this AD to detect and correct fatigue cracking in the skins and stringers at the end fasteners common to the stringer end fittings at a certain station and wing splice joints, which could result in wing structure that might not sustain limit load, and consequent loss of structural integrity of the wing.

DATES: We must receive comments on this proposed AD by September 26, 2008.

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

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

For service information identified in this AD, contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024).

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2008–0858; Directorate Identifier 2008–NM–054–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We have received numerous reports of cracks in the skins and stringers at the end fasteners common to the stringer end fittings at station Xw = 408 and Xw = −408 wing splice joints. Results of an investigation conducted by Boeing Engineering revealed the cracks were due to fatigue. The area where the cracks were found is identified as a principal structural element (PSE). The earliest cracks were discovered at 21,519 total flight cycles, and 58,935 total flight hours. The cracks were discovered by visual inspections and findings of fuel leaks. In addition to unscheduled maintenance for repair of the PSE, this condition, if not corrected, could result in wing structure that might not sustain limit load, and consequent loss of structural integrity of the wing.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008. The service bulletin describes the following procedures.

DESCRIBED ACTIONS AND COMPLIANCE TIMES

Condition	Action	Compliance times
Initial inspection for all airplanes	Do initial high frequency eddy current (HFEC) inspection of the lower wing skin or stringers at the affected fastener hole areas—stations Xw = 408 and Xw = −408, stringers 51 to 64 (for sequence 101, inspection sequence 1, inspection method 01; or sequence 103, inspection sequence 1, inspection method 03), or a visual inspection of any accessible area along the cross section of the stringer in the area of the affected fastener holes (for sequence 102, inspection sequence 1, inspection method 02).	Before the accumulation of 20,000 total flight cycles, or within 1,500 flight cycles or 2 years after the date of the service bulletin, whichever occurs latest.
Condition 1: No cracks at any of the locations—and prior inspection was done by external skin eddy current inspection as given in sequence 103.	Repeat the HFEC or visual inspection, as applicable.	Intervals not to exceed 600 flight cycles after doing the external skin eddy current inspection.
Condition 1: No cracks at any of the locations—prior inspection was done by external skin eddy current inspection as given in sequence 103—and—internal stringer inspection as given in sequence 101 or 102 is done.	Repeat the HFEC or visual inspection, as applicable.	Intervals not to exceed 1,200 flight cycles after doing the external skin eddy current inspection and internal stringer inspection.
Condition 2: Skin cracks less than 3.7 inches long in wing skin at stringer end fittings.	Repair crack and repeat the applicable inspection specified for Condition 2, as applicable.	Before further flight (repair only).
Condition 2: Skin cracks less than 3.7 inches long in wing skin at stringer end fittings—and prior inspection was done by external skin eddy current inspection as given in sequence 103.	Repeat the HFEC or visual inspection, as applicable.	Intervals not to exceed 600 flight cycles after doing the external skin eddy current inspection.
Condition 2: Skin cracks less than 3.7 inches long in wing skin at stringer end fittings—and prior inspection was done by external skin eddy current inspection as given in sequence 103—and—internal stringer inspection as given in sequence 101 or 102 is done.	Repeat the HFEC or visual inspection, as applicable.	Intervals not to exceed 1,200 flight cycles after doing the external skin eddy current inspection and internal stringer inspection.
Condition 3: Skin cracks greater than 3.7 inches at stringer end fittings.	Contact Boeing for repair instructions	Before further flight.
Condition 4: Stringer cracks at stringer end fittings.	Repair crack and repeat the applicable inspection specified for Condition 4, as applicable.	Before further flight (repair only).
Condition 4: Stringer cracks at stringer end fittings—and prior inspection was done by external skin eddy current inspection as given in sequence 103.	Repeat the HFEC or visual inspection, as applicable.	Repeat at intervals not to exceed 600 flight cycles after doing the external skin eddy current inspection.
Condition 4: Stringer cracks at stringer end fittings—and prior inspection was done by external skin eddy current inspection as given in sequence 103—and—internal stringer inspection as given in sequence 101 or 102 is done.	Repeat the HFEC or visual inspection, as applicable.	Repeat at intervals not to exceed 1,200 flight cycles after doing the external skin eddy current inspection and internal stringer inspection.
Condition 5: Cracks at more than two adjacent stringers.	Contact Boeing for repair instructions	Before further flight.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the(se) same type design(s). This proposed AD would require accomplishing the actions specified in the service information described previously, except as discussed under ''Difference Between the Proposed AD and the Service Bulletin.''

Difference Between the Proposed AD and the Service Bulletin

The service bulletin specifies to contact the manufacturer for instructions on how to repair certain conditions, but this proposed AD would require repairing those conditions in one of the following ways:

- Using a method that we approve; or
- Using data that meet the certification basis of the airplane, and that have been approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization whom we have authorized to make those findings.

Costs of Compliance

We estimate that this proposed AD would affect 87 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Inspection	6	$80	$0	$480, per inspection cycle	87	$41,760, per inspection cycle.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

McDonnell Douglas: Docket No. FAA–2008–0858; Directorate Identifier 2008–NM–054–AD.

Comments Due Date

(a) We must receive comments by September 26, 2008.

Affected ADs

(b) None.

Applicability

(c) This AD applies to all McDonnell Douglas Model DC–8–11, DC–8–12, DC–8–21, DC–8–31, DC–8–32, DC–8–33, DC–8–41, DC–8–42, DC–8–43, DC–8–51, DC–8–52, DC–8–53, DC–8–55, DC–8F–54, DC–8F–55, DC–8–61, DC–8–62, DC–8–63, DC–8–61F, DC–8–62F, DC–8–63F, DC–8–71, DC–8–72, DC–8–73, DC–8–71F, DC–8–72F, and DC–8–73F airplanes; certificated in any category.

Unsafe Condition

(d) This AD results from reports of cracks in the skins and stringers at the end fasteners common to the stringer end fittings at stations Xw = 408 and Xw = −408 wing splice joints. We are issuing this AD to detect and correct fatigue cracking in the skins and stringers at the end fasteners common to the stringer end fittings at a certain station and wing splice joints, which could result in wing structure that might not sustain limit load, and consequent loss of structural integrity of the wing.

Compliance

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

Repetitive Inspections and Corrective Actions

(f) At the times specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, except as provided by paragraph (g) of this AD: Do the applicable inspections for fatigue cracking of the lower skin and stringers at stations Xw = 408 and Xw = −408, and do all applicable corrective actions, by accomplishing all applicable actions specified in the Accomplishment Instructions of the service bulletin, except as provided by paragraph (h) of this AD. Do all corrective actions before further flight, in accordance with the service bulletin. Thereafter, repeat the inspections at the applicable intervals specified in paragraph 1.E. of the service bulletin.

(g) Where Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, specifies a compliance time after the date on the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(h) If any cracking is found during any inspection required by this AD, and Boeing Alert Service Bulletin DC8–57A102, dated February 12, 2008, specifies to contact Boeing for appropriate action: Before further flight, repair the cracking using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, ATTN: Dara Albouyeh, Aerospace Engineer, Airframe Branch, ANM–120L, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5222; fax (562) 627–5210; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(4) Accomplishing the requirements of this AD is an acceptable AMOC with the requirements of paragraph (b) of AD 93–01–15, amendment 39–8469, for those areas of principal structural element 57.08.037/038.

Issued in Renton, Washington, on July 31, 2008.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8–18560 Filed 8–11–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 15

[Docket No. FR–5206–P–01]

RIN 2501–AD39

Public Access to HUD Records Under the Freedom of Information Act (FOIA) and Production of Material or Provision of Testimony by HUD Employees: Revisions to Policies and Practices Regarding Subpoenas and Other Demands for Testimony

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would modify HUD's policies and practices regarding responses to subpoenas and other demands for testimony of HUD employees, or for production of documents by HUD. This proposed rule would delegate authority to additional officials within HUD's Office of General Counsel and would revise the criteria used to evaluate such demands. Finally, this rule would eliminate unnecessary provisions covering HUD's response to demands in cases in which the United States is a party to the case in which testimony or documents are requested.

DATES: *Comment Due Date:* October 14, 2008.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. Submission of Comments by Mail. Comments may be submitted by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

2. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *www.regulations.gov* Web site can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule. *No Facsimile Comments.* Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All comments and communications submitted to HUD will be available, without charge, for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339. Copies of all comments submitted are available for inspection and downloading at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy Christopher, Associate General Counsel for Litigation, Office of Litigation, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10258, Washington, DC 20410–0500; telephone number 202–708–0300 (this is not a toll-free telephone number). Persons with hearing or speech impairments may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

HUD's regulations at 24 CFR part 15 describe the policies and procedures governing public access to HUD records under the Freedom of Information Act (FOIA) (5 U.S.C. 552) and the policies and procedures governing the production of material or provision of testimony by HUD employees. On February 26, 2007 (72 FR 8580), HUD published a final rule to clarify and explain the various types of requests for HUD documents and testimony by HUD employees that are intended to be covered by HUD's document production and testimony approval regulations. The final rule revised subparts C and D to describe the procedures to be followed by a party in making a demand to HUD for documents or testimony, and to explain the standards followed by HUD in determining whether production or testimony should be permitted. A technical correction to the final rule was published on September 20, 2007 (72 FR 53876).

II. This Proposed Rule—Proposed Amendments to Part 15

After implementing the revised procedures for consideration of demands for documents or testimony, HUD has determined that additional changes are necessary to ensure the careful and efficient processing of all such demands. The revisions proposed to be made to HUD's regulations at 24 CFR part 15 are as follows:

Terminology

This proposed rule would amend § 15.2 to add, in alphabetical order, the terms ''Appropriate Associate General Counsel,'' ''Appropriate Regional Counsel,'' and ''Authorized Approving Official'' to the list of definitions.

Technical Changes

This proposed rule would correct outdated references to Web sites in §§ 15.102(b) and 15.103(c). This proposed rule would also make technical changes to Appendix A of part 15 by directing the public to HUD's Web site to update the location information of HUD FOIA Reading Rooms and by providing the public with the contact information of HUD's Regional Counsel.

Purpose and Scope

This proposed rule would amend § 15.201 by providing guidance to persons engaged in private litigation, to which the United States is not a party, on the procedures to be followed when making a demand for documents or testimony on HUD. This proposed rule would provide that HUD's regulations in subpart C do not create any affirmative right or benefit, substantive or procedural, that would be enforceable against HUD.

Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings Among Private Litigants

This proposed rule would amend §§ 15.202 through 15.206 by outlining

the procedures for making a demand for production of material or provision of testimony to HUD, and by delegating authority to officials at the Associate General Counsel, Regional Counsel, and Authorized Approving Official level to consider and approve demands for testimony or for documents. These officials are in the best position to evaluate the demands for testimony or documents and have previously been authorized to consider such demands through a delegation of authority. Additionally, this proposed rule would modify the criteria used to consider demands in order to allow for more efficient processing of these demands and to ensure that all legally cognizable objections to the release of the information are considered.

Production of Material or Provision of Testimony in Response to Demands in Legal Proceedings in Which the United States Is a Party

This proposed rule would amend §§ 15.302 through 15.304, and add a new § 15.305, to address the production of material or provision of testimony in response to demands in legal proceedings in which the United States is a party. The proposed rule would prohibit the production of material or testimony, unless the prior approval of the attorney representing the United States has been obtained. The proposed rule would require the employee to immediately notify the Appropriate Associate General Counsel or Appropriate Regional Counsel of the demand, and consideration of such demands would be within the purview of the attorney representing the United States. Finally, the proposed rule would permit the Department to respond to authorized productions of material or testimony by producing authenticated copies of the documents, which shall serve to conform to the Federal Rules of Civil Procedure.

III. Findings and Certifications

Paperwork Reduction Act

The proposed information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Under this Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a valid control number.

The public reporting burden for this collection of information is estimated to include the time for reviewing the instructions, for gathering and preparing the information required to be included in demands, and for completing and reviewing the information to be provided.

The following table provides information on the estimated public reporting burden:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours
§§ 15.203	106	1	106	1.5	159

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology (*e.g.*, permitting responses to be submitted electronically).

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must refer to the proposal by the proposal's name and docket number (FR–5206-P–01) and must be sent to:

HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and

Regulations Division, Office of Legislation and Regulations, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 10276, Washington, DC 20410–0500.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and subject to comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The regulatory amendments that would be made by this proposed rule are procedural and serve to advise on the process and procedures engaged in by the Department when producing material or providing testimony in response to demands in legal proceedings.

Accordingly, the undersigned certifies that this rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Environmental Impact

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

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on state and local governments and is not required by statute, or the rule preempts state law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on state and local governments or preempt

state law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule does not impose any federal mandates on any state, local, or tribal government, or on the private sector, within the meaning of UMRA.

List of Subjects in 24 CFR Part 15

Classified information, Courts, Freedom of information, Government employees, Reporting and recordkeeping requirements.

Accordingly, for the reasons discussed in the preamble, HUD proposes to amend 24 CFR part 15 to read as follows:

PART 15—PUBLIC ACCESS TO HUD RECORDS UNDER THE FREEDOM OF INFORMATION ACT AND TESTIMONY AND PRODUCTION OF INFORMATION BY HUD EMPLOYEES

1. The authority citation for part 15 continues to read as follows:

Authority: 42 U.S.C. 3535(d).
Subpart A also issued under 5 U.S.C. 552.
Section 15.107 also issued under E.O. 12958, 60 FR 19825, 3 CFR Comp., p. 333.
Subparts C and D also issued under 5 U.S.C. 301.

2. Amend § 15.2(b) to add, in alphabetical order, definitions of the terms ''Appropriate Associate General Counsel,'' ''Appropriate Regional Counsel,'' and ''Authorized Approving Official,'' to read as follows:

§ 15.2 Definitions.

* * * * *

(b) * * *

Appropriate Associate General Counsel means the Associate General Counsel for Litigation or the Associate General Counsel for HUD Headquarters employees in those programs for which the Associate provides legal advice.

Appropriate Regional Counsel means the Regional Counsel for the Regional Office having delegated authority over the project or activity with respect to which the information is sought. For assistance in identifying the Appropriate Regional Counsel, see Appendix A to this part.

Authorized Approving Official means the Secretary, General Counsel, Appropriate Associate General Counsel, or Appropriate Regional Counsel.

* * * * *

3. In § 15.102(b), remove the reference to *http://www.hud.gov/ogc/bshelf2a.html* and, in its place, add a reference to *http://www.hud.gov.*

4. In § 15.103(c), remove the reference to *http://www.hud.gov/ogc/foiafree.html* and, in its place, add a reference to *http://www.hud.gov.*

5. Add § 15.201(c) to read as follows:

§ 15.201 Purpose and scope.

* * * * *

(c) This subpart also provides guidance to persons engaged in private litigation, to which the United States is not a party, on the procedures to be followed when making a demand for documents or testimony on the Department of Housing and Urban Development. This subpart does not, and may not be relied upon to, create any affirmative right or benefit, substantive or procedural, enforceable against HUD.

6. Revise § 15.202 to read as follows:

§ 15.202 Production of material or provision of testimony prohibited unless approved.

Neither the Department nor any employee of the Department shall comply with any demand for production of material or provision of testimony in a legal proceeding among private litigants, unless the prior approval of the Authorized Approving Official has been obtained in accordance with this subpart. This rule does not apply to any legal proceeding in which an employee may be called to participate, either through the production of documents or the provision of testimony, not on official time, as to facts or opinions that are in no way related to material described in § 15.201.

7. Revise § 15.203 to read as follows:

§ 15.203 Making a demand for production of material or provision of testimony.

(a) Any demand made to the Department or an employee of the Department to produce any material or provide any testimony in a legal proceeding among private litigants must:

(1) Be submitted in writing to the Department or employee of the Department, with a copy to the Appropriate Associate General Counsel or Appropriate Regional Counsel, no later than 30 days before the date the material or testimony is required;

(2) State, with particularity, the material or testimony sought;

(3) If testimony is requested, state:

(i) The intended use of the testimony, and

(ii) Whether expert or opinion testimony will be sought from the employee;

(4) State whether the production of such material or provision of such testimony could reveal classified, confidential, or privileged material;

(5) Summarize the need for and relevance of the material or testimony sought in the legal proceeding and include a copy of the complaint, if available;

(6) State whether the material or testimony is available from any other source and, if so, state all such other sources;

(7) State why no document[s], or declaration[s] or affidavit[s], could be used in lieu of oral testimony that is being sought;

(8) Estimate the amount of time the employee will need in order to prepare for, travel to, and attend the legal proceeding, as appropriate;

(9) State why the production of the material or provision of the testimony is appropriate under the rules of procedure governing the legal proceeding for which it is sought (*e.g.*, not be unduly burdensome or otherwise inappropriate under the relevant rules governing discovery); and

(10) Describe how producing such material or providing such testimony would affect the interests of the United States.

(b) If the Department determines that the requestor has failed to provide the information required by paragraph (a) of this section, or that the information provided is insufficient to consider the demand in accordance with § 15.204, the Department may require that additional information be provided by the requestor before the demand is considered.

(c) Whenever a demand is made upon the Department or an employee of the Department for the production of material or provision of testimony, the employee shall immediately notify the Appropriate Associate General Counsel or Appropriate Regional Counsel.

8. Revise § 15.204 to read as follows:

§ 15.204 Consideration of demands for production of material or provision of testimony.

(a) The Authorized Approving Official shall determine what material is to be produced or what testimony is to be provided, based upon the following standards:

(1) *Expert or opinion material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in § 15.201(a) that is of an expert or

opinion nature, unless specifically authorized by the Authorized Approving Official for good cause shown.

(2) *Factual material or testimony.* In any legal proceeding among private litigants, no employee of the Department may produce material or provide testimony as described in § 15.201(a) that is of a factual nature, unless specifically authorized by the Authorized Approving Official. The Authorized Approving Official shall determine whether any of the following factors are applicable. Such a demand may either be denied, or conditionally granted in accordance with § 15.204(c), if any such factors are applicable:

(i) Producing such material or providing such testimony would violate a statute or regulation;

(ii) Producing such material or providing such testimony would reveal classified, confidential, or privileged material;

(iii) Such material or testimony would be irrelevant to the legal proceeding;

(iv) Such material or testimony could be obtained from any other source;

(v) One or more documents, or a declaration or affidavit, could reasonably be provided in lieu of oral testimony;

(vi) The amount of employees' time necessary to comply with the demand would be unreasonable;

(vii) Production of the material or provision of the testimony would not be required under the rules of procedure governing the legal proceeding for which it is sought (*e.g.*, unduly burdensome or otherwise inappropriate under the relevant rules governing discovery);

(viii) Producing such material or providing such testimony would impede a significant interest of the United States; or

(ix) The Department has any other legally cognizable objection to the release of such information or testimony in response to a demand.

(b) Once a determination has been made, the requester will be notified of the determination. If the demand is denied, the requestor shall be notified of the reasons for the denial. If the demand is conditionally approved, the requestor shall be notified of the conditions that have been imposed upon the production of the material or provision of the testimony demanded, and the reasons for the conditional approval of the demand.

(c) The Authorized Approving Official may impose conditions or restrictions on the production of any material or provision of any testimony. Such conditions or restrictions may include the following:

(1) A requirement that the parties to the legal proceeding obtain a protective order or execute a confidentiality agreement to limit access to, and limit any further disclosure of, material or testimony;

(2) A requirement that the requester accept examination of documentary material on HUD premises in lieu of production of copies;

(3) A limitation on the subject areas of testimony permitted;

(4) A requirement that testimony of a HUD employee be provided by deposition at a location prescribed by HUD or by written declaration;

(5) A requirement that the parties to the legal proceeding agree that a transcript of the permitted testimony be kept under seal or will only be used or only made available in the particular legal proceeding for which testimony was demanded;

(6) A requirement that the requester purchase an extra copy of the transcript of the employee's testimony from the court reporter and provide the Department with a copy at the requester's expense; or

(7) Any other condition or restriction deemed to be in the best interests of the United States, including reimbursement of costs to the Department.

(d) The determination made with respect to the production of material or provision of testimony pursuant to this subpart is within the sole discretion of the Authorized Approving Official and shall constitute final agency action from which no administrative appeal is available.

9. Revise § 15.205 to read as follows:

§ 15.205 Method of production of material or provision of testimony.

(a) Where the Authorized Approving Official has authorized the production of material or provision of testimony, the Department shall produce such material or provide such testimony in accordance with this section and any conditions imposed upon production of material or provision of testimony pursuant to § 15.204(c).

(b) In any legal proceeding where the Authorized Approving Official has authorized the production of documents, the Department shall respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed, in accordance with its authentication procedures. The authentication shall be evidence that the documents are true copies of documents in the Department's files and shall be sufficient for the purposes of Rules 803(8) and 902 of the Federal Rules of Evidence and Rule 44(a)(1) of the Federal Rules of Civil Procedure.

(c) If response to a demand is required before the determination from the Authorized Approving Official is received, the U.S. Attorney, Department of Justice Attorney, or such other attorney as may be designated for the purpose will appear or make such filings as are necessary to furnish the court or other authority with a copy of the regulations contained in this subpart and will inform the court or other authority that the demand has been, or is being, as the case may be, referred for prompt consideration. The court or other authority shall be requested respectfully to stay the demand pending receipt of the requested determination from the Authorized Approving Official.

10. Revise § 15.206 to read as follows:

§ 15.206 Procedure in the event of an adverse ruling regarding production of material or provision of testimony.

If the court or other authority declines to stay the demand made in accordance with § 15.205(c) pending receipt of the determination from the Authorized Approving Official, or if the court or other authority rules that the demand must be complied with irrespective of the determination by the Authorized Approving Official not to produce the material or provide the testimony demanded or to produce subject to conditions or restrictions, the employee upon whom the demand has been made shall, if so directed by an attorney representing the Department, respectfully decline to comply with the demand. (*United States ex rel. Touhy* v. *Ragen*, 340 U.S. 462 (1951)).

11. Revise § 15.302 to read as follows:

§ 15.302 Production of material or provision of testimony prohibited unless approved.

Neither the Department nor any employee of the Department shall comply with any demand for production of material or provision of testimony in a legal proceeding in which the United States is a party, unless the prior approval of the attorney representing the United States has been obtained in accordance with this subpart. This rule does not apply to any legal proceeding in which an employee may be called to participate, either through the production of documents or the provision of testimony, not on official time, as to facts or opinions that are in no way related to material described in § 15.301.

12. Revise § 15.303 to read as follows:

§ 15.303 Procedure for review of demands for production of material or provision of testimony in any legal proceeding in which the United States is a party.

Whenever a demand is made upon the Department or an employee of the Department for the production of material or provision of testimony, the employee shall immediately notify the Appropriate Associate General Counsel or Appropriate Regional Counsel.

13. Revise § 15.304 to read as follows:

§ 15.304 Consideration of demands for production of material or provision of testimony.

Consideration of demands shall be within the province of the attorney representing the United States, who may raise any valid objection to the production of material or provision of testimony in response to the demand.

14. Add § 15.305 to read as follows:

§ 15.305 Method of production of material or provision of testimony.

If the production of material or provision of testimony has been authorized, the Department may respond by producing authenticated copies of the documents, to which the seal of the Department has been affixed in accordance with its authentication procedures. The authentication shall be evidence that the documents are true copies of documents in the Department's files and shall be sufficient for the purposes of Rules 803(8) and 902 of the Federal Rules of Evidence and Rule 44(a)(1) of the Federal Rules of Civil Procedure.

15. Revise appendix A to read as follows:

Appendix A to Part 15—Location Information for HUD FOIA Reading Rooms and Contact Information for Regional Counsel

The Department maintains a reading room in Headquarters and in each of the Secretary's Representative's Offices. In addition, each of the Secretary's Representative's Offices has a Regional Counsel. The location and contact information for the HUD FOIA Reading Rooms and for the Regional Counsel can be found in HUD's Local Office Directory through HUD's Internet site at *http://www.hud.gov.*

Dated: July 14, 2008.

Roy A. Bernardi,

Deputy Secretary.

[FR Doc. E8–18282 Filed 8–11–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 89; Docket No. TTB–2008–0008]

RIN 1513–AB52

Proposed Establishment of the Happy Canyon of Santa Barbara Viticultural Area (2007R–311P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 23,941-acre ''Happy Canyon of Santa Barbara'' American viticultural area in Santa Barbara County, California. This area lies within the larger Santa Ynez Valley viticultural area and the multicounty Central Coast viticultural area. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before October 14, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2008–0008 at ''Regulations.gov,'' the Federal e-rulemaking portal); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal at *http://www.regulations.gov* within Docket No. TTB–2008–0008. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 89. You also may view copies of this notice, all related petitions, maps and other supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–927–2400 to make an appointment.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area.

Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographic features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Petition for Happy Canyon of Santa Barbara

TTB received a petition from Wes Hagen, Vineyard Manager and Winemaker at Clos Pepe Vineyards, Lompoc, California, on behalf of Happy Canyon vintners and grape growers, proposing the establishment of the ''Happy Canyon of Santa Barbara'' American viticultural area. According to the petitioner, the proposed viticultural area encompasses 23,941 acres, 492 acres of which are in commercial viticulture in 6 vineyards. It is entirely within the Santa Ynez Valley viticultural area (27 CFR 9.54), which in turn is completely within the multicounty Central Coast viticultural area (27 CFR 9.75).

The petitioner states that the viticulture of the proposed Happy Canyon of Santa Barbara viticultural area, in eastern Santa Ynez Valley, is distinguishable from that of the rest of the valley, including the Sta. Rita Hills viticultural area (27 CFR 9.162), in western Santa Ynez Valley. We summarize below the supporting evidence submitted with the petition.

Name Evidence

According to the petitioner and USGS maps, the ''Happy Canyon of Santa Barbara'' name applies to a canyon located in Santa Barbara County. TTB notes that a search of the U.S. Geological Survey Geographical Names Information System (GNIS) includes ten hits for ''Happy Canyon,'' three of which are in California. The petitioner originally considered Happy Canyon for the name of the proposed viticultural area. However, based on results of the GNIS search, TTB determined that the Happy Canyon name would require a geographical modifier to pinpoint its physical location and avoid potential consumer confusion with other identical or similar names. After careful consideration, the petitioner modified the name of the viticultural area petition to ''Happy Canyon of Santa Barbara.'' The petitioner believes that the proposed Happy Canyon of Santa Barbara viticultural area name will identify the area as a unique grape-growing region for both consumers and industry members.

According to the USGS Lake Cachuma, Santa Ynez, and Figueroa Mountain maps that the petitioner provided, Happy Canyon is a region that descends in elevation northeast-to-southwest, north and west of Lake Cachuma in Santa Barbara County. Happy Canyon Road, a light-duty road, meanders through the proposed viticultural area.

A road map of Santa Barbara County shows that the Happy Canyon area and Happy Canyon Road are to the east of the town of Santa Ynez (Automobile Club of Southern California, California State Automobile Association, January 2003 edition). The map also shows that the Happy Canyon area is within Santa Barbara County.

Boundary Evidence

The petitioner documents that the proposed Happy Canyon of Santa Barbara viticultural area lies in the eastern part of the 40-mile-wide Santa Ynez Valley and the northern part of Santa Barbara County, California. As shown on USGS maps, Happy Canyon comprises canyon terrain, hills, and river and creek basins to the east and south of the San Rafael Mountains, west of Lake Cachuma, and north of the Santa Ynez River.

The petitioner explains that the proposed boundary line of the Happy Canyon of Santa Barbara viticultural area was drawn by a local committee of viticulturists, consultants, and vintners, all of whom had formal training in geology, geography, and agriculture. The proposed boundary line encompasses a unique geological and climatic grape-growing region on the east side of the Santa Ynez Valley viticultural area. The proposed boundary line skirts the San Rafael Mountains to the north, the Los Padres National Forest to the east, and the Lake Cachuma Recreation Area on portions of the south side, according to the written boundary description. The proposed boundary line, continuing in a clockwise direction, incorporates a portion of the Santa Ynez River as the south boundary line, and uses a series of straight lines between elevation points to skirt the steep foothills west of the Santa Agueda and Figueroa Creeks.

According to the petitioner, the northern and northeastern portions of the boundary line of the proposed Happy Canyon of Santa Barbara viticultural area are based on the location of the best grape-growing areas, viable agricultural soils, sparse and rocky pine forests, and high elevations. Photographs and descriptions of the landscape in the proposed viticultural area tell of the change from green pastures to stony, infertile soils at the Los Padres National Forest to the northeast. The U.S. Department of Agriculture, Soil Conservation Service, did not map the soils in the national forest. However, as shown on the USGS maps submitted with the petition, elevations north of Happy Canyon rise from 1,200 to 3,200 feet, far exceeding the average 1,200-foot elevation within the proposed viticultural area.

The USGS maps show that the eastern boundary line of the proposed Happy Canyon of Santa Barbara viticultural area runs, north to south, along the border of the Los Padres National Forest, and continues south along the dividing line of several land grants. The proposed boundary line cuts through steep, mountainous terrain where elevations are between approximately 800 and 3,400 feet. The petitioner explains that the proposed eastern boundary line uses the same line established in 1983 for the eastern border of the Santa Ynez Valley viticultural area. Local winegrowers in Happy Canyon assert that the eastern boundary line applies equally well to the Santa Ynez Valley and the proposed Happy Canyon of Santa Barbara viticultural areas.

According to the written boundary description in the petition and the USGS maps, the southern boundary line of the proposed Happy Canyon of Santa Barbara viticultural area coincides with the southern boundary line of the Santa Ynez Valley viticultural area along the boundary line of the Lake Cachuma Recreation Area to its intersection with the Santa Ynez River. The proposed boundary line then follows the Santa Ynez River west to its intersection with a road, where the boundary line turns north.

The petitioner explains that the committee, in determining the southwestern portion of the boundary of the proposed viticultural area, considered only areas that were traditionally known as Happy Canyon and that had similar potential for viticulture.

The petitioner explains that the central and northerly portions of the

western boundary line of the proposed Happy Canyon of Santa Barbara viticultural area define the boundaries of grazed, rolling hills and deep canyons with ridge lines 1,200 to 1,800 feet in elevation. According to the written boundary description and USGS maps, the rolling foothills of the Santa Agueda Creek Valley, where cattle graze both sides of the creek, lie immediately inside the proposed western boundary line. As the Santa Agueda Creek Valley rises to the west, rolling foothills meet steep canyons at the western boundary line of the proposed Happy Canyon of Santa Barbara viticultural area. The petitioner notes that the steepness of the terrain to the west and outside of the proposed boundary line contrasts with the topography and geology of the preserved oak scrubland, open rolling grazeland, and vineyards to the east, inside the proposed boundary line.

Distinguishing Features

The petitioner states that the distinguishing features of the proposed Happy Canyon of Santa Barbara viticultural area are climate, topography, drainage, and soils and geology. Happy Canyon, in the eastern portion of the Santa Ynez Valley, and the western portion of the Santa Ynez Valley have overt differences in climate, geological parent material, and soil drainage patterns.

Climate

According to the petitioner, of all the grape-growing areas in the Santa Ynez Valley, Happy Canyon is the furthest inland and has the warmest climate. It is located in the easternmost part of the Santa Ynez Valley, and the daytime highs and nighttime lows in that part of the county vary more in a 24-hour period than those in other parts of the valley. At about 12 miles west of the proposed viticultural area, the inland mountain ranges change direction from west-east to north-south. The north-south mountain ridge blocks the Pacific coastal breezes, preventing them from cooling the canyon. As a result, the ridge traps in heat in Happy Canyon during the warmer growing months.

The petition for the Happy Canyon of Santa Barbara viticultural area includes climatic data for the period 2004–6 provided by Kerry Martin of Coastal Vineyard Care Associates. Some of the data for the Happy Canyon area and the areas to the west and north of Happy Canyon were obtained from data stations located in vineyards and maintained by Coastal Vineyard Care Associates. The data for the areas to the east and south of Happy Canyon were retrieved from the Western Regional Climate Center (at *http://www.wrcc.dri.edu/*) and the California Irrigation Management Information System (at *http://www.cimis.water.ca.gov/cimis/welcome.jsp*), respectively. The petitioner used those data in creating the table below, which compares growing degree days, based on the Winkler climate classification system, for Happy Canyon and the surrounding areas; see ''General Viticulture,'' by Albert J. Winkler, University of California Press, 1974. In the Winkler system, as a measurement of heat accumulation during the growing season, 1 degree day accumulates for each degree Fahrenheit that a day's mean temperature is above 50 degrees, which is the minimum temperature required for grapevine growth. The data, in degree days, show that, compared to the Happy Canyon area, areas to the north, south, and west of Happy Canyon average between 5 and 20 percent cooler and the area to the east averages 15 percent warmer.

GROWING DEGREE DAYS WITHIN AND OUTSIDE OF HAPPY CANYON, 2004–2006

Location relative to Happy Canyon	2004	2005	2006	Overall average	Percent cooler or warmer than Happy Canyon
In Happy Canyon	3,414	3,187	3,419	3,340	Same.
North—Los Alamos	3,250	2,700	3,200	3,050	9% cooler.
East—Figueroa Mountain.	3,872	3,721	3,965	3,853	15% warmer.
South—Santa Barbara.	2,795	2,537	2,721	2,684	20% cooler.
West—Ballard Canyon.	3,300	2,950	3,250	3,167	5% cooler.

Topography

The petitioner explains that the topography of the proposed Happy Canyon of Santa Barbara viticultural area includes varying elevations, rolling foothills, and a distinctive southwest drainage. According to the USGS maps, the proposed viticultural area lies on the east side and in the higher elevations of the Santa Ynez Valley region. Elevations within the proposed boundary line range from 500 feet in the southwest corner to 3,430 feet in the northeast corner, in the foothills of the San Rafael Range.

The petitioner explains that between the Pacific Ocean and the Santa Ynez Valley, hills and mountains trend west-to-east. As the elevation of the Santa Ynez Valley rises from west to east, the hills and mountains turn from a west-east direction to a generally north-south direction. The proposed viticultural area, located inland, lies along mountains and hills with a north-south orientation.

Drainage

According to the petitioner, the southwest drainage pattern of the proposed viticultural area is comparatively unique. To the west of the proposed boundary line, between Santa Agueda Creek and Figueroa Mountain Road, the drainage pattern trends south-southeast.

Soils and Geology

According to the current soil survey, the two major soil types in the proposed Happy Canyon of Santa Barbara viticultural area are related to topography (''Soil Survey of Northern Santa Barbara Area, California,'' issued by the United States Department of Agriculture, Soil Conservation Service, 1972).

Alluvial soils are at lower elevations and on bottoms of canyons; upland soils are at higher elevations of canyons and on surrounding peaks and hilltops.

The petitioner explains that based on the current soil survey, the soil characteristics of the proposed Happy Canyon of Santa Barbara viticultural area include green serpentine (magnesium silicate hydroxide) parent material, elevated levels of exchangeable magnesium, lower levels of exchangeable sodium, and a high cation exchange capacity (CEC). High CEC levels, based on the amount of positively charged ions in the soils,

increase the uptake of nutrients by plant roots.

The proposed viticultural area comprises the Shedd-Santa Lucia-Diablo and Toomes-Climara associations on uplands. The Shedd-Santa Lucia-Diablo association consists of strongly sloping to very steep, well drained shaly clay loams and silty clays. The Toomes-Climara association consists of moderately steep to very steep, somewhat excessively drained and well drained clay loams and clays.

The Chamise-Arnold-Crow Hills association is of greater extent in the western portion of the Santa Ynez Valley viticultural area, west of the proposed Happy Canyon of Santa Barbara viticultural area. This association consists of gently sloping to very steep, well drained and somewhat excessively drained sands to clay loams on high terraces and uplands.

The petitioner explains that the soils in the western portion of the Santa Ynez Valley viticultural area, compared to the soils in the proposed Happy Canyon of Santa Barbara viticultural area, have less magnesium, a significantly lower CEC level, and higher amounts of exchangeable sodium. Although drainage patterns change along the proposed western boundary line, the soils on both sides of the boundary line are similar.

The Positas-Ballard-Santa Ynez soil association is scattered throughout much of the southern part of the proposed Happy Canyon of Santa Barbara viticultural area. Sedimentary rock, unfavorable for viticulture, is predominant along the south side of the Santa Ynez River, outside the proposed boundary line.

The petitioner provides the results of two soil studies conducted in connection with the proposed Happy Canyon of Santa Barbara viticultural area. The first study details the differences in CEC among soils tested at sites in the proposed viticultural area and in areas immediately southwest and further west of the proposed boundary line, in the western end of the Santa Ynez Valley. The study shows that the soils in the proposed viticultural area have significantly more magnesium and an elevated CEC level as compared to the soils in areas beyond the proposed boundary line to the southwest and west (see table below). The petitioner also notes that the levels of calcium and sodium in the soils in the Happy Canyon are less than half those in the soils to the southwest and west.

CATION EXCHANGE CAPACITY (CEC) IN SOILS WITHIN AND OUTSIDE OF HAPPY CANYON

[meq/100g=milliequivalents of cations absorbed per 100 grams of soil]

Location	Magnesium	Calcium	Sodium	Total CEC in meq/100g
	Percent of total CEC			
Westerly Vineyard (in Happy Canyon)	74.1	23.1	0.72	32.0
Armour Ranch Road and Hwy 154 (1 mile southwest of Happy Canyon)	34.4	60.0	2.0	12.5
Clos Pepe (in the Sta. Rita Hills viticultural area, in the west end of Santa Ynez Valley)	26.0	61.0	5.0	11.6

The second study that the petitioner provided examines the differences in soils in the proposed Happy Canyon of Santa Barbara viticultural area and in canyons outside the boundary line, as far west as Figueroa Mountain Road, which is located approximately 4 miles away. The study is based on an acreage table of the soils on approximately 35,000 acres within the proposed viticultural area and on an equal number of acres to the west (see ''Soil Survey of Northern Santa Barbara Area, California''). The results of that study confirm the differences in total acreage and slope of soils in areas on either side of the proposed western boundary line of the Happy Canyon of Santa Barbara viticultural area (see table below).

DOMINANT SOIL MAP UNITS WITHIN AND OUTSIDE OF HAPPY CANYON

Soil symbol and soil name	Number of map units/percentage of survey area	Percentage slope
Happy Canyon of Santa Barbara (East of Foothills Adjacent to Santa Agueda Creek)		
DaF—Diablo silty clay	28/14	30 to 45 percent.
SrG3—Shedd silty clay loam	23/12	9 to 30 percent.
SdC—Salinas silty clay loam	11/6	2 to 9 percent.
ChF—Chamise shaly loam	11/6	15 to 45 percent.
SrG—Shedd silty clay loam	11/6	9 to 30 percent.
Figueroa Area (West of Foothills and Santa Agueda Creek to Figueroa Mountain Road)		
PtC—Positas fine sandy loam	25/17	2 to 9 percent.
ChF—Chamise shaly loam	22/15	15 to 45 percent.
PtD—Positas fine sandy loam	13/9	9 to 15 percent.
CkF—Chamise clay loam	11/8	30 to 45 percent.
SnC—Santa Ynez Gravelly fine sandy loam	11/8	9 to 15 percent.

According to the petitioner, the results of the soil study above show a unique geological pattern that justifies placing the western portion of the proposed boundary line in the vicinity of the Santa Agueda and Figueroa Creeks. The results also show that the Happy Canyon area comprises a group of soils different from those found to the west.

TTB Determination

TTB concludes that this petition to establish the 23,941-acre ''Happy Canyon of Santa Barbara'' American viticultural area merits consideration and public comment as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Happy Canyon of Santa Barbara,'' will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using ''Happy Canyon of Santa Barbara'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

On the other hand, we do not believe that any single part of the proposed viticultural area name standing alone, such as ''Happy Canyon,'' would have viticultural significance if the new area is established. According to GNIS, the ''Happy Canyon'' refers to 10 locations in 6 States within the United States. TTB believes that a determination of ''Happy Canyon'' as a term of viticultural significance would lead to consumer and industry confusion and should be avoided. Accordingly, the proposed part 9 regulatory text set forth in this document specifies only the full ''Happy Canyon of Santa Barbara'' name as a term of viticultural significance for purposes of part 4 of the TTB regulations.

For a wine to be eligible to use a viticultural area name as an appellation of origin or a term of viticultural significance in a brand name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name or other term of viticultural significance appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name ''Happy Canyon of Santa Barbara'' for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation upon the effective date of the approval of the Happy Canyon of Santa Barbara viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are also interested in receiving comments on the sufficiency and accuracy of the name, boundary, climatic, and other required information submitted in support of the petition. We are also particularly interested in any comments on whether the evidence regarding name and distinguishing features is sufficient to warrant the establishment of this new viticultural area within the existing Santa Ynez Valley and the larger Central Coast viticultural areas. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Happy Canyon of Santa Barbara viticultural area on wine labels that include the words ''Happy Canyon of Santa Barbara'' as discussed above under ''Impact on Current Wine Labels,'' we also are particularly interested in comments regarding whether there will be a conflict between the proposed viticulturally significant terms and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following two methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2008–0008 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov*. A direct link to that docket is available under Notice No. 89 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 89 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

We will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments we receive about this proposal within Docket No. TTB–2008–0008 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov*. A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 89. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov*. For instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

2. Subpart C is amended by adding § 9.___to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.___ Happy Canyon of Santa Barbara.

(a) *Name.* The name of the viticultural area described in this section is ''Happy Canyon of Santa Barbara''. For purposes of part 4 of this chapter, ''Happy Canyon of Santa Barbara'' is a term of viticultural significance.

(b) *Approved maps.* The four United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Happy Canyon of Santa Barbara viticultural area are titled:

(1) Los Olivos, CA, 1995;

(2) Figueroa Mountain, CA, 1995;

(3) Lake Cachuma, CA, 1995; and

(4) Santa Ynez, CA, 1995.

(c) *Boundary.* The Happy Canyon of Santa Barbara viticultural area is located in Santa Barbara County, California. The boundary of the Happy Canyon of Santa Barbara viticultural area is as described below:

(1) The beginning point is on the Los Olivos map at the intersection of the Santa Lucia Ranger District diagonal line and Figueroa Mountain Road, a light-duty road, section 27, T8N, R30W. From the beginning point, proceed southeast along the Santa Lucia Ranger District diagonal line, crossing onto the Figueroa Mountain map, and continuing east to its intersection with the northwest corner of section 6, T7N, R29W; then

(2) Proceed straight south along the R29W and R30W line, which is a boundary line of the Los Padres National Forest, to its intersection with the southwest corner of section 18 that coincides with one of the two 90-degree, southwest corners of the Los Padres National Forest, T7N, R29W; then

(3) Proceed east, south, and then east, along the boundary line of the Los Padres National Forest, to its intersection with the boundary line of the Cañada de Los Pinos, or College Rancho Grant, at the northwest corner of section 28, T7N, R29W; then

(4) Proceed straight south along the boundary line of the Cañada de Los Pinos, or College Rancho Grant, crossing onto the Lake Cachuma map, to its intersection with the 1,074-foot Bitt elevation point and the Lake Cachuma Recreation Area boundary line, section 17 east boundary line, T6N, R29W; then

(5) Proceed generally southwest along the Lake Cachuma Recreation Area boundary line to its intersection with the Santa Ynez River to the west of Lake Cachuma and Bradbury Dam, T6N, R30W; then

(6) Proceed generally west along the Santa Ynez River, crossing onto the Santa Ynez map, and continuing to its intersection with California State Road 154, northwest of BM 533, T6N, R30W; then

(7) Proceed north-northwest in a straight line 1.2 miles to its intersection with the marked 924-foot elevation point, T6N, R30W; then

(8) Proceed north-northwest in a straight line 1.2 miles to its intersection with the ''Y'' in an unimproved road 0.1 mile south of the 800-foot elevation line, west of Happy Canyon Road, T6N, R30W; then

(9) Proceed north-northwest in a straight line for 0.5 mile, crossing onto the Los Olivos map, and continuing to its intersection with the marked 1,324-foot elevation point, 0.5 mile southwest of Bar G O Ranch, T7N, R30W; then

(10) Proceed north-northwest in a straight line for 2.5 miles crossing over the marked 1,432-foot elevation point in section 9, then continue in a straight line northerly 1.4 miles to its intersection with the marked 1,721-foot elevation point in section 4, T7N, R30W; then

(11) Proceed north in a straight line 1.4 miles to its intersection with the marked 2,334-foot elevation point, west of a meandering unimproved road and south of Figueroa Mountain Road, T8N, R30W; then

(12) Proceed east-northeast in a straight line, returning to the beginning point.

Signed: June 9, 2008.

John J. Manfreda,

Administrator.

[FR Doc. E8–18536 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 87; Docket No. TTB–2008–0006]

RIN 1513–AB42

Proposed Establishment of the Lake Chelan Viticultural Area (2007R–103P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 24,040-acre ''Lake Chelan'' American viticultural area in Chelan County, Washington. It lies within the larger Columbia Valley viticultural area in north-central Washington. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before October 14, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

- *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2008–0006 at ''Regulations.gov,'' the Federal e-rulemaking portal); or
- Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal at *http://www.regulations.gov* within Docket No. TTB–2008–0006. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 87. You also may view copies of this notice, all related petitions, maps and other supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–927–2400 to make an appointment.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographic features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographic origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

- Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;
- Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;
- Evidence relating to the geographic features, such as climate, soils, elevation, and physical features, that distinguish the proposed viticultural area from surrounding areas;
- A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and
- A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Lake Chelan Petition

Alan J. Busacca, PhD, a geologist licensed in Washington State and a nationally certified professional soil scientist with Vinitas Vineyard Consultants, submitted a petition on behalf of the Lake Chelan Wine Growers Association to establish the 24,040-acre Lake Chelan American viticultural area in north-central Washington. Some of the petition evidence and documentation provided relies on the previous research and writings of Dr. Busacca. Additional petition resources include Government-published climatic, topographic, and soils data, as well as maps, municipal resources, commercial publications, personal correspondence, and anecdotal information.

The Lake Chelan Valley lies about 112 miles east-northeast of Seattle, according to USGS and commercial maps. The petitioner explains that the proposed Lake Chelan viticultural area lies entirely within the large, established Columbia Valley viticultural area (27 CFR 9.74). TTB notes that the Lake Chelan region lies to the east of the Puget Sound viticultural area (27 CFR 9.151) and to the north of other Washington State viticultural areas. The proposed Lake Chelan viticultural area also is not adjacent to nor does it include any portion of any other Washington State viticultural area except the Columbia Valley viticultural area.

The petitioner explains that the proposed Lake Chelan viticultural area includes the southern and eastern portions of the large body of water known as Lake Chelan and its surrounding lands suitable for viticulture. According to the petitioner, at the time of the 2006 petition filing with TTB, the proposed viticultural area included 13 bonded wineries, 140 acres of vineyards, and another 50 acres to be planted to grape vines.

According to the petitioner, distinguishing features of the proposed Lake Chelan viticultural area include its geology, geography, soils, and climate as directly influenced by past alpine glacial activity of the Cascade region. Lake Chelan Valley is the only valley in the Cascade Range in Oregon or Washington that holds a natural lake of its size. The climate of the agricultural and viticultural lands surrounding the lower (eastern) end of the lake is strongly moderated by the thermal effect of the lake on the air temperatures. The glacier that formed during the last ice age and traveled from the Cascade crest to the eastern end of the modern lake left a defining imprint on the landforms of the Lake Chelan Valley. In addition, the petitioner claims that pumice and ash from eruptions of volcanoes in the Cascade Range, principally Glacier Peak to the west of the proposed viticultural area, formed soils that are ashier and more pumiceous than those in any other established viticultural area in Washington State.

We summarize below the supporting evidence submitted with the petition.

Name Evidence

The ''Chelan'' geographic name derives from the name that Alexander Ross, an American fur trader, in about 1824 used to describe the ''Tsill-anes,'' a native people living along the south shore of Lake Chelan, according to ''Chelan County—Thumbnail History,'' an article from the Washington State Department of Archaeology and Historic Preservation, The Online Encyclopedia of Washington State History at *www.historylink.org.*

The ''Lake Chelan'' name appears on the USGS Chelan, Manson, and Winesap quadrangle maps. The USGS Chelan map, sections 11 and 12, T27N and R23N, identifies an area to the north-northwest of the small town of Chelan as the ''Lake Chelan Golf and Country Club.'' The DeLorme Washington Atlas and Gazetteer identifies ''Lake Chelan'' on page 83, sections A7, B7, and B8. The American Automobile Association map, Oregon Washington State Series, identifies ''Lake Chelan'' as a long slender lake extending northwest from the North Cascades National Park southeast to the Chelan Dam, approximately 2 miles northwest of the Columbia River.

An article entitled ''Chelan and Stehekin, WA,'' dated August 12, 2006, on *http://www.nwsource.com*, a northwest travel and outdoors Web site, states that Lake Chelan is one of Washington's favorite summer recreation areas.

Boundary Evidence

According to the petitioner and the written boundary description, the proposed Lake Chelan viticultural area encompasses the southernmost and easternmost 12 miles of the 55-mile-long lake and surrounding lands. A bedrock ridge, with a pinnacle at a 1,526-foot elevation, divides the approximately 1,200-foot elevation of the south Lake Chelan region from the 707-foot elevation of the Columbia River, according to USGS maps of the area and the petitioner. Lands to the east and southeast of the proposed viticultural area are within the Columbia River airshed and watershed, and have different climates, geology, and soils.

The upper 43 miles of Lake Chelan and its shoreline lie outside of the proposed viticultural area, according to the written boundary description provided in the petition. According to the petitioner, in the northern lake region the surrounding Cascade Range provides significant downward cold air drainage from peaks to valley floor and blocks the sun from the adjacent valley lands. The cold air and shade combine with a steep shoreline terrain to create a region unsuitable for grape growing. Additionally, the North Cascades National Park surrounds the north end of Lake Chelan, and commercial agricultural development is prohibited within its borders.

Lands with viticultural potential in the Lake Chelan Valley area, the petitioner states, are generally at or below 2,000 feet in elevation. High mountains ridges, beyond the boundary of the proposed Lake Chelan viticultural area, rise over 5,000 feet in elevation to the north and west and to 3,800 feet to the south, cradling the Lake Chelan Valley region on three sides, according to the petitioner and USGS maps. The petition explains that these high mountains, which have cold climates and forested terrain, are unsuited to viticulture.

History of Viticulture

According to the Chelan Valley Mirror dated May 1, 1947, Urban DeGrassi, a Jesuit priest, spent several years in the Lake Chelan region teaching agriculture. Based on Father DeGrassi's teachings, in 1881, John and Peter Wapato, Native Americans of Chelan Valley, started planting fruit eventually including grapes and cherries.

According to an article in the August 6, 1891, edition of the Chelan Falls Leader, Louis Conti, an Italian immigrant, owned a 60-acre vineyard in the Lake Chelan area. The article stated that a colony of Italian immigrants, living on the sunnier south side of the lake, planted grape vines on their claimed lands.

Two 1905 photographs from the Chelan County Historical Society show grapes growing in the Lake Chelan area. A photo of grapes on the vine is labeled ''Black Hamburg Grapes—Lake Chelan.'' The petitioner explains that the common name for those grapes is Black Muscat. The other photo, which shows a little boy sitting on the ground beside grapes hanging heavily from a vine, is labeled ''Lake Chelan Grapes.''

The Faletto family continued growing grapes into the early 1900s, according to an e-mail dated November 22, 2005, from family member Rich Faletto. Mr. Faletto stated of his grandfather, ''Old John was the vintner and winery operator in the valley, producing great wine from [grapevines] brought to the area by a group of Italians.''

The Chelan and Manson areas, within the proposed viticultural area, comprised 154 acres of producing vineyards, according to a November 17, 1949, newspaper article written by Harry R. McMullen. According to the article, that year grape growers received 2 cents a pound, or $40 a ton, from the Welch Company.

Modern Viticulture

The petitioner states that in 1998, Steve Kludt and Bob Christopher replanted apple orchards to grapes within the proposed Lake Chelan viticultural area. Also, in 2000 the Kludt family opened the first bonded winery in the area and in 2001 started selling wine. Vineyard production in the Lake Chelan region increased from over 90 acres in 2004 to 140 acres by 2006. According to the petitioner, 13 bonded wineries operated in the Lake Chelan area as of the 2006 petition submission date.

Proposed Boundary Line

The petitioner explains that the proposed boundary line uses a 2,000-foot elevation line and USGS map section lines in conjunction with roads, mountain peaks, and other map markings in providing a clear, simple perimeter. The proposed Lake Chelan viticultural area boundary line includes lands adjacent to the southernmost 12 miles of the lake, according to the petition.

In determining the proposed boundary line, the petitioner includes in the proposed viticultural area only the valley areas with a significant ''lake effect'' climate. The lake affects surrounding lands, the petitioner explains, by favorably moderating the climate, increasing the length of the

growing season, and reducing the frequency of damaging or killing vine freezes. The petitioner states that the proposed boundary line excludes from the proposed viticultural area the surrounding mountainous areas and the northern 43 miles of the lake and adjacent lands, all unsuitable for viticulture.

TTB notes that the northeast portion of boundary of the proposed Lake Chelan viticultural area coincides with 17 miles of the 2,000-foot boundary line of the Columbia Valley viticultural area. In the original petition, the proposed northeast boundary line incorporated a series of map section lines and 90-degree turns. After discussions with TTB, the petitioner modified the northeast portion of the boundary line to coincide with the boundary line of the Columbia Valley viticultural area.

The petitioner provides an aerial photo of agriculture within and immediately outside of the proposed Lake Chelan viticultural area. The planted orchards and vineyards are clustered on the low, flat elevations adjoining the northern and southern shorelines of the lake. The petitioner explains that viticulture fails to thrive outside the proposed boundary line because of high elevations, steep terrain, cold temperatures, and the absence of a moderating lake effect climate.

Other boundary line considerations include properties of the soil, the influences of the watershed and airshed, the elevations of the surrounding mountains, and the steepness of the terrain.

Distinguishing Features

Cascade Range Geographic Province

The proposed Lake Chelan viticultural area, a part of the Cascade Range geographic province, the petitioner explains, includes distinctive geology, geography, soils, and climate that contrast to those of the surrounding areas. The geology, the petitioner notes, includes the advance of Cascade alpine glaciers that occurred 14,000 to 18,000 years ago.

The Cascade Mountain Range runs north-south through Washington and Oregon and divides western and eastern Washington, the petitioner explains. The range creates, to the east, a rain shadow that limits precipitation in the Lake Chelan Valley and on the Columbia Plateau in eastern Washington. The range protects areas to its east from Arctic and Pacific winter storms and further moderates climate.

Lake Chelan Valley is the only valley that the Cascade glacier created in Washington and Oregon and that holds a large natural lake of Lake Chelan's size. The lake is the third deepest lake in the U.S., the petitioner emphasizes. The soils in the valley formed in glacial sediments layered below the more recent windblown deposition of volcanic pumice and ash. Also, the large glacial lake acts as a heat reservoir to produce a unique climate of consistently moderated temperatures.

Columbia Plateau Geographic Province

Most Washington vineyards, the petitioner states, lie on the Columbia Plateau geographic province, the features of which contrast significantly in several important ways from the Lake Chelan Valley in the Cascade Range geographic province. The distinguishing features of the Columbia Plateau include the bedrock of Tertiary-age basaltic lavas, sediments derived from cataclysmic outburst floods of Lake Missoula, and bench-and-riser landforms that the recurrent Missoula Floods created through erosion of the lavas. The topography varies from near moonscapes to megasized gravel bars and slackwater terraces.

The petitioner states that another distinguishing feature of the Columbia Plateau is the predominant east-west trending valley-and-ridge system that affects the elevation, slope, aspect, heat accumulation, winds, and air drainage of the plateau. Also, plateau elevations vary from 460 feet at the Wahluke Slope viticultural area (27 CFR 9.192) to 970 feet at the Walla Walla Valley viticultural area (27 CFR 9.91), a topography with a significantly lower elevation than that of the Lake Chelan area of the Cascade Range.

The separate climates of the Columbia Plateau viticultural areas share low winter temperatures with complete vine dormancy and significant fall daytime and nighttime temperature variations. The viticultural areas of the Columbia Plateau lie within the rain shadow of the Cascade Range, and have a drier climate as compared to western Washington. The combination of distinguishing features in the viticultural areas on the Columbia Plateau, the petitioner concludes, creates a unique annual growing season that contrasts with the Lake Chelan Valley region in the Cascade Range geographic province.

Geology

The petitioner explains that the most recent ice-age events of the Earth, 14,000 to 18,000 years ago, played significant roles in creating the differing geological records within the Cascade Range and the Columbia Plateau.

The region encompassing the proposed Lake Chelan viticultural area, according to the petitioner, includes camel-backed bedrock landforms that the Cascade Range alpine glaciers eroded into the dominantly granitic bedrock of the Lake Chelan area, lake sediments that the alpine glaciers deposited, and bedrock that consists of Cretaceous-age igneous and older metamorphic rocks. The glaciers crushed bedrock in the Lake Chelan region, creating glacial till and outwash sediments that have coarse sandy textures and that are rich in biotite mica. The glacial lake sediments, silty to clayey in texture, include substantive amounts of quartz and mica. As a result, the soil's deep rooting zone for grape vines has distinguishable textures, mineralogy, and nutrients.

The petitioner provides a geologic map of the proposed Lake Chelan viticultural area from the USGS Miscellaneous Investigations Series Map I–1661, Geologic Map of the Chelan, 30-Minute by 60-Minute Quadrangle, Washington, accessed online on June 26, 2006. The map identifies the Cretaceous-age bedrock and the Quaternary age surface sediments in the Lake Chelan Valley area. The Cretaceous-age units consist of dark, intrusive igneous tonalites, the petitioner explains. TTB notes that tonalite is an igneous plutonic (intrusive) rock having greater than 20 percent quartz and quartz diorite with 5 to 20 percent quartz. Also, the Quaternary-age units consist of glacial moraines, terraces, lake deposits, and postglacial landslides and alluvial sediments.

According to the petitioner, the Columbia Plateau geologic history, in contrast, stems from the force of a lobe of the western Canadian ice sheet that blocked the Clark Fork River in Idaho and created the huge glacial Lake Missoula in Montana. When the glacial ice dams repeatedly failed, the largest floods of water ever documented on Earth occurred. The floods overwhelmed the Columbia River and flowed across eastern Washington, eroding channels in the basalt bedrock and depositing gravel bars in the main basins and fine sandy and silty sediments in the river valleys.

Geography

Elevations vary from approximately 1,100 feet at lake level to 3,276 feet at an unnamed peak in the northwest portion of the proposed Lake Chelan viticultural area, 1.8 miles northwest of Lake Chelan State Park on the USGS Manson quadrangle map. The lower elevations, which have gently rising

slopes, are along the southern and eastern shoreline of Lake Chelan, as shown on the USGS maps of the region. The petitioner explains that the lower lakeside elevations are known for successful fruit growing. The higher elevations enveloping the Lake Chelan Valley region generally correlate with steep terrain, as shown on the USGS maps of the proposed viticultural area.

According to the petitioner, when the Cascade alpine glaciers descended from the mountain crests to lower elevations, they created the distinctive U-shaped Lake Chelan Valley topography, including the lake depression. The term ''camel-backed'' describes the landforms of the Lake Chelan Valley at low elevations and adjacent surrounding mountains. The Cascade alpine glaciers created other valleys in the region with similar landscapes, including camel-backed topography, and layers of glacial sediment, but not lake basins. Thus, only Lake Chelan Valley, in contrast to the other regional glacial valleys, has a climate-moderating lake effect.

Climate

According to local growers and temperature statistics, a lake effect moderates air temperature extremes in both summer and winter in the proposed Lake Chelan viticultural area. The combination of moderating summer high and winter low temperatures creates a suitable environment for both viticulture and tree fruit agriculture. According to the petitioner, the strong lake effect moderates the air temperatures of planted areas adjacent north and south of the eastern part of the lake. In those areas, the waters of Lake Chelan create a heat reservoir that absorbs warming solar energy in summer and then reradiates heat energy into cold air in winter. The table below compares the climate in the areas along Lake Chelan to that in similar areas nearby but without lakes.

CLIMATIC INDICES FOR WINE GRAPES FOR THREE SITES IN WASHINGTON STATE, 1994–2003

Area *	Distance from Lake Chelan (miles)	Cool climate viticulture suitability index ** (days)	Number of days a year <32 °F	Number of days a year >95 °F
Lake Chelan	0	244	89.6	7.1
Methow Valley	30, north	176	147.9	13.6
Wenatchee Valley	30, south	230	102.3	14.1

* Based on data from the National Climate Data Center.
** Number of days between <29 °F in spring and the first temperature <29 °F in fall.

The petitioner uses a cool-climate viticultural suitability index (CCVSI) formulated at Cornell University as an analytical tool for the Lake Chelan Valley climate. The CCVSI emphasizes the impact of temperature moderation on viticulture. The petitioner explains that the CCVSI compiles the sum of the days from the last occurrence of 29 degrees Fahrenheit or lower in spring until the first occurrence of 29 degrees Fahrenheit or lower in fall. The larger total numbers, in days, generally correlate to the better viticultural regions.

For the Lake Chelan Valley region, the CCVSI 10-year average of 244 days is significantly higher than the glacially formed Methow Valley in the Cascade Range to the north and higher than the Wanatchee Valley to the south.

In another measure of the lake effect on the proposed Lake Chelan viticultural area, the petitioner uses the annual average number of days with temperatures of 32 degrees Fahrenheit or lower in winter and 95 degrees Fahrenheit or higher in summer. The petitioner compares the climates in Lake Chelan Valley, Methow Valley, and Wenatchee Valley using this method. All three valleys are located within 60 miles of each other, were created partially or totally by Cascade alpine glaciers, and have other similar geographic features. Lake Chelan Valley averages 7 days a year above 95 degrees Fahrenheit, and Methow Valley and Wenatchee Valley average 14 days a year, according to data from the National Climate Data Center included with the petition. Fewer hot days in the Lake Chelan Valley correlate with better fruit quality, since temperatures above 95 degrees shut down most photosynthesis in grapes, according to the petitioner. The Lake Chelan Valley averages only 90 days a year colder than 32 degrees Fahrenheit in winter, while the Methow Valley averages 148 days and the Wenatchee Valley averages 102 days.

Northwest of the proposed viticultural area, temperatures are too low for viticulture because of cold air drainage from the high Cascades and severe shading from steep mountainsides close to the lake. To the east and northeast of the proposed viticultural area, a ridge holds the lake-affected air masses in the lake basin. That ridge is used as the proposed eastern boundary.

To further demonstrate the moderating lake effect, the petitioner provides evidence concerning vine-killing freezes which, according to the petitioner, occur less frequently in the proposed Lake Chelan viticultural area than in other viticultural areas in eastern Washington State. Winemaker Charles Ray Sandidge III, in an October 2, 2006, e-mail to the petitioner, states that he conducted a study of weather data in the period 1934–84 in the regions of Wahluke Slope, Walla Walla, Chelan, East Wenatchee, and Roosevelt. Results, based on cold temperature readings, indicated that the Lake Chelan area averaged a killing freeze once in 17 years, while the other Washington viticultural areas studied averaged 6 to 8 years between vine-killing freezes.

Mr. Sandidge states that Lake Chelan averages a heavy crop loss and a light vine loss every 17 years. Also, fall temperatures cool more rapidly and rains arrive about a week earlier than in areas to the south. Mr. Sandidge theorizes that while the Lake Chelan area experiences milder winter temperatures, the later spring bud break relates to the close proximity of the proposed viticultural area to the surrounding mountains.

Soils

According to the petitioner, the soils of the Lake Chelan Valley include layers of glacial debris, sediment from normal stream erosion and deposition after the glacial age, and airborne volcanic and nonvolcanic sediments. The lower parts of the deeper soils, 20 to 60 inches below the surface, predominantly formed in glacial sediments. The upper part of the soils formed in a mixture of large amounts of airborne volcanic pumice and ash from Glacier Peak and very small amounts of loess (wind-transported material) overlying the glacial sediments. Thus, the soils

downwind from Glacier Peak and the north Cascades, including the soils in the proposed Lake Chelan viticultural area, are rich, about 3 to 40 percent by volume, in volcanic pumice and ash from a massive eruption of the Glacier Peak volcano about 12,000 years ago.

The petitioner explains that bedrock in the proposed Lake Chelan viticultural area consists of Cretaceous-age granitic rocks and older metamorphic rocks, including amphibolite, schist, and biotite gneiss. Glaciers shattered and crushed the Cascade crystalline bedrock, creating glacial till and glacial outwash sediments that include biotite mica-rich cobbly, bouldery, gravelly, and coarse sandy materials.

The soils in Lake Chelan Valley that are close to the surface, according to the petitioner, include sand- and fine gravel-sized pumice from the volcanic eruption of Glacier Peak to the northwest. Soils that have significant amounts of volcanic ash and pumice or clays weathered from glass have an unusually high available water capacity. The petitioner believes that the high content of volcanic material in the soils is a significant contributory factor to the successful regional viticulture and pomology over the past 100 years.

The United States Department of Agriculture, National Cooperative Soil Survey, has identified 11 soil series within the proposed Lake Chelan viticultural area. Eight of these series consist of soils derived from volcanic glass, including ashy, cindery, pumiceous, glassy, vitrandic, medial, and amorphic soils, the petitioner explains. Only the Margerum and Dragoon series are silt loam, which is common on the Columbia Plateau. The information in the soil table below is from the Official Soil Series Descriptions accessed on October 18, 2006, at the U.S. Department of Agriculture Web site, at: *http://soils.usda.gov/technical/classification/osd/index.html*.

Soil series	Soil order	Excerpt from official description
Margerum	Mollisols	Considerable pumice.
Chelan	Mollisols	Volcanic ash and pumice.
Springdale	Inceptisols	Volcanic ash in the upper part.
Kartar	Inceptisols	Volcanic ash in the surface.
Entiat	Mollisols	Volcanic ash.
Dinkelman	Mollisols	A component of volcanic ash.
Tyee	Mollisols	Volcanic ash.
Swakane	Mollisols	Volcanic ash in the upper part.
Psuga	Spodosols	Volcanic ash.
Mansonia	Mollisols	Volcanic ash and pumice.
Dragoon	Mollisols	Volcanic ash.

The petitioner explains that many agricultural soils on the Columbia Plateau are silt loam throughout the soil profile, and are unlike those with a high content of volcanic pumice and ash in the Lake Chelan area and Cascade Range. Also, the mineralogy of the Columbia Plateau basalt sediments, deposited as alluvium derived from basaltic lavas, includes neither quartz nor mica, which are commonly found in the sediments in the Lake Chelan Valley area.

A sampling of soils taken by the petitioner across the Columbia Plateau shows that the dominant parent materials are loess and dunes and have an average content of only 12 percent volcanic glass. This is substantially different from the high glass content of soils in the proposed viticultural area. The Pasco and Umatilla Basins, to the south of the proposed viticultural area, were the origins of most of the loess throughout the Columbia Plateau. Over the millennia the Lake Chelan Valley, outside the path of most of the wind transporting the loess, has received only minor deposits of loess. The petitioner asserts that the differences in soil between the Lake Chelan Valley and the Columbia Plateau impact infiltration and runoff of water, aeration of the soils, root penetration, and available water capacity.

TTB Determination

TTB concludes that this petition to establish the 24,040-acre Lake Chelan American viticultural area merits consideration and public comment, as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Lake Chelan,'' will be recognized as a name of viticultural significance under 27 CFR 4.39(i)(3). The text of the proposed regulation clarifies this point.

In addition, based on the evidence submitted, we believe that ''Chelan'' standing alone is locally and/or nationally known as referring to the region in Washington State encompassed by the proposed ''Lake Chelan'' viticultural area, and we therefore believe that consumers and vintners could reasonably attribute the quality, reputation, or other characteristic of wine made from grapes grown in the proposed ''Lake Chelan'' viticultural area to the name ''Chelan'' itself. Therefore, the proposed part 9 regulatory text set forth in this document specifies both ''Lake Chelan'' and ''Chelan'' as terms of viticultural significance for purposes of part 4 of the TTB regulations. Also see 27 CFR 4.39(i)(3), which provides that a name has viticultural significance when so determined by a TTB officer.

Consequently, if this proposed text is adopted as a final rule, wine bottlers using ''Lake Chelan'' or ''Chelan'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's full name as an appellation of origin.

For a wine to be labeled with a viticultural area name or with a brand name that includes a viticultural area name or other term specified as having viticultural significance in part 9 of the TTB regulations, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not

eligible to use the viticultural area name as an appellation of origin and that name or other term of viticultural significance appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name ''Lake Chelan'' or ''Chelan'' for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation, upon the effective date of the approval of the Lake Chelan viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are interested in receiving comments on the sufficiency and accuracy of the name, climatic, boundary, and other required information submitted in support of the petition. In addition, we are interested in receiving comments on the proposal to identify ''Lake Chelan'' and ''Chelan'' as terms of viticultural significance. Please provide any available specific information in support of your comments. We are also particularly interested in any comments on whether the evidence regarding name and distinguishing geographical features is sufficient to warrant the establishment of this new viticultural area within the existing Columbia Valley viticultural area.

Because of the potential impact of the establishment of the proposed Lake Chelan viticultural area on wine labels that include the words ''Lake Chelan'' or the word ''Chelan'' as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are also interested in receiving suggestions for ways to avoid conflicts, for example by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following two methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2008–0006 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov*. A direct link to that docket is available under Notice No. 87 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 87 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

We will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments we receive about this proposal within Docket No. TTB–2008–0006 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov*. A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 87. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov*. For instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- x 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Amend subpart C by adding § 9.___ to read as follows:

§ 9.___ Lake Chelan.

(a) *Name.* The name of the viticultural area described in this section is ''Lake Chelan''. For purposes of part 4 of this chapter, ''Lake Chelan'' and ''Chelan'' are terms of viticultural significance.

(b) *Approved maps.* The five United States Geological Survey 1:24,000 scale topographic maps used to determine the boundary of the Lake Chelan viticultural area are titled:

(1) Manson Quadrangle, Washington—Chelan Co., 1968, photorevised 1987;

(2) Cooper Ridge Quadrangle—Washington, 1968, photorevised 1987;

(3) Chelan Quadrangle—Washington, 1968, photorevised 1987;

(4) Chelan Falls Quadrangle—Washington, 1968, photorevised 1981; and

(5) Winesap Quadrangle—Washington, 1968, photorevised 1987.

(c) *Boundary.* The Lake Chelan viticultural area is located in Chelan County, Washington. The boundary of the Lake Chelan viticultural area is as described below:

(1) The beginning point is on the Manson map at the intersection of the east shore of Lake Chelan and the north boundary line of section 15, T28N/R21E, north of Greens Landing. From the beginning point, proceed straight east 1.6 miles along the northern boundary line of sections 15 and 4 to its intersection with the 2,000-foot elevation line, T28N/R21E; then

(2) Follow the meandering 2,000-foot elevation line generally southeast onto the Cooper Ridge map, crossing Purtterman Gulch; continue southeast onto the Chelan map and follow the meandering 2,000-foot elevation line onto the Chelan Falls map, over the Cagle Gulch, and then return to the Chelan map; continue generally southeast onto the Chelan Falls map and follow the 2,000-foot elevation line to section 8, T27N/R23E, to a point 0.3 mile due north of BM 1404 at the intersection of U.S. Route 97 and State Route 151, T27N/ R23E; then

(3) Proceed in a straight south-southeast line 1.35 miles to its intersection with the section 20 north boundary line and the 1,000-foot elevation line, T27N/R23E; then

(4) Proceed south-southwest along the 1,000-foot contour line to its intersection with the section 20 south boundary line, south of Chelan Station and immediately west of State Route 151, T27N/R23E; then

(5) Proceed straight west along the south boundary line of sections 20 and 19 for 0.75 mile to its intersection with the light-duty Gorge Road, as identified on the adjoining Chelan map, and the penstock flowing to the surge tank, T27N/R23E; then

(6) Proceed northwest along Gorge Road, crossing onto the Chelan map, to the southeast corner of section 13, T27N/R22E; then

(7) Proceed straight west along the south boundary line of sections 13, 14, 15, 16, 17, and 18, and crossing onto the Winesap map in section 18, to its intersection with the R21E/R22E line, T27N; then

(8) Proceed straight north along the R21E/R22E line to its intersection with the south boundary line of section 13 and the 2,440-foot contour line, T27N/R21E; then

(9) Proceed straight west to the southwest corner of section 13, T27N/R21E; then

(10) Proceed straight north along the section 14 east boundary line to the northeast corner of section 14, T27N/R21E; then

(11) Proceed straight west along the section 14 north boundary line to the northwest corner of section 14, T27N/R21E; then

(12) Proceed straight north along the east boundary line of section 10 for 0.3 mile to its intersection with the 2,520-foot contour line and a 90-degree turn in the Wenatchee National Forest (WNF) boundary line, T27N/R21E; then

(13) Proceed straight west along the WNF boundary line 0.3 mile to its intersection with the 2,600-foot contour line and a 90-degree turn in the WNF boundary line, T27N/R21E; then

(14) Proceed straight south along the WNF boundary line 0.3 mile to its intersection with the south boundary line of section 10, T27N/R21E; then

(15) Proceed straight west along the south boundary lines of sections 10 and 9 to the southeast corner of section 8, T27N/R21E; then

(16) Proceed straight north along the east boundary line of section 8 to the northeast corner of section 8, T27N/R21E; then

(17) Proceed straight west along the north boundary line of section 8 to the northwest corner of section 8, T27N/R21E; then

(18) Proceed generally north along the east boundary line of section 6, crossing onto the Manson map, and continue along the east boundary lines of sections 31 and 30, to the northeast corner of section 30, T28N/R21E; then

(19) Proceed straight east along the north boundary lines of sections 29 and 28 to the intersection with the east shoreline of Lake Chelan; and

(20) Proceed generally northwest and northeast along the east shoreline of Lake Chelan to the point of beginning.

Signed: July 8, 2008.

John J. Manfreda,

Administrator.

[FR Doc. E8–18534 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Notice No. 88; Docket No. TTB–2008–0007]

RIN 1513–AB40

Proposed Establishment of the Upper Mississippi River Valley Viticultural Area (2007R–055P)

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau proposes to establish the 29,914-square mile ''Upper Mississippi River Valley'' American viticultural area in portions of southeast Minnesota, southwest Wisconsin, northwest Illinois, and northeast Iowa. We designate viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. We invite comments on this proposed addition to our regulations.

DATES: We must receive written comments on or before October 14, 2008.

ADDRESSES: You may send comments on this notice to one of the following addresses:

• *http://www.regulations.gov* (via the online comment form for this notice as posted within Docket No. TTB–2008–0007 at ''Regulations.gov,'' the Federal e-rulemaking portal); or

• Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

See the Public Participation section of this notice for specific instructions and requirements for submitting comments, and for information on how to request a public hearing.

You may view copies of this notice, selected supporting materials, and any comments we receive about this proposal at *http://www.regulations.gov* within Docket No. TTB–2008–0007. A link to that docket is posted on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 88. You also may view copies of this notice, all related petitions, maps and other supporting materials, and any comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. Please call 202–927–2400 to make an appointment.

FOR FURTHER INFORMATION CONTACT: N.A. Sutton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 925 Lakeville St., No. 158, Petaluma, CA 94952; telephone 415–271–1254.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act requires that these regulations, among other things, prohibit consumer deception and the use of misleading statements on labels, and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the regulations promulgated under the FAA Act.

Part 4 of the TTB regulations (27 CFR part 4) allows the establishment of definitive viticultural areas and the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) contains the list of approved viticultural areas.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been recognized and defined in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to its geographical origin. The establishment of viticultural areas allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of a viticultural area is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations outlines the procedure for proposing an American viticultural area and provides that any interested party may petition TTB to establish a grape-growing region as a viticultural area. Section 9.3(b) of the TTB regulations requires the petition to include—

• Evidence that the proposed viticultural area is locally and/or nationally known by the name specified in the petition;

• Historical or current evidence that supports setting the boundary of the proposed viticultural area as the petition specifies;

• Evidence relating to the geographical features, such as climate, soils, elevation, and physical features that distinguish the proposed viticultural area from surrounding areas;

• A description of the specific boundary of the proposed viticultural area, based on features found on United States Geological Survey (USGS) maps; and

• A copy of the appropriate USGS map(s) with the proposed viticultural area's boundary prominently marked.

Upper Mississippi River Valley Petition

The Upper Mississippi River Valley AVA Committee submitted a petition to TTB proposing the establishment of the 29,914-square mile ''Upper Mississippi River Valley'' American viticultural area in portions of southeast Minnesota, southwest Wisconsin, northwest Illinois, and northeast Iowa. A map submitted with the petition indicates that the vineyards within the proposed viticultural area are geographically disbursed throughout the area. The established 28,000-acre (43.75-square mile) Lake Wisconsin viticultural area (27 CFR 9.146) located in Columbia and Dane Counties, Wisconsin, lies entirely within the eastern portion of the proposed viticultural area.

As indicated on the USGS maps included with the petition, the Mississippi River runs north-to-south in the approximate middle of the proposed viticultural area. St. Paul, Minnesota, is the northernmost point of the proposed viticultural area and its southernmost point is north of Moline, Illinois. According to the petitioner, the Wisconsin ice age and the effects of glaciation on the region provide a basis for most of the distinguishing features of the proposed viticultural area.

We summarize below the supporting evidence submitted with the petition.

Name Evidence

According to the petitioner, the Upper Mississippi River Wildlife and Fish Refuge Act of 1924 provides a historical perspective in support of the ''Upper Mississippi River Valley'' name and its boundaries. The Act established what later would be known as the Upper Mississippi River National Wildlife and Fish Refuge, an area that Congress created to reflect the unique habitat of the Paleozoic Plateau (see ''Regional Land Management'' below). The petition documentation includes references citing the Upper Mississippi River Valley name relevant to the Upper Mississippi River National Wildlife and Fish Refuge. The petitioner documents the use of the Upper Mississippi River Valley name in Federal and public Web sources.

A page on the USGS Web site, ''Status and Trends of the Nation's Biological Resources, Part 2, Regional Trends of Biological Resources,'' (*http://biology.usgs.gov/s+t/SNT/index.htm*) includes a section on the Mississippi River. The ''Geography, Geological History, and Human Development'' subsection explains the glacial history of the Upper Mississippi River. The Wisconsin Glacier retreating into Canada and melting is described as follows: ''The Upper Mississippi River valley then began filling with glacial outwash, mainly sand and gravel, a process that is still under way * * *. The Upper Mississippi River valley widens considerably where it joins the Minnesota River, 13 kilometers downstream from St. Anthony Falls * * *.'' The petitioner explains that at St. Anthony Falls the Mississippi River headwaters join the northern boundary of the Upper Mississippi River Valley.

Regarding the history of the valley, a page on the National Park Service Web site (*http://www.nps.gov/efmo/parks/hist.htm*) states that ''The Upper Mississippi River valley was not only the home of prehistoric Indians for thousands of years, but also has been the scene for over 300 years of recorded human history as well. Early explorers found the area along the big river

occupied by groups of Native Americans.''

The May 6, 1997, NOVA broadcast entitled ''Flood!'' described the 1993 flooding of the Upper Mississippi River Valley. It included an interview with Lynn House of Quincy, Illinois. She and her husband own 1,400 acres along the Mississippi River. Mrs. House said that during the flooding of 1993 her husband exclaimed, ''Levees are going to break like guitar strings, up and down the Upper Mississippi River Valley!''

''Twelve Millennia: Archaeology of the Upper Mississippi River Valley,'' by James Theler and Robert Boszhardt (2003, Iowa State University Press), provides an overview of the 12,000-year-old human past of the Driftless Area of the Upper Mississippi River Valley, according to a description of the book on *www.amazon.com*. The Driftless Area extends from Rock Island Rapids, in the Moline-Rock Island, Illinois, area, north to St. Anthony Falls in the Minneapolis-St. Paul, Minnesota, area. (It comprises areas that were excluded from glacial transport of sediments and other materials.) The petitioner notes that the Driftless Area roughly corresponds to the boundary of the proposed Upper Mississippi River Valley viticultural area.

The ''Upper Mississippi River Valley: A Personal Web Site and Guide,'' at *http://soli.inav.net/~atkinson/k/UpperMissRiver.htm*, has scenic photographs and information on local tourism, parks and natural areas, cities and towns, books, and shopping in the Upper Mississippi River Valley.

Boundary Evidence

The proposed Upper Mississippi River Valley viticultural area covers 29,914 square miles, averaging 120 miles east to west and 225 miles north to south, according to the USGS maps provided with the petition. The headwaters of the Mississippi River start at Lake Itasca in northwest Minnesota and continue to St. Anthony Falls in Minneapolis-St. Paul, Minnesota, the petitioner explains.

According to the USGS maps included with the petition, the proposed northern boundary of the Upper Mississippi River Valley viticultural area coincides with the landmark St. Anthony Falls. The proposed southern portion of the boundary extends west from north of Moline, Illinois, at Lock and Dam 14 on the Mississippi River, to Tiffin, Iowa. The USGS maps show that the proposed easternmost point of the proposed boundary is in Janesville, Wisconsin, and the westernmost point is along Minnesota State Highway 56 in Coates, Minnesota, south of St. Paul.

To define the proposed boundary of the Upper Mississippi River Valley viticultural area, the petitioner provided a written boundary description and USGS State maps for Minnesota, Wisconsin, Illinois, and Iowa. The petitioner also provided Anamosa and Marshalltown, Iowa, regional maps, which show highways in more detail.

States and Counties

The table below lists the counties in four states that are either totally or partially within the boundary of the proposed Upper Mississippi River Valley viticultural area.

COUNTIES IN THE PROPOSED UPPER MISSISSIPPI RIVER VALLEY VITICULTURAL AREA

	Minnesota	Wisconsin	Illinois	Iowa
1	Dakota	Buffalo	Carroll	Allamakee
2	Dodge	Clark	Jo Davies	Black Hawk
3	Fillmore	Columbia	Lee	Bremer
4	Goodhue	Crawford	Ogle	Buchanan
5	Houston	Dane	Rock Island	Cedar
6	Mower	Dunn	Stephenson	Chickasaw
7	Olmstead	Eau Claire	Whiteside	Clayton
8	Wabasha	Grant	Winnebago	Clinton
9	Washington	Green		Delaware
10	Winona	Iowa		Dubuque
11		Jackson		Fayette
12		Juneau		Howard
13		La Crosse		Jackson
14		La Fayette		Johnson
15		Monroe		Jones
16		Pepin		Linn
17		Pierce		Scott
18		Richland		Winneshiek
19		Rock		
20		Sauk		
21		St. Croix		
22		Trempealeau		
23		Vernon		

Regional History

The petitioner explains that European explorers Jacques Marquette and Louis Joliet first entered the Upper Mississippi River Valley on June 17, 1673. The Louisiana Purchase and the resolution of the Black Hawk War in 1832 served to open the area to settlers from the eastern states.

According to the petitioner, native grape varieties in the Upper Mississippi River Valley thrived in the late 19th and early 20th centuries. In 1919, Iowa produced the sixth largest grape crop in the United States. However, prohibition, severe freezes, droughts, and wind drift from some crop sprays caused native viticulture to dwindle throughout much of the 20th century within the proposed viticultural area. The disease- and cold-resistant French-American grape hybrids and crop spray improvements developed during the 20th century resulted in renewed confidence in grape growing as an industry in the Upper Mississippi River Valley region.

Regional Land Management

The petitioner explains that two management areas, Major Land Resource Area (MLRA) 105 and the Driftless Area Initiative (DAI), help to define the proposed viticultural area. The United States Department of Agriculture, Natural Resources Conservation Service (NRCS), oversees

the management of MLRAs. MLRA 105 comprises the Paleozoic Plateau, which more recent glacial incursions surrounded, bypassed, and preserved as a rugged, bedrock-controlled environment with soils lacking the glacial drift of areas outside the MLRA boundary. Thus, it encompasses a vast area that has similar soils, climate, water resources, and land uses. It includes portions of four states: Southeastern Minnesota, southwestern Wisconsin, northeastern Iowa, and northwestern Illinois. It roughly corresponds to the boundary of, but is 4 percent smaller than, the proposed viticultural area.

The DAI, according to the petitioner, comprises the Midwest Driftless Area with its atypical lack of glacial till. It was created and is managed conjointly by the Resource Conservation and Development Councils under the NRCS in the four-state area. The DAI is mandated to conserve land, water, and habitat resources that are strongly influenced by the dramatic landscape. In some areas the DAI boundary slightly extends beyond the MLRA 105 boundary to more fully capture included watersheds and transitional areas of increasing glacial drift.

The petitioner uses State and interstate highways to define the boundary of the proposed Upper Mississippi River Valley viticultural area. The highways are marked on the USGS maps and form a boundary that comprises these important, interrelated components of the proposed viticultural area: The Upper Mississippi River National Wildlife and Fish Refuge, the Paleozoic Plateau, MLRA 105, the Driftless Area, and the Upper Mississippi River watershed.

According to the petitioner, the proposed Upper Mississippi River Valley viticultural area includes steep-sided cliffs, bluffs, deeply entrenched stream valleys, and karst features. It has more hills, ridges, areas of thinner glacial till, and thus better drainage for grapes than areas outside the proposed boundary. Outside the proposed boundary, the topography consists of smoother landforms of unconsolidated materials, glacial drift that is thicker than that within the proposed boundary, and alluvium.

The petitioner explains that how the Mississippi River is divided varies among individuals, commercial entities, and public agencies. The petitioner notes that ''* * * the Mississippi River, sometimes in conjunction with its valley, is discussed as having upper and lower segments.'' Others, however, refer to the upper, middle, and lower Mississippi.

The petitioner explains further that the southern boundary line of the proposed Upper Mississippi River Valley viticultural area correlates with the southern border of the Upper Mississippi Fish and Wildlife Refuge established in 1924. The Wapsipinicon River watershed closely parallels the eastern and southern boundary lines of the proposed viticultural area. Interstate Highway 80, which serves as a portion of the southern boundary line of the proposed viticultural area, approximates the Wapsipinicon River watershed boundary line.

The petitioner explains that the southern boundary of the proposed viticultural area correlates with the southern boundary of the U.S. Department of Agriculture Hardiness Zone 4b. Also, based on research information provided by Professor Paul Domoto, PhD, Department of Horticulture, Iowa State University, the average minimum winter temperatures within the proposed Upper Mississippi River Valley viticultural area are −15 to −20 degrees F. To the south, they are −10 to −15 degrees F.

According to the petitioner, the southern portion of the boundary of the proposed viticultural area continues for a few miles south of the established southern portion of the boundary of MLRA 105. Also, the western portion of the boundary of the proposed viticultural area includes a portion of the adjacent MLRA 104 to encompass the entire watershed of the Wapsipinicon River, a primary tributary of the Upper Mississippi River.

Lake Wisconsin AVA (27 CFR 9.146)

The proposed Upper Mississippi River Valley viticultural area includes the established 28,000-acre Lake Wisconsin viticultural area, the petitioner explains. The Wisconsin River, which forms Lake Wisconsin, is a major tributary to the Upper Mississippi River.

The petitioner states that the Lake Wisconsin viticultural area is comprised of soil orders and Driftless Area topography similar to those of the proposed Upper Mississippi River Valley viticultural area. Regarding the Lake Wisconsin viticultural area, which has a few glacial deposits at the higher elevations, according to the petitioner, geologists view that area as a transitional glacial area. (The original Lake Wisconsin viticultural area (T.D. ATF–352, 59 FR 537, January 5, 1994) describes the area as a transitional zone between the glaciated topography to its east and the unglaciated, driftless topography to its west.)

Distinguishing Features

The petitioner asserts that the distinguishing features of the proposed Upper Mississippi River Valley viticultural area include its geology, unglaciated topography, climate, soils, and hydrology. The Wisconsin ice age affected the region and provided a basis for most of the distinguishing features of the proposed viticultural area, specifically topography, soils, and hydrology.

Geology

The petitioner explains that a significant event in the geologic history of the proposed Upper Mississippi River Valley viticultural area was the impact of the massive Wisconsin Glacier during the Wisconsin ice age. The glacier, which had lobes in Minnesota and Iowa, started melting 15,000 years ago and retreated northward toward Canada. The resulting glacial water flows combined with the Glacial St. Croix River and drained Glacial Lake Duluth, known now as Lake Superior. The relatively sediment-free drainage of Glacial Lake Duluth helped carve the Upper Mississippi River Valley channel to a depth of about 250 meters, or 820 feet. Eventually, alluvial deposits started refilling the river channel, beginning a process that has continued into modern times.

According to the petitioner, the development of the Upper Mississippi River impacted the regional topography and landforms. The tributary valleys include terraces, older flood plain deposits, and entrenched and hanging meanders (streams). These features show the complexity of the alluvial history and river development associated with glacial melting and drainage diversions.

The petitioner states that surface materials, especially along the Paleozoic Plateau, date to 100,000 years in age. The younger materials that are outside the proposed boundary and that are largely the result of glacial erosion and glacial till date to 10,000 years in age, or 90,000 years younger than the surface materials on the Paleozoic Plateau.

The petitioner explains that streams in the proposed Upper Mississippi River Valley viticultural area cut deep dissections through the inclined landforms and exposed Paleozoic rock. The exposed rock, which varies in age from 350 to 600 million years old, is predominantly dolomite, limestone, and sandstone.

Topography

The Driftless Area of the Upper Mississippi River Valley has a unique

topography and subsurface structure because a direct glacial incursion did not occur in that area during the most recent Wisconsin ice age, the petitioner explains. Consequently, the topography does not have substantial amounts of materials deposited by glaciers. The petitioner notes that the proposed boundary divides the rugged, dissected, bedrock-controlled landscapes within the Upper Mississippi River Valley from the gently rolling landscapes that have lower relief and glaciated, erosional surfaces and that are outside the valley.

Bedrock control in the proposed area, the petitioner explains, refers to the entrenched valleys and karst that constitute an integrated drainage network. The karst topography of the proposed viticultural area includes underground caves, sinkholes, springs, and subsurface caverns. According to the petitioner, rivers and underground water flows are general features throughout the proposed Upper Mississippi River Valley viticultural area, which has none of the natural lakes that direct glacial movement normally creates. Outside the boundary of the proposed Upper Mississippi River Valley viticultural area, the petitioner continues, the topography consists of unconsolidated, heavily dissected soil material along substantial deposits of glacial materials on smooth, rolling hills.

The elevations of the Upper Mississippi River Valley viticultural area, the petitioner states, range from 660 feet on valley floors to 1,310 feet on high ridges. Outside the boundary of the proposed viticultural area, elevations average 250 feet higher to the northwest and 165 feet lower to the southeast.

The petitioner explains that north of the boundary of the proposed Upper Mississippi River Valley viticultural area, loess covers the level-to-rolling till plains. Elevations change little on the plains.

East of the boundary of the proposed Upper Mississippi River Valley viticultural area, the landscape is dominated by a glaciated plain that has belts of morainic hills, ridges, and washout terraces. (TTB notes that morainic hills are accumulations of soil and stones that glacial activity has left.) Also, elevations generally vary several feet, except for the 80- to 330-foot-high moraines, drumlins, and bedrock escarpments.

South of the boundary of the proposed Upper Mississippi River Valley viticultural area are rolling, hilly, loess-covered plains and some broad, level uplands in the southwest region. Elevations there also generally vary by only several feet, except on the upland flats, where elevation changes up to 200 feet.

West of the boundary of the proposed Upper Mississippi River Valley viticultural area the landscape is a nearly level to gently sloping till plain. Elevations generally vary by several feet.

Soils

The soils common to the proposed Upper Mississippi River Valley viticultural area, the petitioner states, are stony or rocky soils on steep slopes. The petitioner provides comparative soil data for the proposed viticultural area and the surrounding regions. The data, which show differences and similarities of the soils, are listed in the table below.

DIFFERENCES AND SIMILARITIES OF THE SOILS WITHIN AND OUTSIDE OF THE UPPER MISSISSIPPI RIVER VALLEY

Location *	Dominant soil orders	Temperature and moisture regimes	Mineralogy, soil depth, drainage, and texture
Within	Alfisols, Entisols, and Mollisols.	Mesic, Udic	Mixed mineralogy; moderately deep to very deep; well drained or moderately well drained; loamy with little clay.
North Outside	Entisols, Alfisols, Histosols, Spodosols, and Inceptisols.	Frigid, Udic	Mixed mineralogy; moderately deep to very deep; well drained to poorly drained; sandy to loamy.
East Outside	Alfisols, Histosols, and Mollisols.	Mesic, Udic	Mixed mineralogy; very deep; well drained to poorly drained; silty, loamy, or clayey.
South Outside	Mollisols, Alfisols, Entisols, and Inceptisols.	Mesic, Udic	Mixed mineralogy; very deep; well drained to poorly drained; loamy.
West Outside	Mollisols and Alfisols	Mesic, Udic	Mixed mineralogy; very deep; well drained to very poorly drained; loamy.

* In relation to the proposed Upper Mississippi River Valley viticultural area.

The petitioner explains that within the boundary of the proposed Upper Mississippi River Valley viticultural area, Argiudolls (Tama, Dodgeville, Richwood, and Dakota series) and Hapludolls (Muscatine series) are on nearly level to gently sloping benches and broad ridge tops. Hapludolls (Frontenac, Broadale, and Bellechester series) are on steep slopes bordering major valleys. Well drained Udifluvents (Dorchester, Chaseburg, and Arenzville series) are along stream bottoms. Quartzipsamments (Boone series) are on steep slopes. Also, Udipsamments (Plainfield and Gotham series) are on nearly level stream benches.

Overall, the soils on steep hills and ridges and those formed in comparatively thinner glacial till within the proposed viticultural area have good natural drainage for grapes. Although they have much clay, generally they have access to water and in numerous areas are on south-facing slopes, creating microclimates beneficial to grapes. The soils outside the proposed boundary generally formed in deeply dissected, thicker glacial drift and alluvium over unconsolidated materials on smooth, gently rolling landscapes. After precipitation they require tile drainage because of glacial pools and the generally lower relief.

Climate

The petitioner states that steep slopes, bluffs, numerous rock outcrops, waterfalls and rapids, sinkholes, springs, and entrenched stream valleys combine to create multiple microclimates within the proposed Upper Mississippi River Valley viticultural area. Also, the combination of microclimates and diverse settings supports varied flora and fauna communities not found outside the boundary of the proposed viticultural area.

The petitioner provides temperature and precipitation data for the proposed Upper Mississippi River Valley viticultural area and its surrounding regions. Those climatic differences are presented in the table below.

TEMPERATURE AND PRECIPITATION FOR WITHIN AND OUTSIDE OF THE UPPER MISSISSIPPI RIVER VALLEY

Location *	Annual average temperature range (degrees Fahrenheit)	Annual average frost-free period (days)	Annual average precipitation (inches)	Amount of annual average precipitation received during the growing season
Within	42–50	145–205	30–38	⅔ or more.
North Outside	40–46	135–180	27–33	Most.
East Outside	43–48	150–190	30–38	Most.
South Outside	46–51	170–205	33–38	Most.
West Outside	44–50	160–195	29–37	More than ⅔.

* In relation to the proposed Upper Mississippi River Valley viticultural area.

According to petition data, the proposed Upper Mississippi River Valley viticultural area has, on average, a warmer annual temperature range than that of the surrounding locations to the north and east. In the areas to south and west, the annual average temperature range is several degrees higher than that in the proposed viticultural area.

The annual average frost-free period within the proposed Upper Mississippi River Valley viticultural area is longer than that in the area to the north and shorter than that in the area to the south, according to petition data. The range of the annual frost-free period in the proposed viticultural area is greater than in the neighboring areas to the east and west.

The petition data show the precipitation range of the proposed Upper Mississippi River Valley viticultural area as compared to that in the surrounding areas. The annual average precipitation range is higher in the proposed Upper Mississippi River Valley viticultural area than in the area to its north. The areas to the south, west, and east receive approximately the same annual average precipitation, in the same pattern, as the proposed viticultural area. The precipitation during the growing season is greater in the areas to the north, south, and east than in the proposed viticultural area, and approximately the same in the area to the west of the proposed viticultural area.

Hydrology

The petitioner provides hydrological data that show the growing conditions, including the relationship between the soils and the hydrological characteristics of the proposed Upper Mississippi River Valley viticultural area and its surrounding regions. The hydrological data are presented in the table below.

HYDROLOGICAL DATA AND DRAINAGE NEEDED FOR CROP PRODUCTION WITHIN AND OUTSIDE OF THE UPPER MISSISSIPPI RIVER VALLEY

Location *	Ground water	Other resources	Soils and crop production
Within	Abundant in valleys and variable on uplands.	Use of springs, streams, and farm ponds, and extensive use of bedrock aquifers.	Minimal need for a tile drainage system in soils.
Outside North	Abundant in deep glacial drift deposits, but scarce in thin ones.	Lakes and streams	Artificial drainage required for soils on lowlands.
Outside East	Abundant in areas underlain by drift.	Inland lakes, streams, and sandstone and limestone bedrock formations below the glacial drift.	Artificial drainage required for fine-textured soils with poor drainage.
Outside South	Abundant in areas of glacial drift	Perennial streams and the Mississippi River.	Favorable precipitation pattern; drainage not required.
Outside West	Adequate	Extensive use of bedrock aquifers	Artificial drainage required for the seasonal high water table.

* In relation to the proposed Upper Mississippi River Valley viticultural area.

In most years the moderate precipitation of the proposed Upper Mississippi River Valley viticultural area, the petitioner explains, is usually adequate for both the human population and agriculture. Ground water, the petitioner states, remains abundant in outwash deposits of valleys, but on uplands it varies in quantity. Bedrock aquifers also provide extensive ground water resources within the proposed viticultural area and in the area to its west.

TTB Determination

TTB concludes that this petition to establish the 29,914-square-mile Upper Mississippi River Valley American viticultural area merits consideration and public comment as invited in this notice.

Boundary Description

See the narrative boundary description of the petitioned-for viticultural area in the proposed regulatory text published at the end of this notice.

Maps

The petitioner provided the required maps, and we list them below in the proposed regulatory text.

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. If we establish this proposed viticultural area, its name, ''Upper Mississippi River Valley,'' will be recognized under 27 CFR 4.39(i)(3) as a name of viticultural significance. The text of the proposed regulation clarifies this point.

Consequently, wine bottlers using ''Upper Mississippi River Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, will have to ensure that the product is eligible to use the viticultural area's name as an appellation of origin.

For a wine to be eligible to use a viticultural area name as an appellation of origin or a term of viticultural significance in a brand name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name or other term, and the wine must meet the other conditions listed in 27 CFR 4.25(e)(3). If the wine is not eligible to use the viticultural area name as an appellation of origin and that name or other term of viticultural significance appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the viticultural area name or other term of viticultural significance appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Accordingly, if a previously approved label uses the name ''Upper Mississippi River Valley'' for a wine that does not meet the 85 percent standard, the previously approved label will be subject to revocation upon the effective date of the approval of the Upper Mississippi River Valley viticultural area.

Different rules apply if a wine has a brand name containing a viticultural area name or other term of viticultural significance that was used as a brand name on a label approved before July 7, 1986. See 27 CFR 4.39(i)(2) for details.

Public Participation

Comments Invited

We invite comments from interested members of the public on whether we should establish the proposed viticultural area. We are interested in receiving comments on the sufficiency and accuracy of the name, climatic, boundary, and other required information submitted in support of the petition. Please provide any available specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Upper Mississippi River Valley viticultural area on wine labels that include the words ''Upper Mississippi River Valley'' as discussed above under Impact on Current Wine Labels, we are particularly interested in comments regarding whether there will be a conflict between the proposed area name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed viticultural area will have on an existing viticultural enterprise. We are particularly interested in any comments on whether the evidence regarding name and distinguishing geographical features is sufficient to warrant the establishment of this new viticultural area that entirely encompasses the existing Lake Wisconsin viticultural area. We are also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the viticultural area.

Submitting Comments

You may submit comments on this notice by using one of the following two methods:

- *Federal e-Rulemaking Portal:* You may send comments via the online comment form posted with this notice within Docket No. TTB–2008–0007 on ''Regulations.gov,'' the Federal e-rulemaking portal, at *http://www.regulations.gov*. A direct link to that docket is available under Notice No. 88 on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml*. Supplemental files may be attached to comments submitted via Regulations.gov. For complete instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''
- *U.S. Mail:* You may send comments via postal mail to the Director, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, P.O. Box 14412, Washington, DC 20044–4412.

Please submit your comments by the closing date shown above in this notice. Your comments must reference Notice No. 88 and include your name and mailing address. Your comments also must be made in English, be legible, and be written in language acceptable for public disclosure. We do not acknowledge receipt of comments, and we consider all comments as originals.

If you are commenting on behalf of an association, business, or other entity, your comment must include the entity's name as well as your name and position title. If you comment via Regulations.gov, please enter the entity's name in the ''Organization'' blank of the online comment form. If you comment via postal mail, please submit your entity's comment on letterhead.

You may also write to the Administrator before the comment closing date to ask for a public hearing. The Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality

All submitted comments and attachments are part of the public record and subject to disclosure. Do not enclose any material in your comments that you consider to be confidential or inappropriate for public disclosure.

Public Disclosure

We will post, and you may view, copies of this notice, selected supporting materials, and any online or mailed comments we receive about this proposal within Docket No. TTB–2008–0007 on the Federal e-rulemaking portal, Regulations.gov, at *http://www.regulations.gov*. A direct link to that docket is available on the TTB Web site at *http://www.ttb.gov/wine/wine_rulemaking.shtml* under Notice No. 88. You may also reach the relevant docket through the Regulations.gov search page at *http://www.regulations.gov*. For instructions on how to use Regulations.gov, visit the site and click on ''User Guide'' under ''How to Use this Site.''

All posted comments will display the commenter's name, organization (if any), city, and State, and, in the case of mailed comments, all address information, including e-mail addresses. We may omit voluminous attachments or material that we consider unsuitable for posting.

You also may view copies of this notice, all related petitions, maps and other supporting materials, and any electronic or mailed comments we receive about this proposal by appointment at the TTB Information Resource Center, 1310 G Street, NW., Washington, DC 20220. You may also obtain copies at 20 cents per 8.5- × 11-inch page. Contact our information specialist at the above address or by telephone at 202–927–2400 to schedule an appointment or to request copies of comments or other materials.

Regulatory Flexibility Act

We certify that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area.

Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

This proposed rule is not a significant regulatory action as defined by Executive Order 12866. Therefore, it requires no regulatory assessment.

Drafting Information

N.A. Sutton of the Regulations and Rulings Division drafted this notice.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, we propose to amend title 27, chapter 1, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

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

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

2. Amend subpart C by adding § 9.___ to read as follows:

§ 9.___ Upper Mississippi River Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Upper Mississippi River Valley''. For purposes of part 4 of this chapter, ''Upper Mississippi River Valley'' is a term of viticultural significance.

(b) *Approved maps.* The six United States Geological Survey topographic maps used to determine the boundary of the Upper Mississippi River Valley viticultural area are titled:

(1) State of Minnesota, scale 1:500,000; compiled in 1963; edition of 1985;

(2) State of Wisconsin, scale 1:500,000; compiled in 1966; edition of 1984;

(3) State of Illinois, scale 1:500,000; compiled in 1970; edition of 1987;

(4) State of Iowa, scale 1:500,000; compiled in 1965; edition of 1984;

(5) Anamosa, Iowa, 1:100,000 scale; edited 1984; and

(6) Marshalltown, Iowa, 1:100,000 scale; edited 1984.

(c) *Boundary.* The Upper Mississippi River Valley viticultural area is located in portions of southeast Minnesota, southwest Wisconsin, northwest Illinois, and northeast Iowa. The boundary of the Upper Mississippi River Valley viticultural area is as described below:

(1) The beginning point is on the State of Minnesota map at the intersection of Interstate Highways 94 and 494 (beltway), east of St. Paul at Oakbury in Washington County. From the beginning point, proceed east on Interstate 94, crossing over Lake St. Croix and onto the State of Wisconsin map at St. Croix County, and then continuing through Dunn County to Eau Claire County, to the intersection of Interstate Highway 94 with Wisconsin State Highway 85, southwest of the City of Eau Claire; then

(2) Proceed northeast on Wisconsin State Highway 85 toward the City of Eau Claire to its intersection with U.S. Highway 12; then

(3) Proceed southeast on U.S. Highway 12 into Jackson County and passing through Clark County, to its intersection with Interstate Highway 94 at Black River Falls; then

(4) Proceed southeast on Interstate Highway 94 into Monroe County to its intersection with Interstate Highway 90, east of the Fort McCoy Military Reservation; then

(5) Proceed southeast on Interstate Highway 90 through Juneau, Sauk, Columbia, Dane, and Rock Counties, crossing onto the State of Illinois map at Winnebago County to its intersection with U.S. Highway 20 at Cherry Valley; then

(6) Proceed west on U.S. Highway 20 to its intersection with Illinois State Highway 2, west of the Rock River; then

(7) Proceed southwest on Illinois State Highway 2, passing through Ogle County and into Lee County, to its intersection with Illinois State Highway 26 at Dixon; then

(8) Proceed south on Illinois State Highway 26 to its intersection with Illinois State Highway 5 (which has been redesignated as Interstate Highway 88 on contemporary maps of Illinois); then

(9) Proceed southwest on Illinois State Highway 5 (Interstate Highway 88), passing through Whiteside County and into Rock Island County, to its intersection with Interstate Highway 80 at Barstow; then

(10) Proceed generally northwest on Interstate Highway 80, crossing the Mississippi River, onto the State of Iowa map at Scott County, and continuing west-northwest through Cedar County and into Johnson County to the intersection of Interstate Highways 80 and 380 at Tiffin; then

(11) Proceed north-northwest on Interstate Highway 380 into Linn County and Cedar Rapids on the State of Iowa map. Then using the Anamosa map, followed by the Marshalltown map, follow Interstate Highway 380, labeled ''Under Construction'' on the Anamosa map, northwest through Benton and Buchanan Counties to Black Hawk County, to its intersection with U.S. Highway 20, southeast of Waterloo and Raymond; then

(12) Using the State of Iowa map, proceed west-northwest on U.S. Highway 20 to Waterloo and its intersection with U.S. Highway 63; then

(13) Proceed north on U.S. Highway 63 through Bremer, Chicksaw, and Howard Counties, skirting the Upper Iowa River at Chester, and crossing onto the State of Minnesota map at Fillmore County, to its intersection with Minnesota State Highway 56; then

(14) Proceed northwest and northerly on Minnesota State Highway 56 through Mower, Dodge, and Goodhue Counties to Dakota County, where it joins with State Highway 52 on commercial maps, to its intersection with the Interstate Highway 494 (beltway), south of St. Paul; then

(15) Follow Interstate Highway 494 (beltway) northeast into Washington County, returning to the beginning point.

Signed: June 6, 2008.

John J. Manfreda,

Administrator.

Editorial Note: This document was received in the Office of the Federal Register on August 6, 2008.

[FR Doc. E8–18535 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7796]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for

participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before November 10, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7796, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

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.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

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.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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	
Hutchinson County, South Dakota, and Incorporated Areas				
James River	Approximately 50 feet upstream of Maxwell Road	None	+1189	Unincorporated Areas of Hutchinson County,
	Approximately 2,600 feet downstream of 269th Street	None	+1210	Town of Olivet.

* National Geodetic Vertical Datum.

+ North American Vertical Datum.

Depth in feet above ground.

** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Olivet

Maps are available for inspection at P.O. Box 490, Parkston, SD 57366.

Unincorporated Areas of Hutchinson County

Maps are available for inspection at PO Box 490, Parkston, SD 57366.

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

Dated: July 25, 2008.

Edward L. Connor,

Deputy Assistant Administrator for Insurance, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–18528 Filed 8–11–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7798]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before November 10, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7798, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov.*

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.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

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.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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:

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified
Town of Boxborough, Massachusetts					
Massachusetts	Town of Boxborough	Guggins Brook	Approximately 1,000 feet upstream of confluence with Inch Brook.	+206	+207

*National Geodetic Vertical Datum.

State	City/town/county	Source of flooding	Location **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground	
				Existing	Modified

+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Town of Boxborough

Maps are available for inspection at the Town of Boxborough, 29 Middle Road, Boxborough, MA.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Morgan County, Illinois, and Incorporated Areas				
Illinois River	From the Scott/Morgan County Border; Smith Lake Road extended.	+446	+447	Unincorporated Areas of Morgan County, Village of Meredosia.
	To the Cass/Morgan County Border; Morgan Cass County Line Road.	+447	+448	
Mauvaise Terre Creek	From approximately Michigan Avenue extended	None	+595	Village of S. Jacksonville.
	To approximately 50 feet downstream of Vandalia Road; approximately 60 feet upstream of Country Club Road.	None	+595	
Town Brook	From Massey Lane	None	+603	Unincorporated Areas of Morgan County.
	To the limit of Detailed Study; approximately 650 feet upstream of Massey Lane.	None	+603	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

Unincorporated Areas of Morgan County

Maps are available for inspection at Morgan County Regional Planning Commission, 345 West State Street, Jacksonville, IL 62650.

Village of Meredosia

Maps are available for inspection at Meredosia Village Hall, 315 Main Street, Meredosia, IL 62665.

Village of S. Jacksonville

Maps are available for inspection at South Jacksonville Village Hall, 301 Dewey Street, South Jacksonville, IL 62650.

Scott County, Illinois, and Incorporated Areas				
Illinois River	From river mile 67.0, approximately 500 feet upstream of the confluence with Coon Run.	+446	+447	Unincorporated Areas of Scott County.
	To the Morgan/Scott county boundary at river mile 68.0—approximately Smith Lake Road extended.	+446	+447	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

ADDRESSES

Unincorporated Areas of Scott County

Maps are available for inspection at Scott County Courthouse, 35 East Market Street, Winchester, IL 62694.

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

Dated: July 25, 2008.

Edward L. Connor,

Deputy Assistant Administrator for Insurance, Department of Homeland Security, Federal Emergency Management Agency.

[FR Doc. E8–18526 Filed 8–11–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

44 CFR Part 67

[Docket No. FEMA–B–7799]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Proposed rule.

SUMMARY: Comments are requested on the proposed Base (1 percent annual-chance) Flood Elevations (BFEs) and proposed BFE modifications for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the proposed regulatory flood elevations for the reach described by the downstream and upstream locations in the table below. The BFEs and modified BFEs are a part of the floodplain management measures that the community is required either to adopt or show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP). In addition, these elevations, once finalized, will be used by insurance agents, and others to calculate appropriate flood insurance premium rates for new buildings and the contents in those buildings.

DATES: Comments are to be submitted on or before November 10, 2008.

ADDRESSES: The corresponding preliminary Flood Insurance Rate Map (FIRM) for the proposed BFEs for each community are available for inspection at the community's map repository. The respective addresses are listed in the table below.

You may submit comments, identified by Docket No. FEMA–B–7799, to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151, or (e-mail) *bill.blanton@dhs.gov.*

FOR FURTHER INFORMATION CONTACT: William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3151 or (e-mail) *bill.blanton@dhs.gov*.

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.

Comments on any aspect of the Flood Insurance Study and FIRM, other than the proposed BFEs, will be considered. A letter acknowledging receipt of any comments will not be sent.

Administrative Procedure Act Statement. This matter is not a rulemaking governed by the Administrative Procedure Act (APA), 5 U.S.C. 553. FEMA publishes flood elevation determinations for notice and comment; however, they are governed by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and do not fall under the APA.

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.

Executive Order 12866, Regulatory Planning and Review. This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866, as amended.

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	
St. Tammany Parish, Louisiana, and Incorporated Areas				
Abita Creek	Approximately 2,960 feet downstream from confluence with Abita Creek Tributary 1.	None	+46	Unincorporated Areas of St. Tammany Parish.
	Approximately 45 feet downstream from intersection with Churchill Downs Dr.	None	+116	
Abita Creek Tributary 1	From confluence with Abita Creek	None	+48	Unincorporated Areas of St. Tammany Parish.
	To 1 mile upstream of confluence with Abita Creek	None	+51	
Abita River Tributary 1	From confluence with Abita River	None	+23	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,077 feet from intersection with State Highway 36.	None	+28	
Bayou Chinchuba	Approximately 7,285 feet downstream from intersection with Interstate 190.	None	+12	Unincorporated Areas of St. Tammany Parish, Town of Mandeville.
	Approximately 6,560 feet downstream from intersection with Lotus Rd./Henry Meiners Rd.	None	+26	
Bayou Lacombe	Approximately 182 feet upstream from intersection with Interstate 190.	None	+10	Unincorporated Areas of St. Tammany Parish.
	Approximately 2,993 feet upstream from intersection with State Highway 36.	None	+40	
Bayou Lacombe Tributary 1	From confluence with Bayou Lacombe	None	+11	Unincorporated Areas of St. Tammany Parish.
	At intersection with N. Pontchartrain Dr	None	+20	
Bayou Lacombe Tributary 2	From confluence of Bayou Lacombe	None	+16	Unincorporated Areas of St. Tammany Parish.
	Approximately 50 feet upstream of intersection with Fish Hatchery Road.	None	+19	
Bayou Lacombe Tributary 4	From confluence with Bayou Lacombe	None	+21	Unincorporated Areas of St. Tammany Parish.
	Approximately 143 feet downstream from intersection with Fish Hatchery Road.	None	+25	
Bayou Lacombe Tributary 5	From confluence with Bayou Lacombe	None	+26	Unincorporated Areas of St. Tammany Parish.
	Approximately 6,789 feet upstream from intersection with Beaver Ball Rd.	None	+36	
Bayou Lacombe Tributary 6	From confluence with Bayou Lacombe	None	+34	Unincorporated Areas of St. Tammany Parish.
	Approximately 7,560 feet upstream from intersection with Hickory Highway.	None	+44	
Bayou Liberty	Approximately 4,328 feet downstream fro intersection with Tammany Trace Bike Trail.	None	+10	Unincorporated Areas of St. Tammany Parish, City of Slidell.
	Approximately 105 feet downstream from intersection with Horse Shoe Island Road.	None	+36	
Bayou Liberty Tributary 3	From confluence with Bayou Liberty	None	+17	Unincorporated Areas of St. Tammany Parish, City of Slidell.
	Approximately 930 feet upstream from intersection with Belair Blvd.	None	+24	
Bayou Paquet	Approximately 2,584 feet downstream from intersection with Park Drive/Park Avenue.	None	+11	Unincorporated Areas of St. Tammany Parish.
	Approximately 182 feet downstream from intersection with Tammany Trace Bike Trail.	None	+14	
Bayou Tete L'Ours	Approximately 8,905 feet from confluence with Tchefuncte River.	+9	+11	Unincorporated Areas of St. Tammany Parish.
	Approximately 100 feet downstream from intersection with Thackery St.	+16	+15	
Bayou de Zaire	Approximately 443 feet downstream from intersection with Dummy Line Rd.	None	+11	Unincorporated Areas of St. Tammany Parish.
	Approximately 4,019 feet upstream from intersection with Galatas Rd.	None	+19	
Bedico Creek	Approximately 11,000 feet downstream from intersection with Jim Willie Rd.	None	+48	Unincorporated Areas of St. Tammany Parish.
	Approximately 2,128 feet upstream from intersection with Jim Willie Rd.	None	+59	
Bedico Creek Tributary 1	Approximately 63 feet upstream from intersection with Gottschaulk Rd.	None	+41	Unincorporated Areas of St. Tammany Parish.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	At the intersection with Hoover Rd	None	+50	
Bedico Creek Tributary 2	From confluence with Bedico Creek	None	+47	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,010 feet upstream from confluence with Bedico Creek.	None	+50	
Big Branch Bayou	Approximately 225 feet upstream from intersection with Interstate 12.	None	+22	Unincorporated Areas of St. Tammany Parish.
	Approximately 7,922 feet upstream from intersection with N. Dixie Ranch Rd.	None	+27	
Big Branch Marsh Tributary 1	Approximately 93 feet upstream from intersection with Tammany Trace Bike Trail.	None	+11	Unincorporated Areas of St. Tammany Parish.
	Approximately 6,776 feet upstream from intersection with Lynwood Rd.	None	+22	
Black River	Approximately 215 feet downstream from intersection with Old Ponchatoula Highway.	None	+11	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,163 feet upstream from intersection with Brewster Rd.	None	+23	
Black River Tributary 1	From confluence with Black River	None	+11	Unincorporated Areas of St. Tammany Parish.
	Approximately 180 feet upstream from intersection with Perriloux Rd.	None	+17	
Black River Tributary 1 Unnamed Tributary.	From confluence with Black River Tributary 1	None	+13	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,205 feet upstream from intersection with Oak Park Dr.	None	+16	
Blue Swamp Tributary 1	Approximately 3,427 feet downstream from intersection with Tammany Trace Bike Trail.	None	+32	Unincorporated Areas of St. Tammany Parish.
	Approximately 2,560 feet upstream from intersection with North Collins Boulevard.	None	+42	
Bogue Chitto River	From confluence of Simmons Creek	None	+65	Unincorporated Areas of St. Tammany Parish, Village of Sun.
	Approximately 6,024 feet upstream from confluence with Sandy Slough.	None	+86	
Bogue Falaya Tributary 1	From confluence with Bogue Falaya	None	+18	Unincorporated Areas of St. Tammany Parish, City of Covington.
	Approximately 286 feet upstream from intersection with Joseph Rd.	None	+29	
Cane Bayou	Approximately 844 feet downstream from intersection with Tammany Trace Bike Trail.	None	+10	Unincorporated Areas of St. Tammany Parish.
	Approximately 1155 feet upstream from intersection with Log Cabin Rd.	None	+24	
Cane Bayou Tributary 1	From confluence with Cane Bayou	None	+10	Unincorporated Areas of St. Tammany Parish.
	Approximately 4,756 feet upstream from intersection with Area 3 Group Camp Road.	None	+11	
Cane Bayou Tributary 2	From confluence with Cane Bayou	None	+14	Unincorporated Areas of St. Tammany Parish.
	At the intersection with Log Cabin Rd	None	+27	
Coon Fork	From confluence with Abita Creek	None	+71	Unincorporated Areas of St. Tammany Parish.
	Approximately 7,776 feet upstream from confluence with Abita Creek.	None	+106	
Crooked Bayou	From confluence with Old River	None	+71	Unincorporated Areas of St. Tammany Parish.
	To confluence of Nichols Creek	None	+74	
Cypress Bayou	Approximately 88 feet downstream from the intersection with U.S. Highway 190.	+12	+13	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,760 feet upstream from intersection with Firetower Road.	None	+29	
Double Branch	Approximately 745 feet upstream from confluence with Mule Bay.	None	+56	Unincorporated Areas of St. Tammany Parish.
	Approximately 8,199 feet upstream from intersection with State Route 435.	None	+85	
East Bedico Creek	Approximately 5,317 feet downstream from confluence with Fox Branch.	None	+17	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,385 feet upstream from intersection with N. Collins Blvd.	None	+38	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
East Bedico Creek Tributary 1.	Approximately 797 feet North of Adrienne St. (Parish boundary, no other references).	None	+17	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,414 feet Southwest of Lavigne Rd./ Approximately 5,057 feet from Parish boundary.	None	+21	
East Bedico Creek Tributary 2.	Approximately 2,469 feet upstream from confluence with East Bedico Creek.	None	+25	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,378 feet upstream from intersection with N. Collins Blvd.	None	+37	
East Bedico Creek Tributary 3.	From confluence with East Bedico Creek	None	+26	Unincorporated Areas of St. Tammany Parish.
	Approximately 63 feet downstream from intersection with State Route 1077.	None	+47	
East Bedico Creek Tributary 3 Unnamed Tributary.	From confluence with East Bedico Creek Tributary 3	None	+38	Unincorporated Areas of St. Tammany Parish.
	Approximately 9,372 feet upstream from confluence with East Bedico Creek Tributary 3.	None	+49	
English Branch Tributary 1 ...	From confluence with English Branch	None	+44	Unincorporated Areas of St. Tammany Parish.
	Approximately 7,212 feet upstream from confluence with English Branch.	None	+50	
Fox Branch	From confluence with East Bedico Creek	None	+20	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,319 feet upstream from intersection with Perriloux Road.	None	+25	
French Branch	At intersection with Interstate Route 10	None	+17	Unincorporated Areas of St. Tammany Parish, City of Slidell, Town of Pearl River.
	Approximately 443 feet upstream from intersection with Highway Department Road.	None	+26	
Gum Bayou Tributary	Approximately 450 feet upstream from intersection with Interstate 59.	None	+14	Unincorporated Areas of St. Tammany Parish.
	Approximately 710 feet upstream from intersection with Hudson Rd.	None	+30	
Gum Creek	At the intersection with State Route 36	None	+41	Unincorporated Areas of St. Tammany Parish.
	Approximately 4,638 feet upstream from intersection with East Archie Singletary Road.	None	+42	
Holden's Creek	At intersection with State Route 16	None	+66	Village of Sun.
	Approximately 544 feet upstream from intersection with Benson Rd.	None	+94	
Horse Branch Tributary 1	Approximately 710 feet upstream of Horse Branch Road intersection.	None	+31	Unincorporated Areas of St. Tammany Parish.
	Approximately 4,450 feet upstream of Lake Ramsey Road intersection.	None	+59	
Horse Branch Tributary 2	Approximately 1,000 feet downstream of Horse Branch Road.	None	+36	Unincorporated Areas of St. Tammany Parish.
	Approximately 250 feet upstream of Lake Ramsey Road intersection.	None	+49	
Horse Branch Tributary 2 Unnamed Tributary.	Approximately 320 feet downstream of Lake Ramsey Road intersection.	None	+38	Unincorporated Areas of St. Tammany Parish.
	Approximately 4,121 feet upstream of Lake Ramsey Road.	None	+47	
House Creek	Confluence with Bogue Chitto River	None	+92	Unincorporated Areas of St. Tammany Parish.
	Approximately 130 feet upstream of La Tung Road	None	+138	
LA 36 North Tributary	Approximately 233 feet downstream of Tammany Trace Bike Trail.	None	+24	Town of Abita Springs.
	Approximately 4,800 feet upstream of Danny Park Drive intersection.	None	+32	
Lake Pontchartrain	Base Flood Elevation changes ranging from 10 to 16 feet in the form of Coastal AE/VE zones have been made.	+9–13	+10–16	Town of Madisonville, Town of Mandeville, City of Slidell, Unincorporated Areas of St. Tammany Parish.
Lateral B	Approximately 50 feet upstream of State Route 437 (North Lee Road).	None	+27	Unincorporated Areas of St. Tammany Parish.
	Approximately 680 feet upstream of Airport Road intersection.	None	+37	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Lateral B Tributary 1	Confluence with Lateral B	None	+28	Unincorporated Areas of St. Tammany Parish.
	Approximately 240 feet upstream of Springwood Drive intersection.	None	+31	
Little Brushy Branch	Confluence with Pearl River Canal	None	+50	Unincorporated Areas of St. Tammany Parish.
	Approximately 600 feet upstream of Jim Williams Road intersection.	None	+82	
Little Creek	Approximately 75 feet upstream of Strain Road intersection.	None	+29	Unincorporated Areas of St. Tammany Parish.
	Approximately 7,223 feet upstream of Strain Road intersection.	None	+31	
Little Gum Creek	Confluence with Gum Creek	None	+24	Town of Pearl River.
	Approximately 2,260 feet upstream of Easy Street intersection.	None	+35	
Long Branch	Confluence with Abita River	None	+29	Town of Abita Springs, Unincorporated Areas of St. Tammany Parish.
	Approximately 1,100 feet upstream of Cleland Road intersection.	None	+94	
Long Branch Tributary	Confluence with Long Branch	None	+30	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,735 feet upstream of Tarpon Springs Drive intersection.	None	+41	
Long Branch Tributary 2	Confluence with Long Branch	None	+39	Unincorporated Areas of St. Tammany Parish, Town of Abita Springs.
	Approximately 5,150 feet upstream of Longleaf Drive intersection.	None	+58	
Mayhaw Branch	Confluence with Bayou Chinchuba	None	+15	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,500 feet upstream of State Route 59 intersection.	None	+22	
Mile Branch Tributary 1	Confluence with Mile Branch	None	+24	Unincorporated Areas of St. Tammany Parish, City of Covington.
	Approximately 485 feet downstream of M P Planche Road.	None	+42	
Mill Creek	Confluence with Bogue Chitto River	None	+68	Unincorporated Areas of St. Tammany Parish.
	Approximately 40 feet downstream of Dad Penton Road intersection.	None	+108	
Mill Creek Tributary 1	Confluence with Mill Creek	None	+86	Unincorporated Areas of St. Tammany Parish.
	Approximately 245 feet downstream of Blue Heron Road.	None	+137	
Moses Branch	Confluence with Talisheek Creek	None	+45	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,371 feet upstream of Ogise Richardson Road.	None	+65	
Mule Bay	Confluence with English Branch	None	+51	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,030 feet downstream of State Route 435 intersection.	None	+67	
Nichols Creek	Confluence with Crooked Bayou	None	+71	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,500 feet upstream of State Route 16 intersection.	None	+90	
Old River	Approximately 1,000 feet downstream of confluence with Holden's Creek.	None	+64	Unincorporated Areas of St. Tammany Parish, Village of Sun.
	Confluence of Bogue Chitto River	None	+75	
Parc du Lac	Confluence with Bayou Chinchuba	None	+12	Unincorporated Areas of St. Tammany Parish, Town of Mandeville.
	Approximately 230 feet downstream of U.S. Highway 190 intersection.	None	+12	
Pearl River	Approximately 9 miles downstream of State Route 59	None	+13	Unincorporated Areas of St. Tammany Parish.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
	Louisiana /Mississippi State Line	None	+61	
Pearl River Canal	Confluence with West Pearl River	None	+28	Unincorporated Areas of St. Tammany Parish.
	Approximately 9,900 feet from Lock #3 Rd	None	+61	
Ponchitolawa Creek	Confluence with Tchefuncte River	+9	+10	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,730 upstream of Jeffrie Street intersection.	None	+33	
Ponchitolawa Creek Tributary 2.	Approximately 690 feet upstream of confluence with Ponchitolawa Creek.	None	+30	Unincorporated Areas of St. Tammany Parish.
	Approximately 5,700 feet upstream of Marion Street intersection.	None	+33	
Pound Branch	Confluence with Talisheek Creek	None	+67	Unincorporated Areas of St. Tammany Parish.
	Approximately 368 feet downstream of Dillard Road	None	+84	
Pound Branch Tributary 1	From confluence with Pound Branch	None	+71	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,650 feet upstream of confluence with Pound Branch Tributary 1.	None	+75	
Simmons Creek	Confluence with Bogue Chitto River	None	+65	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,312 feet upstream of Confluence with Simmons Creek Tributary 1.	None	+123	
Simmons Creek Tributary 1	Confluence with Simmons Creek	None	+113	Unincorporated Areas of St. Tammany Parish.
	Approximately 312 feet upstream of Turkey Ridge Road intersection.	None	+163	
Soap & Tallow Branch	Approximately 1,650 feet downstream of North White Chapel Road intersection.	None	+22	Unincorporated Areas of St. Tammany Parish.
	Approximately 70 feet downstream of Goslee Road intersection.	None	+31	
Soap & Tallow Branch Tributary 1.	Confluence with Soap & Tallow Branch	None	+21	Unincorporated Areas of St. Tammany Parish.
	Approximately 5,899 feet upstream of confluence with Turnpike Rd.	None	+25	
Soap & Tallow Branch Tributary 1 Unnamed Tributary.	Confluence with Soap & Tallow Branch Tributary 1	None	+23	Unincorporated Areas of St. Tammany Parish.
	Approximately 5,446 feet upstream of confluence with Soap & Tallow Branch Tributary 1.	None	+26	
Southwind Branch	Intersection with Tammany Trace Bike Trail/Railroad	None	+29	Unincorporated Areas of St. Tammany Parish.
	Approximately 450 feet upstream of Hickory Highway intersection.	None	+35	
Spanish Fork	Confluence with Abita Creek	None	+69	Unincorporated Areas of St. Tammany Parish.
	Approximately 6,577 feet upstream of confluence with Abita Creek.	None	+118	
Stratman Branch	Confluence with Tenmile Branch	None	+65	Unincorporated Areas of St. Tammany Parish.
	Approximately 4,468 feet upstream of confluence with Tenmile Branch.	None	+75	
Talisheek Creek	Confluence with Pearl River Canal	None	+44	Unincorporated Areas of St. Tammany Parish.
	Confluence of Pound Branch	None	+68	
Talisheek Creek Tributary 1	Confluence with Talisheek Creek	None	+51	Unincorporated Areas of St. Tammany Parish.
	Approximately 6,275 feet upstream of confluence with Talisheek Creek.	None	+63	
Tchefuncte River Tributary 1	Confluence with Tchefuncte River	None	+11	Unincorporated Areas of St. Tammany Parish.
	Approximately 165 feet downstream of State Route 190.	None	+20	
Tchefuncte River Tributary 2	Confluence with Tchefuncte River	None	+13	Unincorporated Areas of St. Tammany Parish.
	Approximately 5,200 feet upstream of Tyler Street intersection.	None	+17	
Tchefuncte River Tributary 3	Confluence with Tchefuncte River	None	+17	City of Covington.
	Approximately 370 feet upstream of West 21st Street intersection.	None	+28	

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	
Tenmile Branch	Confluence with Abita Creek	None	+57	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,700 feet upstream of State Route 21 intersection.	None	+127	
Timber Branch	Confluence with Tchefuncte River	None	+15	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,100 feet upstream of Lake Placid Drive intersection.	None	+22	
Tributary Canal	Approximately 100 feet upstream of Infantry Drive intersection.	None	+17	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,640 feet upstream of intersection with Igloo Rd.	None	+21	
Unnamed Creek 8	Approximately 600 feet downstream of State Route 22 intersection.	+10	+11	Unincorporated Areas of St. Tammany Parish.
	Approximately 3,350 feet upstream of State Route 22 intersection.	None	+17	
Upper Bayou	From confluence with Bayou Chinchuba	None	+16	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,600 feet upstream of intersection with Tammany Trace Bike trail.	None	+28	
Waterhole Branch	Confluence with Talisheek Creek	None	+68	Unincorporated Areas of St. Tammany Parish.
	Approximately 1,100 feet downstream of Railroad Avenue intersection.	None	+83	
West Pearl River	Approximately 4,300 feet upstream of Interstate 10 intersection.	None	+12	Unincorporated Areas of St. Tammany Parish.
	Confluence with Pearl Canal	None	+28	
Wright's Creek	Confluence with Bogue Chitto River	+60	+62	Village of Sun.
	Approximately 500 feet upstream of Kings Road intersection.	None	+84	

* National Geodetic Vertical Datum.
+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Covington
Maps are available for inspection at 609 North Columbia, Covington, LA 70433.

City of Slidell
Maps are available for inspection at 2056 Second St., Slidell, LA 70459.

Town of Abita Springs
Maps are available for inspection at 22161 Level St., Abita Springs, LA 70420.

Town of Madisonville
Maps are available for inspection at 403 St. Francis St., Madisonville, LA 70447.

Town of Mandeville
Maps are available for inspection at 3101 E. Causeway Approach, Mandeville, LA 70448.

Town of Pearl River
Maps are available for inspection at 39460 Willis Alley, Pearl River, LA 70452.

Unincorporated Areas of St. Tammany Parish
Maps are available for inspection at 21490 Koop Dr., Mandeville, LA 70471.

Village of Folsom
Maps are available for inspection at 84321 Railroad Ave., Folsom, LA 70437.

Village of Sun
Maps are available for inspection at 30285 Lock 3 Rd., Sun, LA 70463.

Chippewa County, Wisconsin, and Incorporated Areas

Chippewa River	Just upstream of the Jim Falls Dam Powerhouse	+961	+955	Unincorporated Areas of Chippewa County, City of Cornell.
	Just downstream of the Cornell Dam	+981	+980	

* National Geodetic Vertical Datum.

Flooding source(s)	Location of referenced elevation **	* Elevation in feet (NGVD) + Elevation in feet (NAVD) # Depth in feet above ground		Communities affected
		Effective	Modified	

+ North American Vertical Datum.
# Depth in feet above ground.
** BFEs to be changed include the listed downstream and upstream BFEs, and include BFEs located on the stream reach between the referenced locations above. Please refer to the revised Flood Insurance Rate Map located at the community map repository (see below) for exact locations of all BFEs to be changed.

Send comments to William R. Blanton, Jr., Chief, Engineering Management Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472.

ADDRESSES

City of Cornell
Maps are available for inspection at City Hall, 222 Main Street, Cornell, WI 54732.

Unincorporated Areas of Chippewa County
Maps are available for inspection at Clerk's Office, 711 North Bridge Street, Room 109, Chippewa Falls, WI 54729.

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

Dated: August 4, 2008.

David I. Maurstad,

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

[FR Doc. E8–18529 Filed 8–11–08; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 260

[Docket No. FRA–2008–0061]

RIN 2130–AB91

Railroad Rehabilitation and Improvement Financing Program

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

ACTION: Notice of proposed rulemaking (NRPM); extension of comment period.

SUMMARY: On June 9, 2008, FRA published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (73 FR 32515) proposing amending the eligibility and application form and content criteria of the Railroad Rehabilitation and Improvement Financing (RRIF) Program to ensure the long-term sustainability of the program, promote competition in the railroad industry, and reduce the risk of default for applicants and the Government. Due to an administrative error, a Preliminary Regulatory Evaluation (Evaluation) was not included in the docket. This notice announces an extension of the comment period until August 26, 2008 to allow for consideration of the Evaluation.

DATES: Comments must be received by August 26, 2008. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES: Comments should reference Docket No. FRA–2008–0061 and may be submitted the following ways:

- *E-Gov Web site: http://www.regulations.gov*. This Web site allows the public to enter comments on any **Federal Register** notice issued by any agency. Follow the instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Management System: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.
- *Hand Delivery:* DOT Docket Management System; West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You should identify the docket ID, FRA–2008–0061, at the beginning of your comments. If you submit your comments by mail, submit two copies. To receive confirmation that FRA received your comments, include a self-addressed stamped postcard. Internet users may submit comments at *http://www.regulations.gov*.

Note: Comments are posted without changes or edits to *http://www.regulations.gov*, including any personal information provided. There is a privacy statement published on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: John Kern, Attorney-Advisor, Office of the Chief Counsel, Federal Railroad Administration, 1200 New Jersey Avenue, SE., Washington, DC 20590 (*John.Kern@dot.gov* or 202–493–6044).

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through *http://www.regulations.gov*, which is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at *http://www.gpoaccess.gov*.

Issued in Washington, DC on August 7, 2008.

Joseph H. Boardman,

Administrator.

[FR Doc. E8–18710 Filed 8–8–08; 12:00 pm]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2007–0006; 92210–1117–0000–B4]

RIN 1018–AU93

Endangered and Threatened Wildlife and Plants; Revised Proposed Designation of Critical Habitat for 12 Species of Picture-wing Flies From the Hawaiian Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period, notice of availability of draft economic analysis, and amended required determinations.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the comment period on the revised proposed designation of critical habitat for 12 species of Hawaiian picture-wing flies (*Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera,* and *D. tarphytrichia*) under the Endangered Species Act of 1973, as amended (Act). We also announce the availability of a draft economic analysis (DEA) and an amended required determinations section of the proposal. We are reopening the comment period to allow all interested parties an opportunity to comment simultaneously on the revised proposed rule, the associated DEA, and the amended required determinations section. If you submitted comments previously, you do not need to resubmit them because we have already incorporated them into the public record and will fully consider them in preparation of the final rule.

DATES: We will consider comments received or postmarked on or before September 11, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: RIN 1018–AV91; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on *http://www.regulations.gov.* This generally means that we will post any personal information you provide us (see the ''Public Comments'' section below for more information).

FOR FURTHER INFORMATION CONTACT: Patrick Leonard, Field Supervisor, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, P.O. Box 50088, Honolulu, HI 96850; telephone 808–792–9400; facsimile 808–792–9581. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Public Comments

We will accept written comments and information during this reopened comment period on our revised proposed designation of critical habitat for the 12 Hawaiian picture-wing fly species that was published in the **Federal Register** on November 28, 2007 (72 FR 67428), the June 2008 DEA of Critical Habitat Designation for the Hawaiian Picture-wing Flies, and this document, including the amended required determinations provided in this document. We will consider information and recommendations from all interested parties. We are particularly interested in comments concerning:

(1) The reasons why we should or should not designate habitat as critical habitat under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including whether the benefit of designation would outweigh threats to the species caused by the designation, such that the designation of critical habitat is prudent;

(2) Specific information on:

(a) The amount and distribution of habitat for the 12 Hawaiian picture-wing fly species;

(b) What areas occupied at the time of listing contain features essential for the conservation of the species we should include in the designation and why, and

(c) Which areas not occupied at the time of listing are essential to the conservation of the species and why.

(3) Land use designations and current or planned activities in the subject areas and their possible impacts on the proposed critical habitat.

(4) Information on the extent to which any State and local environmental protection measures we reference in the DEA may have been adopted largely as a result of the species' listing.

(5) Information on whether the DEA identifies all State and local costs and benefits attributable to the proposed critical habitat designation, and information on any costs and benefits that we have overlooked.

(6) Information on whether the DEA makes appropriate assumptions regarding current practices and any regulatory changes that are likely to occur if we designate critical habitat as currently proposed.

(7) Information on whether the DEA identifies all costs and benefits that could result from the designation.

(8) Information on whether the DEA correctly assesses the effect on regional costs or benefits associated with any land use controls that may result from the proposed designation.

(9) The extent to which the description in the DEA of economic impacts to public land management and other activities is complete and accurate.

(10) Information on areas that the critical habitat designation could potentially impact to a disproportionate degree.

(11) Economic data on the incremental costs of designating any particular area as critical habitat.

(12) Information on any quantifiable economic or other potential benefits of the proposed designation of critical habitat. Factors which may be considered under the potential benefits of critical habitat designation may include, but are not limited to, aesthetic considerations, recreational use, biodiversity, aquatic resources, intrinsic values, and benefits to local communities.

(13) Any foreseeable economic, national security, or other relevant impacts that may result from the proposed designation, and in particular, any impacts on small entities, and the benefits of including or excluding areas that exhibit these impacts. Other impacts in addition to economic effects that may be considered in the designation of critical habitat may include, but are not limited to, social factors, ecological factors, and impacts on local communities.

(14) Whether the benefits of excluding any particular area from critical habitat outweigh the benefits of including that area as critical habitat under section 4(b)(2) of the Act, after considering the potential impacts and benefits of the proposed critical habitat designation.

(15) Whether we could improve or modify our approach to designating critical habitat to provide for greater public participation and understanding, or to better accommodate public concerns and comments.

If you submitted comments or information during the initial comment period from November 28, 2007, to January 28, 2008, on the proposed rule (72 FR 67427), please do not resubmit them. We will incorporate them into the public record as part of this comment period, and we will fully consider them in preparation of our final determination. Our final determination concerning revised proposed critical habitat will take into consideration all written comments and any additional information we receive during both comment periods. On the basis of public comments, we may, during the development of our final determination, find that areas proposed are not essential, and are appropriate for exclusion under section 4(b)(2) of the Act, or are not appropriate for exclusion.

You may submit your comments and materials concerning our proposed rule, the associated DEA, and our amended required determinations by one of the methods listed in the **ADDRESSES** section. We will not consider comments

sent by e-mail or fax or to an address not listed in the **ADDRESSES** section.

If you submit a comment via *http://www.regulations.gov,* your entire comment—including any personal identifying information—will be posted on the Web site. If you submit a hardcopy comment that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy comments on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this notice, will be available for public inspection on *http://www.regulations.gov,* or by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

You may obtain copies of the proposed rule and DEA by mail from the Pacific Islands Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**), by visiting the Federal eRulemaking Portal at *http://www.regulations.gov,* or on our Web site at *http://www.fws.gov/pacificislands.*

Background

Under the terms of a settlement agreement approved by the U.S. District Court for the District of Hawaii on August 31, 2005 (*CBD* v. *Allen,* CV–05–274–HA), we were to (1) make a final listing decision for the 12 picture-wing flies by May 6, 2006; (2) propose to designate critical habitat by September 15, 2006; and (3) finalize a critical habitat rule by April 17, 2007. A joint stipulation was approved by the Court on April 18, 2007, to allow additional time to reconsider the proposed rule in light of comments received to the August 15, 2006, proposed designation of approximately 18 acres as critical habitat for 11 of the 12 species of Hawaiian picture-wing flies (71 FR 46944), and to provide an opportunity for additional public comment. Under the terms of the extension, we were required to submit a proposed critical habitat rule to the **Federal Register** by November 15, 2007, and a final critical habitat rule by November 15, 2008.

On November 28, 2007, we published a revised proposed designation of approximately 9,238 acres (ac) (3,738 hectares (ha)) as critical habitat in four counties (City and County of Honolulu, Hawaii, Maui, and Kauai), in Hawaii in the **Federal Register** (72 FR 67427). For additional information on previous Federal actions concerning the 12 species of Hawaiian picture-wing flies for which we are proposing to designate critical habitat, refer to the November 28, 2007, proposed revised designation of critical habitat and the final listing rule published in the **Federal Register** on May 9, 2006 (71 FR 26835).

It is our intent to discuss only those topics directly relevant to the proposed designation of critical habitat in this notice. For more information on the taxonomy and biology of the 12 species of Hawaiian picture-wing flies, refer to the final listing rule published in the **Federal Register** on May 9, 2006 (71 FR 26835), and the revised proposed critical habitat rule published in the **Federal Register** on November 28, 2007 (72 FR 67428).

Section 3 of the Act defines critical habitat as: (1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the provisions of section 4 of the Act, on which are found those physical or biological features (a) essential to the conservation of the species, and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination that such areas are essential for the conservation of the species. If the proposed rule is made final, section 7 of the Act will prohibit the destruction or adverse modification of critical habitat by any activity funded, authorized, or carried out by any Federal agency. Federal agencies proposing actions that may affect areas designated as critical habitat must consult with us on the effects of their proposed actions, pursuant to section 7(a)(2) of the Act.

Draft Economic Analysis

Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact, impact on national security, or any other relevant impact of specifying any particular area as critical habitat. We have prepared a DEA of the proposed revised critical habitat designation based on our November 28, 2007, proposed rule to designate critical habitat for 12 species of Hawaiian picture-wing flies. We request comment on the accuracy of our methodology for distinguishing baseline and incremental costs, the assumptions underlying it, and alternate methodologies that may merit consideration.

The purpose of the DEA is to identify and analyze the potential economic impacts associated with the proposed critical habitat designation for the 12 Hawaiian picture-wing fly species. The DEA quantifies the economic impacts of all potential conservation efforts for the 12 Hawaiian picture-wing fly species; some of these costs will likely be incurred regardless of whether we designate critical habitat. The economic impact of the proposed critical habitat designation is analyzed by comparing two types of impacts: (1) Baseline impacts are those that would occur with or without designation of critical habitat, and (2) incremental impacts are those that would occur only with critical habitat designation. Baseline impacts represent the costs incurred regardless of whether critical habitat is designated. Incremental impacts represent the costs incurred specifically with the designation of critical habitat for the 12 Hawaiian picture-wing fly species. In other words, the incremental costs are those attributable solely to the designation of critical habitat for the picture-wing flies that are above and beyond the baseline costs; these are the costs we may consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the 12 Hawaiian picture-wing fly species were listed, and forecasts both baseline and incremental impacts likely to occur after the proposed critical habitat is finalized. The DEA provides estimated costs of the foreseeable potential economic impacts of the proposed critical habitat designation for the 12 Hawaiian picture-wing fly species from 2009 through 2028.

The draft economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on government agencies, private businesses, and individuals. Decision-makers can use the information from the final economic assessment to assess whether the effects of the revised designation might unduly burden a particular group or economic sector. The draft economic analysis also looks retrospectively at costs that have been incurred since May 9, 2006, the date we listed the 12 Hawaiian picture-wing fly species under the Act (71 FR 26835), and considers those costs that may occur in the 20 years following the designation of critical habitat. Because the draft economic analysis considers the potential economic effects of all actions relating to the conservation of

the 12 Hawaiian picture-wing fly species, including costs associated with sections 4, 7, and 10 of the Act and those attributable to the revised designation of critical habitat, it may overestimate the potential economic impacts of the critical habitat designation.

The analysis quantifies economic impacts of picture-wing fly critical habitat designation associated primarily with the following activities: (1) Preservation and watershed management in all but the Pit Crater unit on the Big Island; (2) game management and public recreational hunting in most of the units where land is owned by the State; (3) potential for future development on about 3 acres (1.2 hectares) of the Pit Crater unit on the Big Island; (4) harvesting of commercial timber from portions of the Stainback Forest and Waiakea Forest units; and (6) section 7 consultation administrative costs.

The total pre-designation baseline costs during the period from 2006 to 2008 in the area proposed for critical habitat designation are estimated by the DEA to range from $750,130 using a 3 percent discount rate to $808,100 using a 7 percent discount rate. Because these costs are projected to occur whether critical habitat is designated or not, they cannot be considered in the Service's determination of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area. These costs are related to preservation and watershed management activities, and all or nearly all of the pre-designation baseline costs have been or will be borne by Federal and State agencies. A portion of the preservation and watershed management costs has been borne by a few private landowners.

The annualized post-designation baseline costs during the period 2009 to 2028 for preservation and water management activities are estimated to range from $348,845 using a 3 percent discount rate to $379,753 using a 7 percent discount rate. Because these costs are projected to occur whether critical habitat is designated or not, they would not be considered in the Service's determination of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area. All or nearly all of the post-designation baseline costs would be borne by Federal and State agencies, although a portion of the preservation and watershed management costs would be borne by a few private landowners. The combined post-designation baseline cost for these conservation activities is estimated by the DEA to be $5,345,730 at a 3 percent discount rate, and $4,305,470 at a 7 percent discount rate.

The DEA estimates that the annualized post-designation incremental costs for the activities described below during the period 2009 to 2028 may range from $44,733 using a 3 percent discount rate to $46,916 using a 7 percent discount rate. If we determine that these costs would occur as a result of critical habitat designation, they can be considered in our analysis of whether the benefits of including an area as critical habitat outweigh the benefits of excluding the area. The activity having the highest incremental cost ranking is preservation and watershed management, with an annualized value of approximately $23,969 using a 3 percent discount rate to $25,568 using a 7 percent discount rate. The second highest cost reflects a possible opportunity loss of harvesting trees in the Stainback Forest and Waiakea Forest units, resulting in an annualized value of approximately $12,693 using a 3 percent discount rate to $12,176 using a 7 percent discount rate.

There may also be post-designation incremental costs of $68,590 using a 3 percent discount rate to $56,000 using a 7 percent discount rate from 2009–2028, related to future section 7 consultations for preservation and watershed management activities. All or nearly all of the post-designation incremental costs would be borne by Federal and State agencies, although a portion of the preservation and watershed management costs would be borne by a few private landowners. The combined post-designation incremental cost for all activities is projected to be $685,450 using a 3 percent discount rate, and $531,780 using a 7 percent discount rate.

Only the incremental costs of designating critical habitat, over and above the costs associated with species protection under the Act more generally, may be considered in designating critical habitat. Therefore, the methodology for distinguishing these two categories of costs is important. This is particularly true in the current case, where approximately 90 percent of the total costs of species conservation over the next 20 years are projected to be baseline costs, and 10 percent are projected to be incremental costs associated with the critical habitat designation.

In the absence of critical habitat, Federal agencies must ensure that any actions they authorize, fund, or carry out are not likely to jeopardize the continued existence of any endangered species or threatened species—costs associated with such actions are considered baseline costs. Once an area is designated as critical habitat, proposed actions that have a Federal nexus in this area will also require consultation and potential revision to ensure that the action does not result in the destruction or adverse modification of designated critical habitat. Costs associated with these actions are considered incremental costs. The DEA explains that incremental section 7 consultation that takes place as a result of critical habitat designation may fall into one of three categories: (1) Additional effort to address adverse modification in a consultation that also involves jeopardy; (2) re-initiation of a previously concluded consultation to address adverse modification; and (3) new consultation resulting entirely from critical habitat designation (*i.e.,* where a proposed action may affect unoccupied critical habitat). The DEA estimates that there would be three project-level informal consultations related to Federal grants that would need to be reinitiated in 2009 to address picture-wing fly critical habitat. There would also be one programmatic consultation that would need to be reinitiated in 2009 related to the Hawai'i Volcano National Park management plan, and subsequent programmatic consultations every five years. The DEA indicates that since these consultations would be for preservation and watershed management activities, no or only minimal project modifications would be anticipated.

We are soliciting data and comments from the public on the DEA, as well as on all aspects of the proposed rule and our amended required determinations. We may revise the proposed rule or its supporting documents to incorporate or address information we receive during this comment period. In particular, we may exclude an area from critical habitat if we determine that the benefits of excluding the area outweigh the benefits of including the area as critical habitat, provided the exclusion will not result in the extinction of the species.

Proposed Exclusions Under 4(b)(2) of the Act

Under section 4(b)(2) of the Act, we may exclude an area from critical habitat if we determine that the benefits of such exclusion outweigh the benefits of including that particular area as critical habitat, unless failure to designate that specific area as critical habitat will result in the extinction of the species. We may exclude an area from designated critical habitat based on economic impacts, national security, or

any other relevant impact. Under section 4(b)(2) of the Act, we must consider all relevant impacts, including economic impacts. For example, we consider whether there are landowners that have developed conservation plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion of lands from, critical habitat. We also consider any social impacts that might occur because of the designation. During the development of a final designation, we will consider economic and other relevant impacts, including additional conservation plans that may be available, with regard to potential exclusion from the final critical habitat designation under section 4(b)(2) of the Act.

In preparing this notice, we have determined that voluntary conservation efforts by private landowners are vital for the conservation and recovery of the 12 Hawaiian picture-wing fly species. As one example, significant progress has been made in habitat restoration on Maui Land and Pineapple Company's (MLP) lands within the Puu Kukui Watershed Management Area (PKWMA), located in the West Maui Mountains. The proposed 584-acre (237-ha) critical habitat unit boundary for *Drosophila neoclavisetae* (Puu Kukui Unit 1) falls completely within the PKWMA. Since 1988, the MLP has proactively managed their 450 acres (182 hectares (ha)) within the PKWMA and is currently in its 15th year of contract with the State of Hawaii's Natural Area Partnership (NAP) Program to preserve the native biodiversity of the company's conservation lands. At just over 8,600 acres (3,483 ha), the PKWMA is the largest privately owned preserve in the State.

In 1993, the MLP became the first private landowner participant in the NAP program. They are pursuing four management programs stipulated in their Long Range Management Plan that emphasizes reducing nonnative species that immediately threaten the management area (Maui Land and Pineapple Company 1999). The primary management goals within PKWMA are to: (1) Eliminate ungulate activity in all Puu Kukui management units; (2) reduce the range of habitat-modifying weeds and prevent introduction of nonnative plants; (3) reduce the negative impacts of non-native invertebrates and small animals; (4) monitor and track biological and physical resources in the watershed in order to improve management understanding of the watershed's resources; and (5) prevent the extinction of rare species within the watershed. Specific management actions to address feral ungulates include the construction of fences surrounding 10 management units and removal of ungulates within the PKWMA.

The nonnative plant control program within PKWMA focuses on weeds that modify habitat, prioritizing weeds according to the degree of threat to native ecosystems, and preventing the introduction of new weeds. The weed control program includes mapping and monitoring along established transects and manual/mechanical control. Natural resource monitoring and research address the need to track biological and physical resources of the PKWMA, and evaluate changes to these resources in order to guide management programs. Vegetation is monitored through permanent photographic points, nonnative species are monitored along permanent transects, and rare, endemic, and indigenous species are monitored. Logistical and other support for approved research projects, interagency cooperative agreements, and remote survey trips within the watershed are also provided.

At this time, we are evaluating the sufficiency of protection that the conservation activities being conducted by the MLP are providing for the 12 picture-wing flies and features essential for their conservation on their lands (450 acres (182 ha)) that fall within the 584-acre (237-ha) proposed critical habitat unit (Puu Kukui Unit 1). Therefore, we are specifically soliciting public comments on the possible exclusion of the MLP lands within proposed Puu Kukui Unit 1 under section 4(b)(2) of the Act.

Benefits of Inclusion

The benefits of including lands in critical habitat can be regulatory, educational, or promote the recovery of species. The principal regulatory benefit of designating critical habitat in this area would be that Federal actions affecting *D. neoclavisetae* would require consultation under section 7 of the Act. Consultation would ensure that a proposed action does not result in the destruction or adverse modification of critical habitat. The most likely Federal nexus would be associated with Service funding for management activities that target invasive species removal, and the likely outcome of a section 7 consultation would be conservation recommendations to avoid stands of *Cyanea kunthiana* and *Cyanea macrostegia* ssp. *macrostegia* when applying herbicides, or to use backpack sprayers to specifically target herbicide application. However, even in the absence of critical habitat designation, these conservation recommendations would still be included within the PKWMA invasive species control program. Accordingly, we believe that few additional regulatory benefits would be derived by including the MLP lands within the area designated as critical habitat for *Drosophila neoclavisetae* beyond those conservation benefits already being achieved through the implementation of the PKWMA Watershed Management Plan (WMP).

There have been no section 7 consultations regarding *Drosophila neoclavisetae* or its host plants with the PKWMA to date. The DEA anticipates that there would be two informal consultations associated with projects to remove non-native species over the next 13 years. It also predicts that no formal consultations would be likely to occur over the 20-year timeframe of the analysis. The two informal section 7 consultations anticipated by the DEA would take place based on the species presence in the area. Accordingly, section 7 consultation under the jeopardy standard would be required for Federal activities that may affect *D. neoclavisetae,* regardless of critical habitat designation. We do not foresee any additional consultations beyond those anticipated by the DEA, and predict that the section 7 consultation process for critical habitat would be unlikely to result in additional protections for the species. Consequently, there would be little regulatory benefit of designating critical habitat on the MLP lands within Puu Kukui Unit 1.

The final listing rule for the 12 picture-wing flies (71 FR 26835) acknowledged the importance of this area to the overall conservation of *Drosophila neoclavisetae* (Service 2006). The MLP is aware of the areas where *D. neoclavisetae* occurs on their property, and is already implementing conservation actions to benefit the species (MLP 2008, p. 2). We therefore believe that any additional educational benefits resulting from the designation of critical habitat on these lands would be minimal. The designation of critical habitat may provide benefits to the recovery of a species, however, in this case the MLP is already committed to implementing conservation actions on their lands under the existing watershed management plan (WMP), and any additional benefits to the recovery of this species beyond those already being realized would be limited.

Benefits of Exclusion

The MLP has a history of entering into conservation agreements with Federal and State agencies and other private organizations on their lands. These agreements further their mission of practicing prudent stewardship of their land and water resources to ensure the protection of rare and endangered plant and animal species, and water resources crucial to the community. The continued implementation of the WMP by the MLP will benefit *Drosophila neoclavisetae* through actions that manage invasive species and restore native species habitat. The WMP provides a significant conservation benefit to *D. neoclavisetae's* host plant populations in the area, and we have a reasonable expectation that the strategies and measures will be effective.

We believe that *Drosophila neoclavisetae* is benefiting substantially from the MLP's proactive management actions, which include reducing ungulate browsing and habitat conversion, competition with nonnative weeds, and the risk of fire. These management actions also include the reintroduction of currently extirpated native species into restored habitats.

The exclusion of the MLP lands from the proposed Puu Kukui—Unit 1 would allow us to continue working with this landowner in a spirit of cooperation and partnership. The MLP management plan acknowledges a shared interest in promoting healthy ecosystems and in protecting populations and habitat of *D. neoclavisetae.* Since the area has been actively managed as a preserve since 1988, there is a reasonable expectation that the conservation management strategies and actions will continue to be implemented for the benefit of *D. neoclavisetae's* habitat in the foreseeable future. Imposing an additional layer of section 7 consultation by designating critical habitat could undermine our existing conservation partnership with the MLP and remove their incentive to accept the additional time and expense of management planning. We believe that the designation of critical habitat would strain the existing proactive working relationship we share with the MLP, and may hinder future cooperative conservation projects.

Excluding the MLP lands from critical habitat designation would acknowledge their positive contribution to conservation on Maui. It would also reduce the cost of additional section 7 consultation, which we believe would be unnecessary. We are hopeful that this recognition would provide other landowners with a positive incentive to undertake voluntary conservation activities on their lands, particularly where there is no regulatory requirement to implement such actions.

Weighing Benefits of Exclusion and Benefits of Inclusion

We believe the proactive management of *Drosophila neoclavisetae* habitat provided under the Maui Land and Pineapple Company Watershed Management Plan provides significant benefits to this species. In contrast, the benefits of including their lands as critical habitat would likely be minor, since there have been no section 7 consultations in the area since the species was listed in 2006. If the MLP lands within the proposed Puu Kukui—Unit 1 were to be excluded from critical habitat designation, the Puu Kukui WMA plan would continue to provide conservation benefits to the species through the ongoing implementation of strategies and measures that are consistent with currently accepted principles of conservation biology.

Will Exclusion Result in Extinction of the Species?

We believe that the exclusion of the MLP lands within the proposed Puu Kukui—Unit 1 from the final designation of critical habitat would not result in the extinction of the species. The continued implementation of their ongoing management programs will provide comparable or greater net conservation benefits than those that would result from critical habitat designation. These management programs provide tangible conservation benefits that reduce the likelihood of extinction for *D. neoclavisetae,* and increase the likelihood of its recovery. In addition, there are no known threats in the PKWMA associated with Federal actions requiring section 7 consultation, so extinction of the species as a consequence of not designating critical habitat would be unlikely. Further, because the 450 ac (182 ha)) of the MLP's lands we are considering excluding from critical habitat designation are occupied by *D. neoclavisetae,* section 7 consultation would be required even in the absence of critical habitat designation, and any Federal actions that may affect the species would be evaluated under the jeopardy standard of section 7 of the Act, which provides assurances that the species would not become extinct.

In addition, § 195D–4 of the Hawaii Revised Statutes, Endangered species and threatened species, stipulates that species determined to be endangered or threatened under the Federal Endangered Species Act shall be deemed endangered or threatened under the State law, and that it is unlawful under the State law (with some exceptions) to ''take'' such species, or to possess, sell, carry or transport them. The statutory protections provided under State law provide additional assurances that exclusion of the MLP lands from critical habitat designation would not result in extinction of *Drosophila neoclavisetae.*

In summary, there may be few regulatory, educational, or recovery benefits from the exclusion of the MLP lands from critical habitat designation. On the other hand, there may be greater conservation benefits that would result from the exclusion of these lands, which include the implementation of affirmative actions for controlling invasive species, protecting host plant habitat, monitoring of native species, and restoration activities. Accordingly, we are requesting public comments on whether the benefits of excluding this area from critical habitat designation would outweigh the benefits of its inclusion, and thus whether the MLP lands should be excluded under section 4(b)(2) of the Act.

Required Determinations—Amended

In our November 28, 2007, proposed critical habitat rule (72 FR 67428), we said that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders became available in the DEA. In this document we affirm the information in our proposed rule concerning Executive Order (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951). However, based on the DEA, we revise our required determinations concerning E.O. 12866, the Regulatory Flexibility Act, E.O. 13211 (Energy, Supply, Distribution, and Use), the Unfunded Mandates Reform Act, and E.O. 12630 (Takings).

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

(a) Whether the rule will have an annual effect of $100 million or more on

the economy or adversely affect an economic sector, productivity, jobs, the environment, or other units of the government.

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

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

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

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 802(2)) (SBREFA), 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 the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. Based on our DEA of the proposed revised designation, we provide our analysis for determining whether the proposed rule would result in a significant economic impact on a substantial number of small entities.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations; small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents; and small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this proposed critical habitat designation as well as types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the proposed designation of critical habitat for the 12 Hawaiian picture-wing fly species would affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities. In order to determine whether it is appropriate for our agency to certify that this rule would not have a significant economic impact on a substantial number of small entities, we considered each industry or category individually. In estimating the numbers of small entities potentially affected, we also considered whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement. The designation of critical habitat will not affect activities that do not have any Federal involvement; designation of critical habitat affects activities conducted, funded, permitted, or authorized by Federal agencies.

If we finalize this proposed critical habitat designation, Federal agencies must consult with us under section 7 of the Act if their activities may affect designated critical habitat. Consultations to avoid the destruction or adverse modification of critical habitat would be incorporated into the existing consultation process.

Chapter 4 of the DEA evaluates the potential economic effects of the proposed revised designation on small entities, based on the estimated incremental impacts associated with the proposed rulemaking. The screening analysis is based on the estimated impacts associated with the proposed rulemaking as described in chapters 3 and 4 and Appendix C of the DEA. The analysis evaluates the potential for economic impacts related to several categories, including: (1) Preservation and watershed management, (2) the purchase of Honouliuli Preserve, (3) game management, (4) timber harvest, (5) property values, and (6) administrative costs associated with section 7 consultation.

Incremental economic impacts associated with section 7 consultations would fall on the U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, National Park Service, and Hawai'i Department of Lands and Natural Resources. The Hawai'i Department of Lands and Natural Resources may also experience an incremental economic impact associated with the opportunity loss of not selling mature trees from a portion of the Waiakea Timber Management Area. However, Federal agencies are not considered small entities, and State governments are not considered small government jurisdictions for purposes of the Regulatory Flexibility Act (RFA) and Small Business Regulatory Enforcement Fairness Act (SBREFA).

The Board of Water Supply of the City and County of Honolulu may experience incremental costs for conservation on its land in the Makaha Valley and Mt. Ka'ala units. However, the RFA/SBREFA defines small governmental jurisdiction as the government of a city, county, town, school district, or special district with a population of less than 50,000. Accordingly, the City and County of Honolulu is not considered a small government jurisdiction.

Nonprofit organizations such as Kamehameha Schools, the Nature Conservancy of Hawai'i (TNCH), the Queen Emma Foundation, and Watershed Partnerships could experience incremental costs associated with (1) the loss of property value for 3 acres of land in the Pit Crater unit; (2) conservation projects on managed lands including the Pu'u Kolekole, Pu'u Kukui, Palikea, Pu'u Kaua, and Kalua'a Gulch units; (3) conservation projects on land in the Kohala Mountains West unit; and (4) conservation projects in the Wailupe, Pu'u Kolekoke, Pu'u Kukui, Kohala Mountains East, and Kohala Mountains west respectively. However, none of these nonprofit organizations are considered ''small organizations'' for purposes of the RFA/SBREFA.

The James Campbell Co. LLC, Maui Land and Pineapple Company, Inc., and Moloka'i Ranch are private companies that could experience incremental impacts associated with critical habitat designation, however, none of these businesses are considered to be small businesses for purposes of the RFA/SBREFA. In this regard, the DEA concludes that none of the incremental economic impacts associated with designating critical habitat would be expected to fall on small entities.

In summary, we have considered whether the proposed critical habitat designation would result in a significant economic impact on a substantial number of small entities, and do not anticipate any substantial impacts on any small entities. We therefore certify that, if promulgated, the proposed revised designation would not have a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required.

Executive Order 13211—Energy Supply, Distribution, and Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, and use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB's guidance for implementing this Executive Order outlines nine outcomes that may constitute ''a significant adverse effect'' when compared to no regulatory action. The DEA finds none of these criteria relevant to this analysis (Chapter 4 of the DEA). Thus, based on information in the DEA, we do not expect conservation activities within proposed critical habitat for the 12 Hawaiian picture-wing fly species to lead to energy-related impacts. As such, we do not expect the proposed designation of critical habitat to significantly affect energy supplies, distribution, or use, and a Statement of Energy Effects is not required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), we make the following findings:

(a) The rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector, and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding'' and the State, local, or tribal governments ''lack authority'' to adjust accordingly. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except as (i) a condition of Federal assistance; or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply; nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that the proposed designation will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year, that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The proposed designation of critical habitat imposes no obligations on State or local governments. The SBA does not consider the Federal Government to be a small governmental jurisdiction or entity. Consequently, we do not believe that the revised critical habitat designation would significantly or uniquely affect small government entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of proposing critical habitat for the 12 Hawaiian picture-wing fly species in a takings implications assessment. The takings implications assessment concludes that the proposed designation of critical habitat for the 12 Hawaiian picture-wing fly species does not pose significant takings implications for lands within or affected by the proposed designation.

Authors

The primary authors of this notice are the staff of the Endangered Species Program, Pacific Region, 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: August 4, 2008.

David M. Verhey,

Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–18519 Filed 8–11–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R1–ES–2008–0073; 14420–1113–0000–C5]

Endangered and Threatened Wildlife and Plants; 90-Day Finding on a Petition To Remove the Bliss Rapids Snail (Taylorconcha serpenticola) From the List of Endangered and Threatened Wildlife; Notice of Document Availability.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability of new information that may impact our status review for the Bliss Rapids snail (*Taylorconcha serpenticola*). This information has become available since the close of the comment period on our 90-day finding (72 FR 31250) on a petition to remove the Bliss Rapids snail from the Federal List of Endangered and Threatened Wildlife, pursuant to the Endangered Species Act of 1973, as amended (Act). Interested members of the public are invited to submit comments on this new information as it applies to the listing status of the Bliss Rapids snail.

DATES: To ensure consideration in the 12-month finding on this petition, comments and information should be submitted to us by August 27, 2008.

ADDRESSES: You may submit comments by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *U.S. mail or hand-delivery:* Public Comments Processing, Attn: Docket FWS–R1–ES–2008–0073; Division of Policy and Directives Management; U.S. Fish and Wildlife Service; 4401 N. Fairfax Drive, Suite 222; Arlington, VA 22203.

We will not accept e-mail or faxes. We will post all comments on: *http://www.regulations.gov.* This generally

means that we will post any personal information you provide us (see below for more information).

FOR FURTHER INFORMATION CONTACT: Jeffery L. Foss, Field Supervisor, U.S. Fish and Wildlife, Service Snake River Fish and Wildlife Office, by mail at 1387 S. Vinnell Way, Room 368, Boise, ID 83709; by telephone at 208/378–5243; by facsimile at 208/378–5262; or by electronic mail at: *fw1srbocomment@fws.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 26, 2006, we received a petition filed by the State of Idaho and the Idaho Power Company to remove the Bliss Rapids snail from the Federal List of Endangered and Threatened Wildlife in accordance with the provisions of section 4 of the Act.

On June 6, 2007, we published a substantial 90-day finding on the petition to remove the Bliss Rapids snail from the List of Endangered and Threatened Wildlife (72 FR 31250), initiated a status review, and opened a 60-day public comment period. Subsequent to the public comment period, new information has become available that is relevant to our status review. To ensure that the status review is complete and based on the best available scientific information, we are soliciting information on this new information as it relates to the listing status of the Bliss Rapids snail. The new information includes a draft status review for the Bliss Rapid Snail (Draft Status Review), prepared in February 2008; peer reviews of the Draft Status Review; a manuscript examining the genetic structure of Bliss Rapids snail populations; and documentation from a recent expert panel convened to assess the status of the Bliss Rapids snail.

Comments particularly are sought concerning:

(1) Information and data in the Draft Status Review;

(2) Peer review comments on the Draft Status Review;

(3) The relevance of the new genetic information to the listing status of the Bliss Rapids snail;

(4) Information and data used by the expert panel; and,

(5) The expert panel's discussion of threats to the Bliss Rapids snail and ongoing conservation actions or regulatory actions that address these threats.

These materials are available for review at the following Web sites: *http://www.regulations.gov. http://www.fws.gov/idaho/Index.cfm.*

If you wish to comment, you may submit your comments and materials concerning this new information related to the petition finding by one of the methods listed in the **ADDRESSES** section.

If you submit information via *http://www.regulations.gov*, your entire submission—including your personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this petition finding, will be available for public inspection on *http://www.regulations.gov*, or by appointment, during normal business hours at the U.S. Fish and Wildlife Service Snake River Fish and Wildlife Office, 1387 S. Vinnell Way, Room 368, Boise, ID 83709; by telephone at 208/378–5243.

Author

The primary authors of this notice are staff of the Snake River Fish and Wildlife Office, 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: July 24, 2008.

Kenneth Stansell,

Acting Director, Fish and Wildlife Service.

[FR Doc. E8–18310 Filed 8–11–08; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 73, No. 156
Tuesday, August 12, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Environmental Assessment; Rehabilitation of Grade Stabilization Structure W–3, Papillion Creek Watershed, Washington County, NE

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Availability, Finding of No Significant Impact.

SUMMARY: The Natural Resources Conservation Service (NRCS) has prepared an Environmental Assessment in compliance with the National Environmental Policy Act (NEPA), as amended. Pursuant to the implementing regulations for NEPA (40 CFR parts 1500–1508); the USDA Departmental Policy for the NEPA (7 CFR part 1b); the Natural Resources Conservation Service Regulations (7 CFR part 650); and the Natural Resources Conservation Service policy (General Manual Title 190, Part 410); the Natural Resources Conservation Service gives notice that an environmental impact statement is not being prepared for the rehabilitation of grade stabilization Structure W3 in Papillion Creek Watershed, Washington County, Nebraska. The Environmental Assessment was developed in coordination with the sponsoring local organization (Papio-Missouri River Natural Resources District) for a federally assisted action to address grade stabilization and incidental flood control prevention in the Papillion Creek Watershed and the status of grade stabilization Structure W–3. Upon consideration of the affected environment, alternatives, environmental consequences, and comments and coordination with concerned public and agencies, the State Conservationist for NRCS, Nebraska found that based on the significance and context and intensity that the proposed action is not a major federal action significantly affecting the quality of the human environment. Thus, a Finding of No Significant Impact (FONSI) was made.

FOR FURTHER INFORMATION CONTACT: Stephen K. Chick, State Conservationist, U.S. Department of Agriculture, Natural Resources Conservation Service, Federal Building, Room 152, 100 Centennial Mall North, Lincoln, Nebraska 68508–3866; telephone (402) 437–5300.

SUPPLEMENTARY INFORMATION: The sponsoring local organization concurs with this determination and agrees with carrying forward the proposed project. Structure W–3 does not meet NRCS safety and performance standards for a High Hazard Class structure. The proposed action is to rehabilitate Structure W–3 to current NRCS High Hazard Class requirements and extend its life for 90 years. The following actions are proposed: The existing principal spillway would be removed and replaced, the auxiliary spillway would be raised and an additional auxiliary spillway would be constructed, and the top of dam would be raised to increase storage capacity.

Information regarding this finding may be obtained at the contact information listed above. No administrative action on implementation of the proposed funding action will be taken until 30 days after the date of this publication in the **Federal Register**.

Signed in Lincoln, Nebraska on July 17, 2008.

Stephen K. Chick,

State Conservationist.

[FR Doc. E8–18533 Filed 8–11–08; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Marine Mammal Health and Stranding Response Program Survey for Stranding Network Participants.

OMB Control Number: None.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 294.

Number of Respondents: 294.

Average Hours per Response: 1.

Needs and Uses: The National Marine Fisheries Service's (NMFS) Marine Mammal Health and Stranding Response Program will conduct program evaluations of the six NMFS regional stranding networks: Northeast, Southeast, Southwest, Northwest, Alaska, and Pacific Islands Regions. A survey will be used to gather data from a cross-section of stranding network participants in each region. The data will be collected regarding performance, organizational structure, objectives, and needs of the program. The information will be used to prioritize and discuss issues of concern and assist with future program management and planning.

Affected Public: Not-for-profit institutions.

Frequency: One-time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285, or *David_Rostker@omb.eop.gov* .

Dated: August 7, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–18552 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and

Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Industry and Security (BIS).

Title: Competitive Enhancement Needs Assessment Survey Program.

OMB Control Number: 0694–0083.

Form Number(s): None.

Type of Request: Regular submission.

Burden Hours: 2,400.

Number of Respondents: 2,400.

Average Hours per Response: 1.

Needs and Uses: The Defense Production Act of 1950, as amended, and Executive Order 12919, authorizes the Secretary of Commerce to assess the capabilities of the defense industrial base to support the national defense and to develop policy alternatives to improve the international competitiveness of specific domestic industries and their abilities to meet defense program needs. The information collected from this voluntary survey will be used to assist small and medium-sized firms in defense transition and in gaining access to advanced technologies and manufacturing processes available from Federal Laboratories. The goal is to improve regions of the country adversely affected by cutbacks in defense spending and military base closures. While the previous survey focused primarily on those small businesses that were impacted by defense downsizing, it became apparent that non-defense dependent firms could also benefit from the variety of services offered. Therefore, the latest survey includes firms who manufacture products for non-defense end-uses, including NASA programs.

Affected Public: Business and other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, FAX number (202) 395–7285 or via the Internet at *David_Rostker@omb.eop.gov* .

Dated: August 7, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–18553 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

(Docket 43–2008)

Proposed Foreign–Trade Zone, Butte–Silver Bow, Montana, Application and Public Hearing

An application has been submitted to the Foreign–Trade Zones Board (the Board) by the City and County of Butte–Silver Bow, Montana, to establish a general–purpose foreign–trade zone at a site in Butte, Montana, adjacent to the Butte–Silver Bow CBP port of entry. The application was submitted pursuant to the provisions of the FTZ Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on August 4, 2008. The applicant is authorized to make the proposal under Montana Code Sections 30–15–101 through 103.

The proposed zone would consist of one site covering 1,545 acres in Butte–Silver Bow, Montana and is within a Tax Increment Financing Industrial District located at 119041 German Gulch Road, Butte, Montana. The site is owned by the City and County of Butte–Silver Bow, the Port of Montana Authority, REC Advanced Silicon Materials LLC, and Pioneer Concrete & Fuel, Inc.

The application indicates a need for zone services in Butte–Silver Bow, Montana. Several firms have indicated an interest in using zone procedures for warehousing/distribution activities for a variety of products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case–by-case basis.

In accordance with the Board's regulations, Kathleen Boyce of the FTZ staff is designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on September 11, 2008 at 1:00 pm, in the Council Chambers, Room 312, Butte–Silver Bow Courthouse, 155 West Granite St., Butte, MT 59701.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is October 14, 2008. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to October 27, 2008).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Chief Executive, Butte–Silver Bow Courthouse, 155 West Granite Street, Butte, Montana 59701; and, Office of the Executive Secretary, Foreign–Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230.

For further information, contact Kathleen Boyce at Kathleen__Boyce@ita.doc.gov or (202) 482–1346.

Dated: August 5, 2008.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E8–18623 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Information Collection; Comment Request; Survey of International Air Travelers

AGENCY: International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 14, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at dHynek@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Richard Champley or Ron Erdmann, Office of Travel & Tourism Industries (OTTI), ITA, Phone: (202) 482–0140, and fax: (202) 482–2887, E-Mail: Richard.champley@mail.doc.gov or Ron.erdmann@mail.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The ''Survey of International Air Travelers'' program, administered by the Office of Travel and Tourism Industries (OTTI) of the International Trade Administration provides the sole source data required to: (1) Estimate international travel and passenger fare exports, imports and the trade balance for the United States; (2) support the U.S. Department of Commerce (DOC), Bureau of Economic Analysis' (BEA) mandate to collect, analyze and report information used to calculate the Gross Domestic Product (GDP) and (3) Travel and Tourism Satellite Account for the United States.

The Survey program contains the core data that is analyzed and communicated by OTTI with other government agencies, associations and businesses that share the same objective of increasing U.S. international travel exports. The Survey assists OTTI in assessing the economic impact of international travel on state and local economies, providing visitation estimates, and identifying traveler and trip characteristics. The DOC assists travel industry enterprises to increase international travel and passenger fare exports for the country as well as outbound travel on U.S. carriers. The Survey program provides the only available estimates of nonresident visitation to the states and cities within the U.S., as well as U.S. resident travel abroad. U.S. and foreign flag airlines that voluntarily participate in the Survey program enable the collection.

II. Method of Collection

The survey will be collected by: (1) the flight attendant during the flight, *or* (2) the sub-contractor ''interviewer'' in the pre-flight departure gate area. International passengers will be prompted to complete/submit the survey after making flight arrangements via a booking engine (i.e., Worldspan) or an airline Internet site.

III. Data

OMB Control Number: 0625–0227.

Form Number(s): None.

Type of Review: Regular submission.

Affected Public: Individuals or households.

Estimated Number of Respondents: 99,400.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 24,850.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 7, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–18551 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–818)

Certain Pasta from Italy: Notice of Extension of Final Results of Antidumping Duty Changed Circumstances Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW, Washington, DC 20230, telephone: (202) 482–6071.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2007, the Department of Commerce (the Department) published its notice of initiation of antidumping duty changed circumstances review. *See Certain Pasta from Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review*, 72 FR 65010 (November 19, 2007) (Initiation). On February 22, 2008, the Department published its notice of preliminary results of CCR and intent to reinstate the antidumping duty order. *See Certain Pasta from Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent to Reinstate the Antidumping Duty Order*, 73 FR 9769 (February 22, 2008). The final results are currently due no later than August 5, 2008.

Extension of Time Limit for Preliminary Results

Under 19 CFR 351.216(e), the Department will issue the final results of a changed CCR within 270 days after the date on which the Department initiates the changed circumstances review. Currently, the final results of the antidumping duty CCR, which cover Pasta Lensi S.r.L. (Lensi), a producer/exporter of pasta from Italy, and American Italian Pasta Company (AIPC), Lensi's corporate parent and importer of subject merchandise produced by Lensi, are due by August 5, 2008. Lensi and AIPC have requested that the Department meet with their representatives on August 11, 2008, which is after the current deadline of the final results of the CCR. Due to the Department's decision to accommodate the request of Lensi and AIPC and in accordance with 19 CFR 351.302(b), we are extending the due date of the final results of by 60 days. Therefore, the final results of the CCR are now due no later than October 6, 2008.[1]

This notice is issued and published in accordance with sections 751(b) and 777(i) of the Tariff Act of 1930, as amended.

Dated: August 5, 2008.

Gary Taverman,

Acting Deputy Assistant Secretaryfor Import Administration.

[FR Doc. E8–18624 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Meeting of the Information Security and Privacy Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the

[1] Day 60 falls on a Saturday. Therefore, we are extending the due date of final results to the following business day, which is Monday, October 6, 2008.

Information Security and Privacy Advisory Board (ISPAB) will meet Thursday, September 4, 2008, from 8:30 a.m. until 5 p.m., and Friday, September 5, 2008 from 8 a.m. until 4:30 p.m. All sessions will be open to the public. The Advisory Board was established by the Computer Security Act of 1987 (Pub. L. 100–235) and amended by the Federal Information Security Management Act of 2002 (Pub. L. 107–347) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. Details regarding the Board's activities are available at *http://csrc.nist.gov/groups/SMA/ispab/index.html/.*

DATES: The meeting will be held on September 4, 2008 from 8:30 a.m. until 5 p.m. and September 5, 2008, from 8 a.m. until 4:30 p.m.

ADDRESSES: The meeting will take place at George Washington University Cafritz Conference Center 800 21st Street, NW., Room 405, Washington, DC on September 4–5, 2008.

FOR FURTHER INFORMATION CONTACT: Ms. Pauline Bowen, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–2938.

SUPPLEMENTARY INFORMATION:

Agenda

—Welcome and Overview
—NIST Computer Security Division Overview
—FISMA
—DHS Cyber Security Center Activities Brief
—Industry Security Officers Best Practices Panel
—Privacy Technology Report
—Trusted Internet Connection Panel
—Cyber Initiative and Relationship to Civilian Agency Security
—Privacy Impact (Einstein)
—Board discussion on transition letter for old and new administration (NIST Director and OMB Director)
—ISPAB Work Plan Discussion
—Security and Privacy Professional Workforce Issues Discussion

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters. The final agenda will be posted on the Web site indicated above.

Public Participation: The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public (Friday, September 5, 2008 at 3–3:30 p.m.). Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated above. In addition, written statements are invited and may be submitted to the Board at any time. Written statements should be directed to the ISPAB Secretariat, Information Technology Laboratory, 100 Bureau Drive, Stop 8930, National Institute of Standards and Technology, Gaithersburg, MD 20899–8930. Approximately 15 seats will be available for the public and media.

Dated: August 5, 2008.

James M. Turner,

Deputy Director.

[FR Doc. E8–18620 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Public Safety Voice Over Internet Protocol (VoIP) Public Workshop for Organizations Interested in Utilization of VoIP for Communication Between Public Safety Personnel

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Public Workshop.

SUMMARY: The Office of Law Enforcement Standards (OLES), in cooperation with the Department of Homeland Security's Office of Interoperability and Compatibility (DHS/OIC) and representatives of the public safety community, will hold a public working group on September 9–11, 2008, at Twisted Pair Communications in Seattle, Washington. The purpose of the first two days of the meeting (September 9–10, 2008) is to bring manufacturers together to establish voice over IP (VoIP) connectivity between radio communication system bridging devices. The purpose of the last day of the working group (September 11, 2008) is to bring practitioners and industry together to discuss the development of an enhanced implementation profile for VoIP between radio system bridging solutions. The results of this and subsequent roundtable discussions will be used in the development of specific implementation profiles for VoIP usage in public-safety owned systems.

There is no charge for the roundtable; however, because of meeting room restrictions, advance registration is mandatory and limited to three representatives from any one organization. There will be no on-site, same-day registration. The registration deadline is September 2, 2008. Please note registration and admittance instructions and other additional information under the **SUPPLEMENTARY INFORMATION** section of this notice.

DATES: The workshop will be held on September 9–11, 2008, from 8:30 a.m. until 5 p.m. PT.

ADDRESSES: The roundtable will be held in the conference room of Twisted Pair Communications, 3131 Elliott Ave., Suite 200, Seattle, WA 98121.

FOR FURTHER INFORMATION CONTACT: Dereck Orr, (303) 497–5400, e-mail: *dereck.orr@nist.gov.* The mailing address is 325 Broadway, Mail Stop ITS.P, Boulder, CO 80305. Information regarding OLES can be viewed at *http://www.eeel.nist.gov/oles/.* Information regarding DHS/OIC can be viewed at *http://www.safecomprogram.gov.* Information regarding ITS can be viewed at *http://www.its.bldrdoc.gov.*

SUPPLEMENTARY INFORMATION: In response to a request from the U.S. Department of Homeland Security (DHS), Science and Technology Directorate (S&T), Command, Control and Interoperability Division (CCI), Office of Interoperability and Compatibility (OIC), the NIST Office of Law Enforcement Standards (OLES) is developing protocol implementation profiles for VoIP communications between public safety personnel.

The request from OIC germinated from practitioner-raised issues related to VoIP-enabled solutions being marketed to the public safety community as an ''interoperability solution,'' yet these solutions will not interoperate with VoIP-enabled solutions from other manufacturers making the same claim. The proper way to address this situation is to develop a protocol implementation profile (or set of profiles) that contains the minimum standards, parameters and values necessary to ensure that solutions developed by independent organizations will interoperate with each other. This roundtable discussion is intended to lead to the development of a protocol implementation profile for VoIP-enabled radio system bridging solutions.

Anyone wishing to attend this meeting must register by close of business September 2, 2008, in order to attend. Please submit your name, time of arrival, e-mail address and phone number to Ms. Stacey Breitberg and she will provide you with logistics information for the meeting. Ms. Breitberg's e-mail address is *stacey.breitberg@twistpair.com* and her phone number is (206) 812–2367.

All attendees are required to submit their name, time of arrival, e-mail address and phone number to Ms. Breitberg.

Dated: August 5, 2008.

James M. Turner,

Deputy Director.

[FR Doc. E8–18618 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Application Form for Membership on a National Marine Sanctuary Advisory Council

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before October 14, 2008.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6625, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Karen M. Brubeck, 206–842–6084 or *karen.brubeck@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

Section 315 of the National Marine Sanctuaries Act (16 U.S.C. 1445a) allows the Secretary of Commerce to establish one or more advisory councils to provide advice to the Secretary regarding the designation and management of national marine sanctuaries. The councils are individually chartered for each sanctuary to meet the needs of the sanctuary. Once a council has been chartered, the sanctuary manager starts a process to recruit members for that Council by providing notice to the public and requesting interested parties to apply for the available seats.

II. Method of Collection

An application form and guidelines for a narrative submission must be submitted to the sanctuary manager. Submissions may be made electronically.

III. Data

OMB Control Number: 0648–0397.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations; not-for-profit institutions.

Estimated Number of Respondents: 500.

Estimated Time Per Response: 1 hour.

Estimated Total Annual Burden Hours: 500 hours.

Estimated Total Annual Cost to Public: $0.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 7, 2008.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E8–18550 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Federal Consistency Appeal by Mr. G. Walter Swain

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (Commerce).

ACTION: Notice of closure—administrative appeal decision record.

SUMMARY: This announcement provides notice that the decision record has been closed for an administrative appeal filed with the Department of Commerce by Mr. G. Walter Swain.

DATES: The decision record for the administrative appeal of Mr. G. Walter Swain was closed on August 12, 2008.

ADDRESSES: Materials from the appeal record are available at the Internet site *http://www.ogc.doc.gov/czma.htm* and at the Office of the General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Thomas Street, Attorney-Advisor, NOAA Office of General Counsel for Ocean Services, via e-mail at *thomas.street@noaa.gov,* or at 301–713–7390.

SUPPLEMENTARY INFORMATION: On February 4, 2008, Mr. G. Walter Swain filed notice of an appeal with the Secretary of Commerce (Secretary), pursuant to the Coastal Zone Management Act of 1972 (CZMA), 16 U.S.C. 1451 *et seq.*, and implementing regulations found at 15 CFR Part 930, Subpart H. Mr. Swain appealed an objection by the State of Delaware in the proposed construction of a marina and associated structures at the confluence of Cedar Creek and Mispillion River, in Milford, Delaware.

Mr. Swain requested that the Secretary override Delaware's objection based upon an alleged threshold deficiency in the objection and on the grounds that the project is consistent with the objectives of the CZMA or otherwise necessary in the interest of national security. Decisions for CZMA administrative appeals are based on information contained in a decision record. Under the CZMA, the decision record must close no later than 220 days after notice of the appeal was first published in the **Federal Register**. *See* 16 U.S.C. 1465; 15 CFR 930.130. The CZMA requires that a notice be published in the **Federal Register** indicating the date on which the decision record has been closed. *See* 16 U.S.C. 1465(b); 15 CFR 930.130. Consistent with this deadline, the Swain appeal decision record was closed on August 12, 2008. No further information, briefs or comments will be considered in deciding this appeal.

Additional information about the Swain appeal and the CZMA appeals process is available from the

Department of Commerce CZMA appeals Web site: *http://www.ogc.doc.gov/czma.htm.*

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance.)

Dated: August 7, 2008.

Joel La Bissonniere,

Assistant General Counsel for Ocean Services.

[FR Doc. E8–18658 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XG81

Marine Mammals; File No. 1121–1900

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

ACTION: Notice; issuance of permit amendment.

SUMMARY: Notice is hereby given that NOAA Fisheries Office of Science and Technology (Principal Investigator: Dr. Brandon Southall), Silver Spring, MD, has been issued an amendment to Permit No. 1121–1900 to conduct research on marine mammals.

ADDRESSES: The permit amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)427–2521; *http://www.nmfs.noaa.gov/pr/permits/review.htm*; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, Florida 33701; phone (727)824–5312; fax (727)824–5309.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Jolie Harrison, (301)713–2289.

SUPPLEMENTARY INFORMATION: On April 2, 2008, notice was published in the **Federal Register** (73 FR 17957) that a request for an amendment to Scientific Research Permit No. 1121–1900 to take beaked whales (*Ziphius cavirostris* and *Mesoplodon* spp.) and other odontocete species had been submitted by the above-named institution (permit holder). The requested permit amendment has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit amendment extended the duration of the permit to allow conduct of three additional annual field seasons, and modified the protocols for playback experiments as requested by the permit holder. The amended permit authorizes research involving temporary attachment of scientific instruments (digital archival recording tags), photo-identification, and exposure to controlled levels of natural and anthropogenic underwater sounds, including signals simulating mid-frequency sonar. Sloughed skin samples collected from the detached instrument would be imported into the U.S. for analysis. The permit is valid through January 1, 2011.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), a supplemental environmental assessment was prepared analyzing the effects of the permitted activities. After a Finding of No Significant Impact, the determination was made that it was not necessary to prepare an environmental impact statement.

Issuance of this permit, as required by the ESA, was based on a finding that such permit: (1) was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: August 6, 2008.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E8–18617 Filed 8–11–08; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

(CPSC Docket No. 08-COO 16)

A & R Knitwear, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with A & R Knitwear, Inc., containing a civil penalty of $35,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08-C0016, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

August 5, 2008.

Todd A. Stevenson,

Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of A & R Knitwear, Inc., CPSC Docket No. 08–C0016

Settlement Agreement

1. In accordance with 16 CFR 1118.20, A & R Knitwear, Inc. (''A & R'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. A & R is a corporation organized and existing under the laws of New York, with its principal offices located in New York, NY. At all times relevant hereto, A & R imported and sold apparel.

Staff Allegations

4. In 2007, A & R imported and sold to a nationwide retailer at least 5,214 Personal Identity V-neck sweaters with hood and neck drawstrings (''Drawstring Sweaters'').

5. The nationwide retailer sold the Drawstring Sweaters to consumers.

6. The Drawstring Sweaters are ''consumer product[s],'' and, at all times relevant hereto, A & R was a ''manufacturer'' of those

consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. The Commission was not informed of any incidents or injuries from the Drawstring Sweaters.

11. A & R's distribution in commerce of the Drawstring Sweaters did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On December 6, 2007, the Commission and the nationwide retailer announced a recall of the Drawstring Sweaters, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. A & R had presumed and actual knowledge that the Drawstring Sweaters distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(l). A & R had obtained information that reasonably supported the conclusion that the Drawstring Sweaters contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required A & R to immediately inform the Commission of the defect and risk.

14. A & R knowingly failed to immediately inform the Commission about the Drawstring Sweaters as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected A & R to civil penalties.

A & R Response

15. A & R denies the Staff's allegations above, including, but not limited to, the allegations that A & R failed to immediately inform the Commission about the Drawstring Sweaters as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), or otherwise violated the CPSA or FHSA.

16. A & R specifically denies that A & R violated the CPSA or the FHSA and that the Drawstring Sweaters contained a defect that could create a substantial product hazard or created an unreasonable risk of serious injury or death. A & R denies that it violated the reporting requirements of CPSA section 15(b), 15 U.S.C. 2064(b).

17. A & R received no reports of incidents or injury related to the Drawstring Sweaters, and A & R was unaware of both the Guidelines and the May 2006 letter posted on the Commission's Web site stating that the staff of the Commission's Office of Compliance considers children's upper outerwear with drawstrings at the head or neck area to be defective and to present a substantial risk of injury to young children. Accordingly, A & R denies that any alleged violation of the CPSA or FHSA occurred ''knowingly'' as defined in CPSA section 20(d), 15 U.S.C. 2069(d).

18. Between November 2006 and June 2008, the CPSC posted on its Web site at least twenty-two recall announcements involving children's drawstring garments. These twenty-two recall announcements referenced and linked electronically to the Guidelines. The Guidelines, which are entitled in part ''Recommended Guidelines,'' state that the ''CPSC's drawstring guidelines do not represent a standard or mandatory requirement set by the agency.'' Accordingly, at the time A & R imported and sold the Drawstring Sweaters, the Commission had not provided adequate notice that civil penalties could arise from A & R's conduct.

19. As soon as A & R was alerted by the retailer about safety concerns with the drawstrings in the Drawstring Sweaters, it undertook efforts to have the drawstrings removed from the garments. In addition, A & R fully cooperated with the retailer and the Commission in connection with the December 2007 recall of the Drawstring Sweaters, which resulted in A & R's removal of the drawstrings from 2,332 Drawstring Sweaters in the possession of A & R.

20. A & R has entered into the Agreement for settlement purposes only, and has made a business decision to avoid additional expenses and distractions related to further administrative procedures and litigation. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing on the part of A & R.

Agreement of the Parties

21. Under the CPSA, the Commission has jurisdiction over this matter and over A & R.

22. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by A & R, or a determination by the Commission, that A & R has knowingly violated the CPSA.

23. In settlement of the Staff's allegations, A & R shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

24. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

25. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, A & R knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether A & R failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

26. The Commission may publicize the terms of the Agreement and the Order.

27. The Agreement and the Order shall apply to, and be binding upon, A & R and each of its successors and assigns.

28. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject A & R to appropriate legal action.

29. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

30. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and A & R agree that severing the provision materially affects the purpose of the Agreement and the Order.

31. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or

firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

A & R Knitwear, Inc.

Dated: 7/21/08.

By: /s/ David Rosenbluth,
David Rosenbluth,
President, A & R Knitwear, Inc., 530 7th Avenue, Suite 901, New York, NY 10018.

Dated: 7/25/08.

By: /s/ Michael T. Cone,
Michael T. Cone, Esquire,
Neville Peterson, LLP 17 State Street, 19th Floor, New York, NY 10004, Attorney for A & R Knitwear, Inc.

U.S. Consumer Product Safety Commission Staff

J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations.

Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations.

Dated: 7/31/08.

By: /s/ Dennis C. Kacoyams,
Dennis C. Kacoyams,
Trial Attorney, Legal Division, Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of A & R Knitwear, Inc., CPSC Docket No. 08–C16

Order

Upon consideration of the Settlement Agreement entered into between A & R Knitwear, Inc. (''A & R'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over A & R, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *Ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is *Further ordered,* that A & R shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of A & R to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by A & R at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August, 2008.

By Order of the Commission.
Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–18403 Filed 8–11–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0013]

AJ Blue LLC, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with AJ Blue LLC, containing a civil penalty of $40,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 08–C0013, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 5, 2008.

Todd A. Stevenson,
Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of AJ Blue LLC, CPSC Docket No. 08–C0013.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, AJ Blue LLC, d/b/a Apollo Jeans (''AJB'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. AJB is a corporation organized and existing under the laws of New York, with its principal offices located in New York, New York. At all times relevant hereto, AJB sold apparel.

Staff Allegations

4. On July 11, 2007, AJB imported 13,728 Apollo Active Wear girls' hooded jackets with drawstrings at the hood (''Jackets''). On August 17, 2007, AJB sold and/or distributed in commerce the Jackets.

5. A nationwide retailer sold the Jackets to consumers.

6. The Jackets are ''consumer product[s],'' and, at all times relevant hereto, AJB was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. AJB informed the Commission that there had been no incidents or injuries from the Jackets.

11. AJB's distribution in commerce of the Jackets did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On January 31, 2008, the Commission and AJB announced a recall of the Jackets.

13. AJB had presumed and actual knowledge that the Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15 (c)(1), 15 U.S.C. 1274(c)(1). AJB had obtained information that reasonably supported the conclusion that the Jackets contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections

15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required AJB to immediately inform the Commission of the defect and risk.

14. AJB knowingly failed to immediately inform the Commission about the Jackets as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected AJB to civil penalties.

AJB's Response

15. AJB denies the Staff's allegations above that AJB knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over AJB.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by AJB, or a determination by the Commission, that AJB has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, AJB shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, AJB knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether AJB failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, AJB and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject AJB to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and AJB agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 C.F.R. § 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

AJ Blue LLC.

Dated: 6–25–08.

By: Edward Alfaks,
President, AJ Blue LLC, 1407 Broadway, Suite 2004, New York, NY 10018.

U.S. Consumer Product Safety Commission Staff.

J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations.

Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations.

Dated: 7–7–08.

By: Seth B. Popkin,
Trial Attorney, Legal Division, Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of AJ Blue LLC., CPSC Docket No. 08–C0013.

Order

Upon consideration of the Settlement Agreement entered into between AJ Blue LLC, d/b/a Apollo Jeans (''AJB'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over AJB, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is *further ordered*, that AJB shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of AJB to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by AJB at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August, 2008.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–18397 Filed 8–11–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

(CPSC Docket No. 08–C0018)

Cobmex, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Cobmex, Inc., containing a civil penalty of $25,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (insert date that is 15 calendar days from publication date).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08-C0018, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

August 5, 2008

Todd A. Stevenson

Secretary

United States of America

Consumer Product Safety Commission

In the Matter of Cobmex, Inc., CPSC Docket No. 08–C0018.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Cobmex, Inc. (''Cobmex'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staffs allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. Cobmex is a corporation organized and existing under the laws of California, with its principal offices located in Lakewood, CA. At all times relevant hereto, Cobmex imported and sold apparel.

Staff Allegations

4. Between January 2006 and March 2007, Cobmex imported and/or sold to retailers at least 30,020 youth jackets with drawstrings (''Drawstring Jackets'')

5. Retailers sold the Drawstring Jackets to consumers.

6. The Drawstring Jackets are ''consumer product[s],'' and, at all times relevant hereto, Cobmex was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(l), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Cobmex reported to the Commission that there had been no incidents or injuries from the Drawstring Jackets.

11. Cobmex's distribution in commerce of the Drawstring Jackets did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On March 8, 2007, the Commission and Cobmex announced a recall of the Drawstring Jackets, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Cobmex had presumed and actual knowledge that the Drawstring Jackets distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(l), 15 U.S.C. 1274(c)(1). Cobmex had obtained information that reasonably supported the conclusion that the Drawstring Jackets contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required Cobmex to immediately inform the Commission of the defect and risk.

14. Cobmex knowingly failed to immediately inform the Commission about the Drawstring Jackets as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 1 9(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Cobmex to civil penalties.

Cobmex Response

15. Cobmex denies the Staff's allegations above that Cobmex knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Cobmex.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Cobmex, or a determination by the Commission, that Cobmex has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Cobmex shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in two (2) installments as follows: The first installment payment of $10,000 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of $15,000 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement. Each installment payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Cobmex knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Cobmex failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Cobmex and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Cobmex to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Cobmex agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

Cobmex, Inc.

Dated: 5–29–08.

By: Scott Schwartz,
President and Chief Executive Officer, Cobmex, Inc., 3673 Industry Avenue, Unit 106, Lakewood, CA 90058.

U.S. Consumer Product Safety Commission Staff.

J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations.

Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations.

Dated: 5/30/08.

By: Dennis C. Kacoyanis,
Trial Attorney, Legal Division, Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of Cobmex, Inc., CPSC Docket No. 08–C0018.

Order

Upon consideration of the Settlement Agreement entered into between Cobmex, Inc. (''Cobmex'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Cobmex, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is *further ordered,* that Cobmex shall pay a civil penalty in the amount of twenty five thousand dollars ($25,000.00) in two (2) installments as follows: The first installment payment of $10,000 shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second installment payment of $15,000 shall be paid within one (1) year of service of the Commission's final Order accepting the Agreement. Each installment payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Cobmex to make the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Cobmex at the federal legal rate of interest set forth at 28 U.S.C. 1961 (a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August, 2008.

By Order of the Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–18395 Filed 08–11–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–COO 15]

Liberty Apparel Co., Inc.; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Liberty Apparel Co., Inc., containing a civil penalty of $35,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to Comment 08–COO 15, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

August 5, 2008.

Todd A. Stevenson,

Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of Liberty Apparel Co., Inc., CPSC Docket No. 08–C15.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Liberty Apparel Co., Inc. (''Liberty'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent Federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. Liberty is a corporation organized and existing under the laws of New York, with its principal offices located in New York, New York. At all times relevant hereto, Liberty sold apparel.

Staff Allegations

4. In August 2007, Liberty imported 12,228 Jewel girls' hooded sweatshirts with drawstrings at the hood (''Sweatshirts''). From August to October 2007, Liberty sold and/or distributed in commerce the Sweatshirts.

5. Retailers sold the Sweatshirts to consumers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Liberty was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Liberty informed the Commission that, to the best of Liberty's knowledge, there had been no incidents or injuries from the Sweatshirts.

11. Liberty's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On December 21, 2007, the Commission and Liberty announced a recall of the Sweatshirts.

13. Liberty had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Liberty had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required Liberty to immediately inform the Commission of the defect and risk.

14. Liberty knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Liberty to civil penalties.

Liberty's Response

15. Liberty denies the Staff's allegations above that Liberty knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Liberty.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Liberty, or a determination by the Commission, that Liberty has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Liberty shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(e)(1), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Liberty knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Liberty failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. Upon issuance of, and Liberty's compliance with, the final Order, the Commission regards this matter as resolved and agrees not to bring a civil penalty action against Liberty based upon the Staff's allegations contained herein regarding the Sweatshirts.

22. The Commission may publicize the terms of the Agreement and the Order.

23. The Agreement and the Order shall apply to, and be binding upon, Liberty and each of its successors and assigns.

24. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Liberty to appropriate legal action.

25. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

26. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Liberty agree that severing the provision materially affects the purpose of the Agreement and the Order.

27. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than 100,000.

Liberty Apparel Co., Inc.

Dated: 7/3/08.

By: Hagai Laniado,
President, Liberty Apparel Co., Inc., 1407 Broadway, Suite 1500, New York, NY 10018.

Dated: 7/3/08.

By: David Laniado, Esq.,
55 Atlantic Avenue, Lynbrook, NY 11563, Counsel for Liberty Apparel Co., Inc.

U.S. Consumer Product Safety Commission Staff.

J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations.

Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations.

Dated: 7/31/08.

By: Seth B. Popkin,
Trial Attorney, Legal Division, Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of Liberty Apparel Co., Inc. CPSC Docket No. 08–COO15

Order

Upon consideration of the Settlement Agreement entered into between Liberty Apparel Co., Inc. (''Liberty'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Liberty, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is *further ordered*, that Liberty shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Liberty to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Liberty at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August, 2008.

By Order of the Commission

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–18402 Filed 8–11–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0014]

Rebelette International Trading Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Rebelette International Trading Corporation, containing a civil penalty of $40,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08-C0014, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Seth B. Popkin, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7612.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

August 5, 2008.

Todd A. Stevenson,

Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of Rebelette International Trading Corporation, CPSC Docket No. 08–C0014.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Rebelette International Trading Corporation (''Rebelette'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this

Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. Rebelette is a corporation organized and existing under the laws of California, with its principal offices located in South El Monte, California. At all times relevant hereto, Rebelette sold apparel.

Staff Allegations

4. From July to August, 2007, Rebelette imported 4,793 girls' hooded sweatshirts with drawstrings through the hood (''Sweatshirts''). From July to September, 2007, Rebelette sold and/or distributed in commerce the Sweatshirts.

5. Retailers sold the Sweatshirts to consumers.

6. The Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Rebelette was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under the Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Rebelette informed the Commission that there had been no incidents or injuries from the Sweatshirts.

11. Rebelette's distribution in commerce of the Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On March 5, 2008, the Commission and Rebelette announced a recall of the Sweatshirts.

13. Rebelette had presumed and actual knowledge that the Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. 1274(c)(1). Rebelette had obtained information that reasonably supported the conclusion that the Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required Rebelette to immediately inform the Commission of the defect and risk.

14. Rebelette knowingly failed to immediately inform the Commission about the Sweatshirts as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Rebelette to civil penalties.

Rebelette's Response

15. Rebelette denies the Staff has allegations above that Rebelette knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Rebelette.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Rebelette, or a determination by the Commission, that Rebelette has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Rebelette shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Rebelette knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Rebelette failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Rebelette and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Rebelette to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Rebelette agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

Rebelette International Trading Corporation.

Dated: 6/27/08.

By: Hong Chen,
President, Rebelette International Trading Corporation, 2422 N. Strozier Avenue, South El Monte, CA 91733.

Dated: 6/27/08.

By: Roger C. Hsu, Esq.
201 South Lake Avenue, Suite 302, Pasadena, CA 91101–3023, Counsel for Rebelette International Trading Corporation.

U.S. Consumer Product Safety Commission Staff.

J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations.

Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations.

Dated: 7–31–08.

By: Seth B. Popkin,
Trial Attorney, Legal Division, Office Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of Rebelette International Trading Corporation, CPSC Docket No. 08–C0014.

Order

Upon consideration of the Settlement Agreement entered into between Rebelette International Trading Corporation (''Rebelette'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Rebelette, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *ordered,* that the Settlement Agreement be, and hereby is, accepted; and it is *further ordered,* that Rebelette shall pay a civil penalty in the amount of forty thousand dollars ($40,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Rebelette to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Rebelette at the federal legal rate of interest set forth at 28 U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August, 2008.

By Order of the Commission.
Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–18396 Filed 8–11–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

(CPSC Docket No. 08–C0019)

Scope Imports, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR § 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Scope Imports, Inc., containing a civil penalty of $70,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0019, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 208 144408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 208 14–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

August 5, 2008

Todd A. Stevenson,
Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of Scope Imports, Inc. CPSC Docket No. 08–C0019

Settlement Agreement

1. In accordance with 16 C.F.R. § 1118.20, Scope Imports, Inc. (''Scope'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051–2084 (''CPSA'').

3. Scope is a corporation organized and existing under the laws of Texas, with its principal offices located in Houston, TX. At all times relevant hereto, Scope imported and sold apparel.

Staff Allegations

4. From July 30, 2007 to August 30, 2007, Scope imported and/or sold to retailers at least 95,628 boys' hooded sweatshirts with hood and neck drawstrings (''Drawstring Sweatshirts'').

5. Retailers sold the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Scope was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. § 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on neck and waist drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms shou1d be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM Fl816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C § 1274(c). The letter aLso notes the CPSA section 15(b) reporting requirements.

10. Scope indicated to the Commission that there had been no incidents or injuries from the Drawstring Sweatshirts.

11. Scope's distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On December 6, 2007, the Commission and Scope announced a recall of the Drawstring Sweatshirts, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Scope had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Scope had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. § 2064(b)(2) and (3), required Scope to immediately inform the Commission of the defect and risk.

14. Scope knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. § 2064(b)(2) ad (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 20(a)(4). Pursuant to CPSA section 20. 15 U.S.C. § 2069, this failure subjected Scope to civil penalties.

Scope Response

15. Scope denies the Staff's allegations set forth above, including but not limited to, any allegation that it violated any provision of the CPSA or HSA.

16. Scope has entered into the Agreement for settlement purposes only. The Agreement and Order do not constitute and are not evidence of any fault or wrongdoing on the part of Scope.

Agreement of the Parties

17. Under the CPSA, the Commission has jurisdiction over this matter and over Scope.

18. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Scope, or a determination by the Commission, that Scope has knowingly violated the CPSA.

19. In settlement of the Staff's allegations, Scope shall pay a civil penalty in the amount of seventy thousand dollars ($70,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement The payment shall be by check payable to the order of the United States Treasury.

20. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR § 1118.20(e). In accordance with 16 CFR § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

21. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Scope knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Scope failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

22. The Commission may publicize the terms of the Agreement and the Order.

23. The Agreement and the Order shall apply to, and be binding upon, Scope and each of its successors and assigns.

24. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Scope to appropriate legal action.

25. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or altercation is sought to be enforced.

26. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Scope agree that severing the provision materially affects the purpose of the Agreement and the Order.

27. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR § 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C § 2068, where the total amount of the settlement involves no more than $100,000.

Scope Imports, Inc.

Dated: 6/10/08.

By: Alan Finkelman,
President, Scope Imports, Inc., 8020 Blankenship Drive, Houston, TX 77055.

U.S. Consumer Product Safety Commission Staff.

J. Gibson Mullan,
Assistant Executive Director, Office of Compliance and Field Operations.

Ronald G. Yelenik,
Acting Director, Legal Division, Office of Compliance and Field Operations.

Dated: 6/10/08.

By: Dennis C. Kacoyanis,
Trial Attorney, Legal Division, Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of Scope Imports, Inc., CPSC Docket No. 08–C0019.

Order

Upon consideration of the Settlement Agreement entered into between Scope Imports, Inc. (''Scope'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Scope, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is *further ordered*, that Scope shall pay a civil penalty in the amount of seventy thousand dollars ($70,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Scope to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Scope at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August 2008.

By Order of The Commission.

Todd A. Stevenson,
Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–18398 Filed 8–11–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

(CPSC Docket No. 08–C0021)

Sears Holdings Management Corporation, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR § 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Sears Holdings Management Corporation, containing a civil penalty of $50,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0021, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 5, 2008.

Todd A. Stevenson,

Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of Sears Holdings Management Corporation.
CPSC Docket No. 08–C0021

Settlement Agreement

1. In accordance with 16 CFR § 1118.20, Sears Holdings Management Corporation (''Sears'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staffs allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established

pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. § § 2051–2084 (''CPSA'').

3. Sears is a corporation organized and existing under the laws of Delaware, with its principal offices located in Hoffman Estates, IL. At all times relevant hereto, Sears sold apparel.

Staff Allegations

4. From September 13, 2007, to September 18, 2007, Sears held for sale and/or sold to consumers at least 5,214 Personal Identity v-neck sweaters with hood and neck drawstrings (''Drawstring Sweaters'').

5. The Drawstring Sweaters are ''consumer product[s],'' and, at all times relevant hereto, Sears was a ''retailer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (6), (11), and (12), 15 U.S.C. 2052(a)(l), (6), (11), and (12).

6. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

7. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

8. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. § 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

9. Sears informed the Commission that there had been no incidents or injuries from the Drawstring Sweaters.

10. Sears's distribution in commerce of the Drawstring Sweaters did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

11. On December 6, 2007, the Commission and Sears announced a recall of the Drawstring Sweaters, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

12. Sears had presumed and actual knowledge that the Drawstring Sweaters distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(l), 15 U.S.C. § 1274(c)(1). Sears had obtained information that reasonably supported the conclusion that the Drawstring Sweaters contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required Sears to immediately inform the Commission of the defect and risk.

13. Sears knowingly failed to immediately inform the Commission about the Drawstring Sweaters as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Sears to civil penalties.

Sears Response

14. Sears denies the Staff's allegations above that Sears knowingly violated the CPSA.

Agreement of the Parties

15. Under the CPSA, the Commission has jurisdiction over this matter and over Sears.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Sears, or a determination by the Commission, that Sears has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Sears shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury.

18. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Sears knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) An administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Sears failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and the Order.

21. The Agreement and the Order shall apply to, and be binding upon, Sears and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Sears to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

24. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Sears agree that severing the provision materially affects the purpose of the Agreement and the Order.

25. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 C.F.R. § 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. § 2068, where the total amount of the settlement involves no more than $100,000.

SEARS HOLDINGS MANAGEMENT CORPORATION

Dated: 7–22–08 By:

Mary Tortorice
Vice President and Deputy General Counsel
Sears Holdings Management Corporation
3333 Beverly Road
Hoffman Estates, IL 60179

U.S. CONSUMER PRODUCT SAFETY COMMISSION STAFF

J. Gibson Mullan
Assistant Executive Director
Office of Compliance and Field Operations
Ronald G. Yelenik
Acting Director Legal Division
Office of Compliance and Field Operations

Dated: 8–1–08 By:
Dennis C. Kacoyanis
Trial Attorney
Legal Division
Office of Compliance and Field Operations

United States of America

Consumer Product Safety Commission

In the Matter of Sears Holdings Management Corporation)
CPSC Docket No. 08–C0021

Order

Upon consideration of the Settlement Agreement entered into between Sears Holdings Management Corporation (''Sears'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Sears, and pursuant to the authority delegated in

section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

ordered, that the Settlement Agreement be, and hereby is, accepted; and it is *further ordered,* that Sears shall pay a civil penalty in the amount of fifty thousand dollars ($50,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Sears to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Sears at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August, 2008.

By Order of the Commission.
Todd A. Stevenson
Secretary
U.S. Consumer Product Safety Commission

[FR Doc. E8–18401 Filed 8–11–08; 8:45 am]
BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

(CPSC Docket No. 08–C0017)

Siegfried & Parzifal, Inc., Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission

ACTION: Notice

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR § 1118.20(e). Published below is a provisionally accepted Settlement Agreement with Siegfried & Parzifal, Inc., containing a civil penalty of $35,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by (insert date that is 15 calendar days from publication date).

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08-C0017, Office of the Secretary, Consumer Product Safety Commission, 4330 East West Highway, Room 502, Bethesda, Maryland 20814 4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, Maryland 208 14–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

August 5, 2008

Todd A. Stevenson

Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of Siegfried & Parzifal, Inc. CPSC Docket No. 08–C0017.

Settlement Agreement

1. In accordance with 16 CFR § 1118.20, Siegfried & Parzifal, Inc. (''Siegfried'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staff's allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. Siegfried is a corporation organized and existing under the laws of California, with its principal offices located in City of Industry, CA. At all times relevant hereto, Siegfried imported and sold apparel.

Staff Allegations

4. From June 19, 2007, to July 20, 2007, Siegfried imported and/or sold to retailers at least 5,120 sweatshirts with drawstrings (''Drawstring Sweatshirts'')

5. Retailers sold the Drawstring Sweatshirts to consumers.

6. The Drawstring Sweatshirts are ''consumer product[s],'' and, at all times relevant hereto, Siegfried was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. § 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its website a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. § 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. Siegfried informed the Commission that there had been no incidents or injuries from the Drawstring Sweatshirts.

11. Siegfried's distribution in commerce of the Drawstring Sweatshirts did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staffs May 2006 defect notice, and posed a strangulation hazard to children.

12. On February 12, 2008, the Commission and Siegfried announced a recall of the Drawstring Sweatshirts, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Siegfried had presumed and actual knowledge that the Drawstring Sweatshirts distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(1), 15 U.S.C. § 1274(c)(1). Siegfried had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. § 2064(b)(2) and (3), required Siegfried to immediately inform the Commission of the defect and risk.

14. Siegfried knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. § 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. § 2069(d). This failure violated CPSA section 19(a)(4), 15 U.S.C. § 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. § 2069, this failure subjected Siegfried to civil penalties.

Siegfried Response

15. Siegfried denies the Staffs allegations above that Siegfried knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Siegfried.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Siegfried, or a determination by the Commission, that Siegfried has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Siegfried shall pay a civil penalty in the amount of thirty-five thousand dollars ($35,000.00) within twenty (20) calendar

days of service of the Commission's final Order accepting the Agreement. The payment shall be by check payable to the order of the United States Treasury. '

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR § 1118.20(e). In accordance with 16 CFR § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Siegfried knowingly, voluntarily, and completely waives any rights it may have regarding the Staff's allegations to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Siegfried failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Siegfried and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Siegfried to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Siegfried agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR § 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. § 2068, where the total amount of the settlement involves no more than $100,000.

Siegfried & Parzifal, Inc.

Dated: 7/10/2008.

By: Joseph Hwa,

President, Siegfried & Parzifal, Inc., 18701 Arenth Avenue, City of Industry, CA 91748.

Dated: 7/10/2008.

By: Mark Fang, Esquire,

215 E. Daily Drive, Suite 9, Camarillo, CA 93010, Attorney for Siegfried & Parzifal, Inc.

U.S. Consumer Product Safety Commission Staff .

J. Gibson Mullan,

Assistant Executive Director, Office of Compliance and Field Operations.

Ronald G. Yelenik,

Acting Director, Legal Division, Office of Compliance and Field Operations.

Dated: 7/31/08.

By: Dennis C Kacoyaniss,

Trial Attorney, Legal Division, Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of Siegfried & Parzifal, Inc., CPSC Docket No. 08–C0017

Order

Upon consideration of the Settlement Agreement entered into between Siegfried & Parzifal, Inc. (''Siegfried'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Siegfried, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is *ordered*, that the Settlement Agreement be, and hereby is, accepted; and it is *further ordered*, that Siegfried shall pay a civil penalty in the amount of thirty five thousand dollars ($35,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Siegfried to make the foregoing payment when due, interest on the unpaid amount shall accrue and be paid by Siegfried at the federal legal rate of interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August, 2008.

By Order of the Commission

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–18399 Filed 8–11–08; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 08–C0020]

Vacation Clothing Exchange, Inc., d/b/a Basix USA, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e). Published below is a provisionally-accepted Settlement Agreement with Vacation Clothing Exchange, Inc., d/b/a Basix USA, containing a civil penalty of $25,000.00.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by August 27, 2008.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 08–C0020, Office of the Secretary, Consumer Product Safety Commission, 4330 East-West Highway, Room 502, Bethesda, Maryland 20814–4408.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Legal Division, Office of Compliance and Field Operations, Consumer Product Safety Commission, 4330 East-West Highway, Bethesda, Maryland 20814–4408; telephone (301) 504–7587.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: August 5, 2008.

Todd A. Stevenson,

Secretary.

United States of America

Consumer Product Safety Commission

In the Matter of
Vacation Clothing Exchange, Inc. d/b/a Basix USA.
CPSC Docket No. 08–C0020.

Settlement Agreement

1. In accordance with 16 CFR 1118.20, Vacation Clothing Exchange, Inc., d/b/a Basix USA (''Vacation Clothing'') and the staff (''Staff'') of the United States Consumer Product Safety Commission (''Commission'') enter into this Settlement Agreement (''Agreement''). The Agreement and the incorporated attached Order (''Order'') settle the Staffs allegations set forth below.

Parties

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. 2051–2084 (''CPSA'').

3. Vacation Clothing is a corporation organized and existing under the laws of Florida, with its principal offices located in Lauderdale Lakes, FL. At all times relevant hereto, Vacation Clothing imported and sold apparel.

Staff Allegations

4. Between May 2003 and December 2006, Vacation Clothing imported and/or sold to retailers at least 22,420 children's sweatshirts and windbreakers with drawstrings in the hoods (''Drawstring Sweatshirts and Windbreakers'').

5. Retailers sold the Drawstring Sweatshirts and Windbreakers to consumers.

6. The Drawstring Sweatshirts and Windbreakers are ''consumer product[s],'' and, at all times relevant hereto, Vacation Clothing was a ''manufacturer'' of those consumer products, which were ''distributed in commerce,'' as those terms are defined in CPSA sections 3(a)(1), (4), (11), and (12), 15 U.S.C. 2052(a)(1), (4), (11), and (12).

7. In February 1996, the Staff issued the Guidelines for Drawstrings on Children's Upper Outerwear (''Guidelines'') to help prevent children from strangling or entangling on drawstrings. The Guidelines state that drawstrings can cause, and have caused, injuries and deaths when they catch on items such as playground equipment, bus doors, or cribs. In the Guidelines, the Staff recommends that there be no hood and neck drawstrings in children's upper outerwear sized 2T to 12.

8. In June 1997, ASTM adopted a voluntary standard, ASTM F1816–97, that incorporated the Guidelines. The Guidelines state that firms should be aware of the hazards and should be sure garments they sell conform to the voluntary standard.

9. On May 19, 2006, the Commission posted on its Web site a letter from the Commission's Director of the Office of Compliance to manufacturers, importers, and retailers of children's upper outerwear. The letter urges them to make certain that all children's upper outerwear sold in the United States complies with ASTM F1816–97. The letter states that the Staff considers children's upper outerwear with drawstrings at the hood or neck area to be defective and to present a substantial risk of injury to young children under Federal Hazardous Substances Act (''FHSA'') section 15(c), 15 U.S.C. 1274(c). The letter also notes the CPSA's section 15(b) reporting requirements.

10. The Commission was not informed of any incidents or injuries from the Drawstring Sweatshirts and Windbreakers.

11. Vacation Clothing's distribution in commerce of the Drawstring Sweatshirts and Windbreakers did not meet the Guidelines or ASTM F1816–97, failed to comport with the Staff's May 2006 defect notice, and posed a strangulation hazard to children.

12. On February 13, 2007, the Commission and Vacation Clothing announced a recall of the Drawstring Sweatshirts and Windbreakers, informing consumers that they should immediately remove the drawstrings to eliminate the hazard.

13. Vacation Clothing had presumed and actual knowledge that the Drawstring Sweatshirts and Windbreakers distributed in commerce posed a strangulation hazard and presented a substantial risk of injury to children under FHSA section 15(c)(l), 15 U.S.C. 1274(c)(1). Vacation Clothing had obtained information that reasonably supported the conclusion that the Drawstring Sweatshirts and Windbreakers contained a defect that could create a substantial product hazard or that they created an unreasonable risk of serious injury or death. CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), required Vacation Clothing to immediately inform the Commission of the defect and risk.

14. Vacation Clothing knowingly failed to immediately inform the Commission about the Drawstring Sweatshirts and Windbreakers as required by CPSA sections 15(b)(2) and (3), 15 U.S.C. 2064(b)(2) and (3), and as the term ''knowingly'' is defined in CPSA section 20(d), 15 U.S.C. 2069(d). This failure violated CPSA section l9(a)(4), 15 U.S.C. 2068(a)(4). Pursuant to CPSA section 20, 15 U.S.C. 2069, this failure subjected Vacation Clothing to civil penalties.

Vacation Clothing Response

15. Vacation Clothing denies the Staff's allegations above that Vacation Clothing knowingly violated the CPSA.

Agreement of the Parties

16. Under the CPSA, the Commission has jurisdiction over this matter and over Vacation Clothing.

17. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Vacation Clothing, or a determination by the Commission, that Vacation Clothing has knowingly violated the CPSA.

18. In settlement of the Staff's allegations, Vacation Clothing shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in five (5) installments as follows: The first installment of five-thousand dollars ($5,000.00) shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second payment of five-thousand dollars ($5,000.00) shall be paid within six (6) months of service of the Commission's final Order accepting the Agreement; the third payment of five-thousand dollars ($5,000.00) shall be paid within twelve (12) months of service of the Commission's final Order accepting the Agreement; the fourth payment of five-thousand dollars ($5,000.00) shall be paid within eighteen (18) months of service of the Commission's final Order accepting the Agreement; and the fifth payment of five-thousand dollars ($5,000.00) shall be paid within twenty-four (24) months of service of the Commission's final Order accepting the Agreement. Each payment shall be by check payable to the order of the United States Treasury.

19. Upon provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e). In accordance with 16 CFR 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) calendar days, the Agreement shall be deemed finally accepted on the sixteenth (16th) calendar day after the date it is published in the **Federal Register**.

20. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Vacation Clothing knowingly, voluntarily, and completely waives any rights it may have regarding the Staffs allegations to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Order or of the Commission's actions; (3) a determination by the Commission of whether Vacation Clothing failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

21. The Commission may publicize the terms of the Agreement and the Order.

22. The Agreement and the Order shall apply to, and be binding upon, Vacation Clothing and each of its successors and assigns.

23. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Vacation Clothing to appropriate legal action.

24. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and the Order may not be used to vary or contradict their terms. The Agreement shall not be waived, amended, modified, or otherwise altered without written agreement thereto executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

25. If any provision of the Agreement and the Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and the Order, such provision shall be fully severable. The balance of the Agreement and the Order shall remain in full force and effect, unless the Commission and Vacation Clothing agree that severing the provision materially affects the purpose of the Agreement and the Order.

26. Pursuant to section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, the Commission delegated to the Assistant Executive Director for Compliance and Field Operations the authority to act, with the concurrence of the General Counsel, for the Commission under 16 CFR 1118.20 with respect to Staff allegations that any person or firm violated 15 U.S.C. 2068, where the total amount of the settlement involves no more than $100,000.

Vacation Clothing Exchange, Inc. d/b/a Basix USA

Dated: 7/21/08 By:

Benjamin Perelmutter,

Vice President, Vacation Clothing Exchange, Inc., d/b/a Basix USA.
2778 NW 31st Avenue.
Lauderdale Lakes, FL 33311.
Dated: 7/21/08 By:

Brian Kopelowitz, Esquire,
The Kopelowitz Ostrow Law Firm, P.A.
200 SW 1st Avenue, 12th Floor
Fort Lauderdale, FL 33301
Attorney for Vacation Clothing Exchange, Inc., d/b/a Basix USA.

U.S. Consumer Product Safety Commission Staff

J. Gibson Mullan,
Assistant Executive Director,
Office of Compliance and Field Operations.
Ronald G. Yelenik,
Acting Director,
Legal Division,
Office of Compliance and Field Operations.

Dated: 7/31/08 By:

Dennis C. Kacoyanis,
Trial Attorney,
Legal Division,
Office of Compliance and Field Operations.

United States of America

Consumer Product Safety Commission

In the Matter of Vacation Clothing Exchange, Inc. d/b/a Basix USA. CPSC Docket No. 08–C0020

Order

Upon consideration of the Settlement Agreement entered into between Vacation Clothing Exchange, Inc., d/b/a Basix USA (''Vacation Clothing'') and the U.S. Consumer Product Safety Commission (''Commission'') staff, and the Commission having jurisdiction over the subject matter and over Vacation Clothing, and pursuant to the authority delegated in section 6(d) of the Interim Delegation of Authority ordered by the Commission on February 1, 2008, and it appearing that the Settlement Agreement and the Order are in the public interest, it is

Ordered, that the Settlement Agreement be, and hereby is, accepted; and it is

Further ordered, that Vacation Clothing shall pay a civil penalty in the amount of twenty-five thousand dollars ($25,000.00) in five (5) installments as follows: The first payment of five-thousand dollars ($5,000.00) shall be paid within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement; the second payment of five-thousand dollars ($5,000.00) shall be paid within six (6) months of service of the Commission's final Order accepting the Agreement; the third payment of five-thousand dollars ($5,000.00) shall be paid within twelve (12) months of service of the Commission's final Order accepting the Agreement; the fourth payment of five-thousand dollars ($5,000.00) shall be paid within eighteen (18) months of service of the Commission's final Order accepting the Agreement; and the fifth payment of five-thousand dollars ($5,000.00) shall be paid within twenty-four (24) months of service of the Commission's final Order accepting the Agreement. Each payment shall be made by check payable to the order of the United States Treasury. Upon the failure Vacation Clothing to make the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Vacation Clothing at the federal legal rate of interest set forth at U.S.C. 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 4th day of August 2008.

By order of the commission:

Todd A. Stevenson,

Secretary, U.S. Consumer Product Safety Commission.

[FR Doc. E8–18400 Filed 8–11–08; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0084]

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Logistics Agency is amending a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on September 11, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: DP, 8725 John J. Kingman Road, Stop 2533, Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 5, 2008.

Patricia Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

S700.30

SYSTEM NAME:

Operational Accounting Records for Civilian Employee-Based Expenditures (June 13, 2005, 70 FR 34105).

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with ''Enterprise Business System (EBS).''

SYSTEM LOCATION:

Delete entry and replace with ''Financial Compliance and Process Management (J–89), Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6238, Fort Belvoir, VA 22060–6221.

EBS Processing Center (EPC), DISA/DECC-Ogden, Building 981, 7879 Wardleigh Road, Hill AFB, UT 84056–5997''.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Defense Logistics Agency (DLA) civilian employees and civilian employees of other DOD Components who receive accounting and financial management support from DLA under an administrative support agreement.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, Social Security Number (SSN), activity code, home address, Country Code, Electronic Fund Transfer waiver, Financial Institution, Bank Routing Number, Bank Account Number, Account Type, gross pay data (date paid, disbursing officer voucher number, disbursing station symbol number, pay period ending date, pay system code, grade, pay/straight rate, work schedule, temporary position code, gross reconciliation code, job order number, hours extended, hours paid, and earnings/employer contributions amount), and reconciliation or error data (if applicable).''

* * * * *

PURPOSE(S):

Delete entry and replace with ''Records are used to initiate reimbursements to enable the Defense Finance and Accounting Service (DFAS) to distribute payments to DLA employees for certain miscellaneous out-of-pocket expenses (training,

tuition, Permanent Change of Station, etc). Records are also used to identify employee-related costs associated with reimbursable orders received by DLA and to enable accurate billing of those reimbursable orders.

Records are used to create a general ledger file containing the accounts necessary to reflect DLA operational costs. Operations costs consist of operating accounts, liability accounts, budgetary accounts, and statistical accounts, maintained for the purposes of establishing, in summary form, the status of the DLA accounts and to provide an audit trail to verify accuracy of reports.

Records are used by financial management offices to validate and accurately record employee-labor operational expenses.

Records are used to determine DLA civilian payroll budgetary requirements.

Records are used by internal auditors to conduct audits or investigations into the DLA accounting and financial management process.

Records are used by the DOD Components who receive accounting and financial management support from DLA under an administrative support agreement for accounting and financial management purposes.

Records devoid of personal identifiers are used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by DOD or other government agencies.

Statistical data, with all personal identifiers removed, may be used by management for program evaluation, review, or oversight purposes.

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''Records are retrieved by individual's name, Employee Number, and Social Security Number.''

SAFEGUARDS:

Delete entry and replace with ''Physical entry is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted by access profiles to those who require the records in the performance of their official duties. All Personally Identifiable Information is encrypted with accessibility limited to permitted access profiles. Access to personal information is further restricted by the use of passwords that are changed periodically.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''General ledger postings are cutoff at the end of the fiscal year and are maintained for 6 years and 3 months, and then destroyed.

Reconciliation or error records may remain in the system no longer than 2 years. These reconciliations or error records are kept by DFAS 6 years and 3 months, and then destroyed.

Ready to pay file disposition is pending (until the National Archives and Records Administration has approved the retention and disposal of ready to pay files, treated them as permanent.''

* * * * *

S700.30

SYSTEM NAME:

Enterprise Business System (EBS).

SYSTEM LOCATION:

Financial Compliance and Process Management (J–89), Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6238, Fort Belvoir, VA 22060–6221.

EBS Processing Center (EPC), DISA/DECC-Ogden, Building 981, 7879 Wardleigh Road, Hill AFB, UT 84056–5997.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Defense Logistics Agency (DLA) civilian employees and civilian employees of other DOD Components who receive accounting and financial management support from DLA under an administrative support agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), activity code, home address, Country Code, Electronic Fund Transfer waiver, Financial Institution, Bank Routing Number, Bank Account Number, Account Type, gross pay data (date paid, disbursing officer voucher number, disbursing station symbol number, pay period ending date, pay system code, grade, pay/straight rate, work schedule, temporary position code, gross reconciliation code, job order number, hours extended, hours paid, and earnings/employer contributions amount), and reconciliation or error data (if applicable).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 31 U.S.C. 3512, Executive agency accounting and other financial management reports and plans, as amended by Pub.L. 104–208, Federal Financial Management Improvement Act of 1996; and E.O. 9397 (SSN).

PURPOSE(S):

Records are used to initiate reimbursements to enable the Defense Finance and Accounting Service (DFAS) to distribute payments to DLA employees for certain miscellaneous out-of-pocket expenses (training, tuition, Permanent Change of Station, etc). Records are also used to identify employee-related costs associated with reimbursable orders received by DLA and to enable accurate billing of those reimbursable orders.

Records are used to create a general ledger file containing the accounts necessary to reflect DLA operational costs. Operations costs consist of operating accounts, liability accounts, budgetary accounts, and statistical accounts, maintained for the purposes of establishing, in summary form, the status of the DLA accounts and to provide an audit trail to verify accuracy of reports.

Records are used by financial management offices to validate and accurately record employee-labor operational expenses.

Records are used to determine DLA civilian payroll budgetary requirements.

Records are used by internal auditors to conduct audits or investigations into the DLA accounting and financial management process.

Records are used by the DOD Components who receive accounting and financial management support from DLA under an administrative support agreement for accounting and financial management purposes.

Records devoid of personal identifiers are used for extraction or compilation of data and reports for management studies and statistical analyses for use internally or externally as required by DOD or other government agencies.

Statistical data, with all personal identifiers removed, may be used by management for program evaluation, review, or oversight purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Office of Management and Budget for the purposes of conducting reviews, audits, or inspections of agency practices.

The DOD ''Blanket Routine Uses'' apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records may be stored on both paper and electronic media.

RETRIEVABILITY:

Records are retrieved by individual's name, Employee number, and Social Security Number (SSN).

SAFEGUARDS:

Physical entry is restricted by the use of locks, guards, and administrative procedures. Access to personal information is restricted by access profiles to those who require the records in the performance of their official duties. All Personally Identifiable Information is encrypted with accessibility limited to permitted access profiles. Access to personal information is further restricted by the use of passwords that are changed periodically.

RETENTION AND DISPOSAL:

General ledger postings are cut off at the end of the fiscal year and are maintained for 6 years and 3 months, and then destroyed.

Reconciliation or error records may remain in the system no longer than 2 years. These reconciliations or error records are kept by the DFAS 6 years and 3 months, and are then destroyed.

Ready to pay file disposition is pending (until the National Archives and Records Administration has approved the retention and disposal of ready to pay files, treated them as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Staff Director, Financial Compliance and Process Management (J–89), Headquarters, Defense Logistics Agency, 8725 John J. Kingman Road, Stop 6238, Fort Belvoir, VA 22060–6221.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Office, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their full name, Social Security Number (SSN), current address, telephone number, and office or organization where currently assigned, if applicable.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Individuals should provide their full name, Social Security Number (SSN), current address, telephone number, and office or organization where currently assigned, if applicable.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in 32 CFR part 323, or may be obtained from the Privacy Act Office, Headquarters Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

Existing DLA and DFAS databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–18595 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2008–OS–0083]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice To Amend a System of Records.

SUMMARY: Defense Information Systems Agency proposes to amend a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 11, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Defense Information Systems Agency, 5600 Columbia Pike, Room 933-I, Falls Church, VA 22041–2705.

FOR FURTHER INFORMATION CONTACT: Ms. Jeanette M. Weathers-Jenkins at (703) 681–2103.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

K890.11

SYSTEM NAME:

Manage to Pay (M2P) Files (June 12, 2008, 73 FR 33412).

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, Grade, Pay cost, Location code (Org), Program element code (PE), Object class code (EEIC), Gross reconciliation code (GRC), Hours, Document number, and Emergency or Special Pay Code (ESP).''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are continuously updated. Obsolete computer records are erased or overwritten at the end of two years.''

* * * * *

K890.11

SYSTEM NAME:

Manage to Pay (M2P) Files.

SYSTEM LOCATION:

Defense Information Systems Agency (DISA), ATTN: CFE7, P.O. Box 4502, Arlington, VA 22204–4502.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DISA civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Grade, Pay cost, Location code (Org), Program element code (PE), Object class code (EEIC), Gross reconciliation code (GRC), Hours, Document number, and Emergency or Special Pay Code (ESP).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 113, Secretary of Defense; DoD Directive 5105.19, Defense Information Systems Agency (DISA); and E.O. 9397 (SSN).

PURPOSE(S):

To assist DISA officials and employees in the management, supervision, and administration of the decentralized payroll system.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The ''Blanket Routine Uses'' set forth at the beginning of the DISA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media.

RETRIEVABILITY:

Individual's name and/or organization and program element code.

SAFEGUARDS:

Guards secure buildings during non-duty hours. Management personnel, who are responsible for maintaining the confidentiality of the records, control access to the records. Use of the information is restricted to those who require the records in the performance of their official duties and with a need-to-know. Access to personnel information is further restricted by the use Common Access Card (CAC) authorization.

RETENTION AND DISPOSAL:

Records are continuously updated. Obsolete computer records are erased or overwritten at the end of two years.

SYSTEM MANAGER(S) AND ADDRESS:

System manager, CFE7, Defense Information Systems Agency, P.O. Box 4520, Arlington, VA 22204–4502.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquire to System Manger, CFE7, Defense Information Systems Agency, P.O. Box 4520, Arlington, VA 22204–4502.

The individual should refer to the office where he/she is/was assigned or affiliated. Include address and telephone number applicable to the period during which the record was maintained. Social Security Number (SSN) will be used for positive identification.

RECORDS ACCESS PROCEDURE:

Individuals seeking access to information about themselves contained in this system of records should address written inquires to System Manger, CFE7, Defense Information Systems Agency, P.O. Box 4520, Arlington, VA 22204–4502.

The individual should refer to the office where he/she is/was assigned or affiliated and include address and telephone number applicable to the period during which the record was maintained. Social Security Number (SSN) will be used for positive identification.

CONTESTING RECORD PROCEDURES:

DISA's rules for accessing records, for contesting contents and appealing initial agency determinations are published in DISA Instruction 210–225–2 at 32 CFR part 316 or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employee, DISA Accounting system, DISA payroll database records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–18596 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0052]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Delete a System of Records.

SUMMARY: The Department of the Army is deleting a system of records in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 11, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Department of the Army, Records Management and Declassification Agency, Privacy Division, 7701 Telegraph Road, Alexandria, VA 22315.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of Army proposes to delete a system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0037–1 DAPE

SYSTEM NAME:

Resource Management and Cost Accounting Files (February 22, 1993, 58 FR 10002).

REASON:

These records are now covered under notice T7905, Labor Cost and Reporting System (August 16, 2007, 72 FR 46040).

[FR Doc. E8–18588 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0051]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Department of the Army is proposing to add a system of records to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 11, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the

Federal Register and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 28, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals', dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0215c FMWRC

SYSTEM NAME:

Learning Management System (MWR–LMS).

SYSTEM LOCATION:

Cogent Communications, 510 Huntmar Park Dr, Herndon, VA 20170–5100.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Department of Army employees and contractor personnel receiving training funded or sponsored by the Army. Department of Defense military personnel employees and contractor personnel receiving training funded or sponsored by the Army. Coast Guard and non-appropriated fund personnel may be included in the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number (SSN); date of birth, addresses; occupational series, grade, and supervisory status; registration and training data, including application or nomination documents, pre- and post-test results, student progress data, start and completion dates, and course descriptions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM

10 U.S.C. 3013, Secretary of the Army; 26 U.S.C. 6041, Information at Source; DoD Directive 1015.2, Military Morale, Welfare and Recreation (MWR); The Government Employees Training Action of 1958 (U.S. Code, Title 5, Section 4101 to 4118); DoD Instruction 1015.10, Program for Military Morale, Welfare and Recreation (MWR); Army Regulation 215–1, Morale, Welfare and Recreations Activities and Non-appropriated Fund Instrumentalities; Army Regulation 215–3, Nonappropriated Fund Personnel Policy; Army Regulation 215–4, Nonappropriated Fund Contracting; Army Regulation, 608–10 Child Development Services; and E.O. 9397 (SSN).

PURPOSE(S):

To provide central registration, course enrollment, web-based learning, a career management tool, and a range of performance support tools. It provides anywhere, anytime training to employees worldwide.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local agencies and oversight entities to track, manage, and report on mandatory training requirements and certifications.

To public and private sector educational, training, and conferencing entities for participant enrollment, tracking, evaluation, and payment reconciliation purposes.

To Federal agencies for screening and selecting candidates for training or developmental programs sponsored by the agency.

The ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

Automated records may be retrieved by Social Security Number, name, logon identification, password, or by a combination of these data elements. Manual records are retrieved by employee last name or Social Security.

SAFEGUARDS:

Data is encrypted and password protected. The system is only accessible to registered users by access through login and password that is activated upon registration. Registrants must click the activation e-mail in order to activate their login.

RETENTION AND DISPOSAL:

Transcript and training records on individual users are kept active to provide official transcript records to students. Student transcript records are kept active for 10 years.

SYSTEM MANAGERS(S) AND ADDRESS:

FMWRC, Family and Morale Welfare Recreation Center Workforce Development, Morale Welfare Recreation (MWR) Academy, 5285 Shawnee Road, Suite 200, Alexandria, VA 22312–2328.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Morale Welfare Recreation (MWR) Academy at 5285 Shawnee Road, Suite 200, Alexandria, VA 22312–2328.

Individuals must provide name, rank, Social Security Number (SSN), proof of identification, and any other pertinent information necessary.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Morale Welfare Recreation (MWR) Academy at 5285 Shawnee Road, Suite 200, Alexandria, VA 22312–2328.

Individuals must provide name, rank, Social Security Number (SSN), proof of identification, and any other pertinent information necessary.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Student input, classroom instructors, system administrators/instructors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–18589 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0054]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record

systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 11, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0027–60a DAJA

SYSTEM NAME:

Patent, Copyright, Trademark, and Proprietary Data Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''U.S. Army Legal Services Agency, JALS–IP, 901 North Stuart Street, Arlington, VA 22203–1837.''

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 301, Departmental Regulations, and Army Regulation 27–60, Intellectual Property.''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

SAFEGUARDS:

Change the word therefor to ''therefore''.

* * * * *

A0027–60a DAJA

SYSTEM NAME:

Patent, Copyright, Trademark, and Proprietary Data Files.

SYSTEM LOCATION:

Primary location: U.S. Army Legal Services Agency, JALS–IP, 901 North Stuart Street, Arlington, VA 22203–1837.

Secondary location: Office of the Staff Judge Advocate at major Army commands, field operating agencies, and installations. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have submitted inventions to the Government; inventors with patents or applications for patents procured on behalf of the Department of the Army or in which the government has an interest; authors of copyrightable or copyrighted material in which the government has an interest; and government employees to whom copyright assistance has been rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents relating to; disposition of rights in Government employees' inventions; foreign patent filings; licensing of government-owned patents, copyrights, and service marks; government interest in or under patents, applications for patent, and copyrights procured on behalf of the Department of the Army; and invention disclosures including drawings, patentability search reports, evaluation reports, applications, amendments, petitions, appeals, interferences, licenses, assignments, other instruments, and relevant correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 301, Departmental Regulations, and Army Regulation 27–60, Intellectual Property.

PURPOSE(S):

To determine the rights in government employee inventions, and to maintain evidence and record of documents used in filing for foreign patents; invention disclosures submitted to the Department of the Army; patents and applications for patent procured on behalf of the Army or in which the Army has an interest; patent and copyright licensing and assignments; and copyright assistance rendered.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The U.S. Patent and Trademark Office, Department of Commerce, and/or to the Copyright Office, Library of Congress.

In the event of legal proceedings and litigation, information may be disclosed to the Civil Division, Department of Justice.

For foreign patent filings records are presented to the Director of Patent Administration, Department of National Defense in Ottawa, Ontario, Canada.

Parties to a licensing arrangement have access to the specific files involved.

Concerned contractors and/or Government agencies have access in order to conduct patent investigations and evaluations.

Information from this system of records may be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in buildings protected by secured guards, and are accessible only to authorized persons having need therefore in the performance of official duties.

RETENTION AND DISPOSAL:

At the primary location: records pertaining to patent matters are retained for 20 to 25 years depending on the specific case; those concerning copyright matters are retained either for 56 years or an expiration of copyright not renewed, after which they are destroyed by shredding.

Records at the secondary locations are destroyed after 2 years.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210; senior patent attorney at each secondary location.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individuals should provide full name, current address and telephone number, the case number or other identifying information on correspondence emanating from the Army.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individuals should provide full name, current address and telephone number, the case number or other identifying information on correspondence emanating from the Army.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records, the government agency interested in the invention or copyright, research material in libraries, the Patent and Trademark Office, and/or the Copyright Office.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–18590 Filed 8–11–08; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0053]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 11, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/ Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0350–1 DAMI

SYSTEM NAME:

INSCOM, Personal Qualification and Training Profile (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; Army Regulation 350–1, Army Training and Leadership Development; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and on electronic storage media.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/ Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish their full name, any alias, Social Security Number (SSN), date and place of birth, current address, telephone number, and a notarized signature.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish their full name, any alias, Social Security Number (SSN), date and place of birth, current address, telephone number, and a notarized signature.''

CONTESTING RECORD PROCEDURES:

Delete and replace entry with ''The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.''

* * * * *

A0350–1 DAMI

SYSTEM NAME:

INSCOM, Personal Qualification and Training Profile.

SYSTEM LOCATION:

United States Army Intelligence and Security Command, Fort Belvoir, VA 22060–5370.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army military personnel assigned to Headquarters, United States Army Intelligence and Security Command and its attached activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's name, Social Security Number, pay grade, primary military occupational specialty (PMOS)/Specialty skill identifier (SSI), date of last evaluation report, sex, date of birth, organization/unit processing code, duty section, height, weight, weight control program status, physical profile factors (PULHES), date of last physical examination, examination, profile status, expiration date of temporary profile, over 40 medical clearance status, date last Human Immunodeficiency Virus (HIV) test, date

last Army physical fitness test (APFT), APFT results, APFT scores, date last skill qualification test (SQT), SQT score, PLDC attendance, CAS3 attendance, date last weapons qualification, weapons qualification status, caliber of weapon in which qualified, date last subversion and espionage directed against defense in which qualified, date last subversion and espionage directed against defense activities (SAEDA) training, date of last operations security training, and similar personnel, medical and training related data pertaining to assignments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 350–1, Army Training and Leadership Development; and E.O. 9397 (SSN).

PURPOSE(S):

To maintain a consolidated file of specified personnel, medical and training related data pertaining to all Army military personnel assigned to Headquarters United States Army Intelligence and Security Command and their supporting tenant activities. A consolidated records system of selected data is required to more efficiently and effectively provide management and training support to assigned personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ASSESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By individual's name, Social Security Number or other individually identifying characteristics.

SAFEGUARDS:

Military police are used as security personnel. A stringent employee identification badge and visitor registration/escort system is in effect. The computer terminal and hard copy records are maintained in areas accessible only to authorized personnel who have a need for the information in the performance of their official duties. The computerized records system is accessed and updated by the custodian of the records system and by a limited number of other personnel responsible for servicing the records in the performance of their official duties. Access to the computer file requires utilization of a password. Once in the system, access is restricted to only the user's applicable portions of the system. One unit cannot access another unit's records. All hard copy products bear Privacy Act labels.

RETENTION AND DISPOSAL:

All data pertaining to an individual is deleted from the computer file during the individual's out-processing. Paper records are retained for 2 years and are destroyed as unclassified For Official Use Only waste.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, United States Army Intelligence and Security Command, Fort Belvoir, VA 22060–5370.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish their full name, any alias, Social Security Number (SSN), date and place of birth, current address, telephone number, and a notarized signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the United States Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort Meade, MD 20755–5995.

Individuals must furnish their full name, any alias, Social Security Number (SSN), date and place of birth, current address, telephone number, and a notarized signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual and from the official military personnel records, official health records and local training records during in-processing. Data for updates to records in the system are obtained from the individual and from source documents utilized to update the individual's official records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–18591 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0055]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Department of the Army is proposing to alter a system of records in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective on September 11, 2008 unless comments are received that would result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on July 29, 2008, to the House Committee on Oversight and Government Reform, the Senate Committee on Homeland Security and Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: August 1, 2008.

Patricia L. Toppings

OSD Federal Register Liaison Officer, Department of Defense.

A0027–20c DAJA

System name:

Army Property Claim Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Individuals who, having damaged Government property, were not subject to the collection activities of other agencies or organizations and from whom the Department of the Army must recover its damages through administrative collection or through litigation on its behalf.''

CATEGORY OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Individual's name, address and telephone number, case, claim and court docket numbers, copies of reports from the claim investigator, accident and police reports relating to damage, and pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied material involved in representing the U.S. Army.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 3013, Secretary of the Army; 31 U.S.C. 3711, Collection and Compromise; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

RETRIEVABILITY:

Delete entry and replace with ''By individual's surname.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records at the Judge Advocate General's Office are destroyed 10 years after final action; *i.e.*, completion of litigation of determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 6 years and 3 months after final action.''

* * * * *

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Delete second paragraph and replace with ''Individual should provide their full name, current address and telephone number, case or claim number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.''

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Delete second paragraph and replace with ''Individuals should provide their full name, current address and telephone number, case or claim number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.''

* * * * *

A0027–20c DAJA

SYSTEM NAME:

Army Property Claim Files.

SYSTEM LOCATION:

Staff Judge Advocate Offices at Army commands, field operating agencies, installations, and activities. A segment of the system is located at U.S. Army Claims Service, Fort Meade, MD 20755–5360.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who, having damaged Government property, were not subject to the collection activities of other agencies or organizations and from whom the Department of the Army must recover its damages through administrative collection or through litigation on its behalf.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, address and telephone number, case, claim and court docket numbers, copies of reports from the claim investigator, accident and police reports relating to damage, and pleadings, motions, briefs, orders, decisions, memoranda, opinions, supporting documentation, and allied material involved in representing the U.S. Army.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 31 U.S.C. 3711, Collection and Compromise; Army Regulation 27–20, Claims; and E.O. 9397 (SSN).

PURPOSE(S):

To negotiate with, or to sue, as appropriate, insurance carriers, the individuals or entities responsible for loss or damage of U.S. Army property.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to the Department of Justice, U.S. Attorney, and opposing parties and their attorneys as deemed necessary in litigating property claims.

Information from this system of records may also be disclosed to law students participating in a volunteer legal support program approved by the Judge Advocate General of the Army.

The ''Blanket Routine Uses'' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are accessible only by authorized personnel who are properly instructed in the permissible use of the information.

RETENTION AND DISPOSAL:

Records at the Judge Advocate General's Office are destroyed 10 years after final action; *i.e.*, completion of litigation of determination that case will not be prosecuted. Claims settled by local Staff Judge Advocates are destroyed 6 years and 3 months after final action.

SYSTEM MANAGER(S) AND ADDRESS:

The Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individual should provide their full name, current address and telephone number, case or claim number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Judge Advocate General, Headquarters, Department of the Army, Washington, DC 20310–2210.

Individuals should provide their full name, current address and telephone number, case or claim number that appeared on documentation, any other information that will assist in locating pertinent records, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; Army records and reports; Office of Personnel Management; Department of Justice, U.S. Attorney, opposing counsel, and similar pertinent sources.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–18592 Filed 8–11–08; 8:45 am]
BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0056]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 11, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 6, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0055–355b DALO

SYSTEM NAME:

Individual Travel Files (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 704, Duties of Trustee; 10 U.S.C. 3013, Secretary of the Army; Army Regulation 55–355, Defense Traffic Management Regulation and E.O. 9397 (SSN).''

* * * * *

STORAGE:

Delete entry and replace with ''Paper records in file folders and electronic storage media.''

* * * * *

A0055–355b DALO

SYSTEM NAME:

Individual Travel Files.

SYSTEM LOCATION:

Travel offices at installations, major commands, and Army Staff Agencies.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Army military (active and reserve) and civilian personnel, U.S. Government personnel assigned to Army and other military installations, their dependents and bona fide members of individual's household, and U.S. personnel traveling under Army sponsorship, including contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents pertaining to travel of persons on official Government business, and/or their dependents, including but not limited to travel assignment orders, authorized leave en route, availability of quarters and/or shipment of household goods and personal effects, application for passport/visas, the passport authorized travel, security clearance and relevant messages and correspondence. Records may also include clearances for official travel to or within certain foreign countries which may require military theater/area and/or Department of State authorization pursuant to DoD Directive 5000.7 or other established military requirement applying in overseas commands for personal unofficial travel in certain foreign countries.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 704, Duties of Trustee; Army Regulation 55–355, Defense Traffic Management Regulation and E.O. 9397 (SSN).

PURPOSE(S):

To process official travel requests (and personal travel to restricted areas if in overseas commands) for military and civilian personnel; to determine eligibility of individual's dependents to travel; to obtain necessary clearances where foreign travel is involved, including assisting individual in applying for passports and visas and counseling where proposed travel involves visiting/transiting communist countries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to attaché or law enforcement authorities of foreign countries; to U.S. Department of Justice or Department of Defense legal/intelligence/investigative agencies for security, investigative, intelligence, and/or counterintelligence operations.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and electronic storage media.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized persons who are properly screened, cleared, and trained. Buildings housing records are either located on controlled access post or otherwise secured when offices are closed.

RETENTION AND DISPOSAL:

Records are retained for 2 years after which they are destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

The Adjutant General, Headquarters, Department of the Army, 2461 Eisenhower Avenue, Alexandria, VA 22331–0470.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Administrative or Personal Services Office at the installation/major command at which travel request/clearance was initiated.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the appropriate decentralized record custodian.

Individual should provide full name, grade/rank, signature, and details of travel authorization/clearance documents being accessed. Custodian of records may require notarized statement of identity.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual requesting travel authorization/clearance; Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E8–18593 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0050]

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on September 11, 2008 unless comments are received which result in a contrary determination.

ADDRESSES: Department of the Army, Freedom of Information/Privacy Division, U.S. Army Records Management and Declassification Agency, 7701 Telegraph Road, Casey Building, Suite 144, Alexandria, VA 22325–3905.

FOR FURTHER INFORMATION CONTACT: Ms. Vicki Short at (703) 428–6508.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: August 1, 2008.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

A0381–100a DAMI

SYSTEM NAME:

Intelligence/Counterintelligence Source Files (November 1, 1995, 60 FR 51996).

CHANGES:

* * * * *

STORAGE:

Delete entry and replace with ''Paper records and electronic storage media.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Buildings employ alarms, security guards and/or rooms are security controlled accessible only to authorized persons. Paper records in the IRR are stored in security controlled areas accessible only to authorized persons. Electronically stored records are maintained in specialized software with password protected access and data backup measures. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records are retained in active file until no longer needed; then retired to the IRR where they are destroyed 75 years after date of last action. Destruction is by shredding, burning, or pulping for paper records and magnetic erasing for electronic records.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort George G. Meade, MD 20755–5995.

Individual should provide their full name, any alias, Social Security Number (SSN), date and place of birth, current address, telephone number and notarized signature.''

RECORD ACCESS PROCEDURES:

Delete the first and second paragraphs and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort George G. Meade, MD 20755–5995.

Individual should provide their full name, any alias, Social Security Number (SSN), date and place of birth, current address, telephone number and notarized signature.''

Delete the third paragraph.

* * * * *

A0381–100a DAMI

SYSTEM NAME:

Intelligence/Counterintelligence Source Files.

SYSTEM LOCATION:

U.S. Army Intelligence and Security Command, 8825 Beulah Street, Fort Belvoir, VA 22060–5246.

Decentralized segments are located at U.S. Army Intelligence brigades, groups, battalions, companies, detachments, and field offices and resident offices worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Selected individuals who qualify and may be accepted as an intelligence or counterintelligence source for the U.S. Army.

CATEGORIES OF RECORDS IN THE SYSTEM:

Record consists of agreements; contracts; information reports; financial reports; operational correspondence; requests for, technical files, and results of polygraph examinations; audiovisual products and similar documents necessary to confirm operational use of source or future claims against the Army by source or heirs of the source. Administrative records required by the U.S. Army Investigative Records Repository (IRR) for records management purposes such as form transmitting operational material to the IRR and providing instructions for indexing the record in the Defense Central Index of Investigations [Defense Clearance and Investigations Index] (System Notice V5–02) and release of material contained therein, form indicating dossier has been reviewed and all material therein conforms to Department of Defense (DoD) policy regarding retention criteria, form pertaining to the release of information pertaining to controlled records, cross reference sheet to indicate the removal of investigative documents requiring limited access, form identifying material that has been segregated and or is exempt from release, and records accounting for the disclosure of operational information made outside of the DoD.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; National Security Act of 1947, as amended; E.O. 10450, Security Requirements for Government Employment, paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 14; E.O. 12333, United States Intelligence Activities, paragraphs 1.1(c), 1.1(d), 1.12(d), 2.3, 2.4, and 2.6; the National Security Act of 1947, as amended; the Intelligence Authorization Act of 1995, title V, section 503 and title VIII, sections 801–811 and E.O. 9397 (SSN).

PURPOSE(S):

To support contingency planning and military operations, to conduct counterintelligence and intelligence operations, to confirm claims against the Army by source or heirs of source, and to document source operations pertaining to the U.S. Army's responsibilities for intelligence and counterintelligence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as routine uses pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and electronic storage media.

RETRIEVABILITY:

By individual name or source/project name, date and place of birth, Social Security Number, and numerically by source or project number.

SAFEGUARDS:

Buildings employ alarms, security guards and/or rooms are security controlled accessible only to authorized persons. Paper records in the IRR are stored in security controlled areas accessible only to authorized persons. Electronically stored records are maintained in specialized software with password protected access and data backup measures. Records are accessible only to authorized persons with a need-to-know who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are retained in active file until no longer needed; then retired to the IRR where they are destroyed 75 years after date of last action. Destruction is by shredding, burning, or pulping for paper records and magnetic erasing for electronic records.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Intelligence, Headquarters, Department of the Army, 1001 Army Pentagon, Washington, DC 20310–1001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort George G. Meade, MD 20755–5995.

Individual should provide their full name, any alias, Social Security Number (SSN), date and place of birth, current address, telephone number and notarized signature.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the U.S. Army Intelligence and Security Command, Freedom of Information/Privacy Office, 4552 Pike Road, Fort George G. Meade, MD 20755–5995.

Individual should provide their full name, any alias, Social Security Number (SSN), date and place of birth, current address, telephone number and notarized signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From individual; Federal and Department of Defense investigative, intelligence and law enforcement agencies; and foreign investigative, intelligence, and law enforcement agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), (k)(2), or (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. E8–18594 Filed 8–11–08; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Notice of Waiver for the Adult Education and Family Literacy Act to Certain Outlying Areas

AGENCY: Office of Vocational and Adult Education, Department of Education.

ACTION: Notice of Waiver for the Adult Education and Family Literacy Act to Certain Outlying Areas.

SUMMARY: The Secretary waives the requirements in 34 CFR 75.250 and 34 CFR 75.261(c)(2) of the Education Department General Administrative Regulations (EDGAR) to enable the funding of continuation grants for certain outlying areas under section 211(e) of the Adult Education and Family Literacy Act (AEFLA). This waiver enables the current eligible grantees to continue to receive Federal funding beyond the five-year limitation contained in 34 CFR 75.250.

DATES: This notice is effective August 12, 2008.

FOR FURTHER INFORMATION CONTACT: Sarah Newcomb, U.S. Department of Education, 400 Maryland Avenue, SW., Room 11007, Potomac Center Plaza, Washington, DC 20202–7240. Telephone (202) 245–7754 or e-mail: *sarah.newcomb@ed.gov*.

If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) by contacting the program contact person listed in this section.

SUPPLEMENTARY INFORMATION:

Background: The Office of Vocational and Adult Education awarded a discretionary grant on September 1, 2003, under the provisions of section 211(e) of the AEFLA to a group of applicants that included American Samoa, Guam, Northern Marianas, and Palau. Each member of the group could have applied for, and competed with, the other members of the group for section 211(e) funds. However, the applicants decided to file a joint application naming the Northern Marianas College (NMC) as the designated grantee on behalf of the group so that all parties could benefit under a common application. Joint applications of this type are authorized in 34 CFR 75.127 through 129 of EDGAR. AEFLA funds under the grant are targeted to the training of adult educators from all members of the group. No entities other than those in the group are eligible to receive funding under section 211(e).

The project period for the current award to the group ends on August 31, 2008. Congress has appropriated funding for AEFLA, including section 211(e), for both fiscal year 2007 and fiscal year 2008. The Department normally would conduct a new competition because the funding for the current grant, obtained from the fiscal year 2002 through 2006 appropriations, was available to the group beginning in 2003, and under 34 CFR 75.250 the project period generally lasts no longer than 60 months.

On July 7, 2008, in accordance with section 553(b) of the Administrative Procedure Act (APA), the Department gave actual notice to all current eligible grantees of our proposal to waive 34 CFR 75.250 and 34 CFR 75.261(c)(2) and to fund continuation grants instead of holding a new grant competition, and invited their comments on our proposal. The notice also provided the current designated grantee with an opportunity to submit specific information regarding the grant and any plans to improve its current implementation. This waiver will enable the Secretary to provide additional funds to all current, eligible grantees for additional periods for as long Congress continues to appropriate funds under the current legal authority in section 211(e) of AEFLA and possibly during a transition to any new program authorities Congress might create if and when it chooses to reauthorize AEFLA. There is no substantive difference between the actual notice of our proposal and this notice of funding of continuation grants and waiver. Therefore, all affected parties were provided actual notice of the Department's proposal and an opportunity to comment in lieu of publication of a notice of proposed rulemaking in the **Federal Register**.

Comment

In response to the actual notice of proposed funding of continuation grants and waiver, and our invitation to comment, five parties submitted comments supporting the proposed waiver and the proposal to continue funding for all current, eligible grantees. During this period, the current designated grantee also submitted a written agreement, including a program narrative, signed by all the outlying areas eligible for funding, that describes the activities that NMC intends to carry out with funds under a continuation grant. In light of these positive comments and the additional information, we have not made any substantive changes to our proposal.

Waiver of Delayed Effective Date

The APA requires that a substantive rule be published at least 30 days before its effective date, except as otherwise provided for good cause (5 U.S.C. 553(d)(3)). We provided all affected entities an opportunity to submit comments on the Secretary's proposal to waive 34 CFR 75.250 in order to continue the current grant. All of the comments that we received support our proposal. In addition, given that the current grant ends on August 31, 2008, and in order to avoid any lapse in funding under this program, the Secretary has determined that a delayed effective date is unnecessary and contrary to the public interest.

Waiver of 34 CFR 75.250 and 75.261(c)(2)

In determining how to implement section 211(e) this year, the Department considered the relatively small amount of funds appropriated under section 211(e) for fiscal years (FYs) 2007 and 2008 ($61,257 and $65,131, respectively), the burden on group members in having to file either new competitive applications or a new group application, and the commitment of time and resources a new competition would require of the Department and Pacific Resources for Education and Learning (PREL) in Honolulu, which would be required by section 211(e)(2) of AEFLA to make recommendations in a new competition. The Department also has considered the fact that all the entities eligible for funding under section 211(e) are members of the group and receive services through the current grant.

In light of these factors, the Department waives the 60-month limit on the project period established by 34 CFR 75.250 for the existing grant award. The Department plans to continue funding the current grant, rather than conducting a new competition, if the designated grantee submits further satisfactory information regarding its performance under the current grant and its plans to improve implementation of the grant. The Department also waives 34 CFR 75.261(c)(2), which limits the extension of a project period. The Department is waiving this additional regulation in order to be able to continue the current grant with FY 2007 and 2008 funds.

The Department's waiver of the regulations and continued funding of the current grant would extend as long as Congress continues to appropriate funds under the current legal authority in section 211(e), and possibly during a transition to any new program authorities Congress might create with respect to members of the group if and when it reauthorizes AEFLA. However, the continuation would initially only be from FY 2007 funds. The waiver would not affect any other legal provisions governing the grant to group members, including the requirement that

continuation of the grant would depend on the group's meeting the requirements of 34 CFR 75.253. Among other things, § 75.253 conditions continuation of a grant on the grantee's having made substantial progress toward meeting the objectives in its approved application. The grantee also would have to comply with any special conditions of the grant established by the Department in order to receive further continuation funding from the FY 2008 or any future appropriation.

The waivers of 34 CFR 75.250 and 75.261(c)(2) do not exempt the group from the account closing provisions of 31 U.S.C. 1552(a), nor would they extend the availability of funds previously awarded the group. Under 31 U.S.C. 1552(a), appropriations available for a limited period may be used for payment of valid obligations for only five years after the expiration of their period of availability for Federal obligation. After that time, the unexpended balance of those funds will be canceled and returned to the U.S. Treasury Department and will be unavailable for restoration for any purpose.

The Department believes that its waiver of regulations and continued funding of the group application is in the best interests of the members of the group application and the public interest.

Instructions for Requesting a Continuation Award Under EDGAR Part 75

Under applicable EDGAR provisions, a grantee wishing to receive an annual continuation grant must submit a performance report providing the most current performance and financial expenditure information on its project. A grantee must also submit a budget and budget narrative each year it requests a continuation award. (34 CFR 75.253(c)(2)). In addition, a grantee must submit a program narrative that describes the activities it intends to carry out with a continuation award. The activities described must be consistent with, or be a logical extension of, the scope, goals, and objectives of the grantee's approved application. (34 CFR 75.261(c)(3)). The Department will award a continuation grant each year only if the grantee submits a satisfactory performance report, budget and budget narrative, and program narrative.

Regulatory Flexibility Act Certification

The Secretary certifies that this notice of waiver will not have a significant economic impact on a substantial number of small entities. The only entities that would be affected are American Samoa Community College; Guam Community College; Northern Marianas College, the grantee of the group; Ministry of Education Republic of Palau; and PREL.

Paperwork Reduction Act of 1995

This notice of waiver does not contain any information collection requirements.

Intergovernmental Review

This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism. The Executive Order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Assessment of Educational Impact

Based on our own review, we have determined that this notice of waiver does not require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/news/fedregister*.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.gpoaccess.gov/nara/index.html*.

(Catalog of Federal Domestic Assistance Number: 84.002A Outlying Area portion of the State Grant Program)

Program Authority: 20 U.S.C. 9211(e).

Dated: August 7, 2008.

Troy R. Justesen,

Assistant Secretary for Vocational and Adult Education.

[FR Doc. E8–18622 Filed 8–11–08; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Southwestern Power Administration

Notice of Re-Opening of Public Comment Period for White River Minimum Flows—Proposed Determination of Federal and Non-Federal Hydropower Impacts

AGENCY: Southwestern Power Administration, DOE.

ACTION: Notice of re-opening of public comment period.

SUMMARY: Southwestern Power Administration (Southwestern) is re-opening the public comment period on its proposed determination of the Federal and non-Federal hydropower impacts of the White River Minimum Flows project for an additional 45 days. The original notice, issued July 3, 2008, provided a 30-day comment period ending on August 4, 2008 (73 FR 38198). Southwestern is re-opening the comment period until September 18, 2008.

DATES: The public comment period closes on September 18, 2008. Written comments on Southwestern's proposed determination must be received by that date.

ADDRESSES: Comments should be submitted to George Robbins, Director, Division of Resources and Rates, Southwestern Power Administration, U.S. Department of Energy, One West Third Street, Tulsa, Oklahoma 74103.

FOR FURTHER INFORMATION CONTACT: Mr. George Robbins, Director, Division of Resources and Rates, (918) 595–6680, *george.robbins@swpa.gov*.

SUPPLEMENTARY INFORMATION: Southwestern's draft determination was published by **Federal Register** Notice (73 FR 6717) dated February 5, 2008. Written comments were invited through March 6, 2008. All public comments received were considered, and Southwestern's draft determination was revised as necessary to incorporate the public comments. Since there were significant changes to Southwestern's draft determination, Southwestern published a proposed determination for public review and comment prior to its final determination.

Southwestern's proposed determination was published by **Federal Register** Notice (73 FR 38198) dated July 3, 2008. Written comments were invited through August 4, 2008. Due to requests for additional time to provide public comments, Southwestern is re-opening the public comment period for 45 days. Written comments will now be accepted through September 18, 2008. Comments

submitted between August 4, 2008 and August 12, 2008 are deemed timely submitted.

Dated: August 4, 2008.

Jon C. Worthington,

Administrator.

[FR Doc. E8–18574 Filed 8–11–08; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Boulder Canyon Project

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Base Charge and Rates.

SUMMARY: The Deputy Secretary of Energy approved the Fiscal Year (FY) 2009 Base Charge and Rates (Rates) for Boulder Canyon Project (BCP) electric service provided by the Western Area Power Administration (Western). The Rates will provide sufficient revenue to pay all annual costs, including interest expense, and repay investments within the allowable period.

DATES: The Rates will be effective the first day of the first full billing period beginning on or after October 1, 2008. These Rates will stay in effect through September 30, 2009, or until superseded by other rates.

FOR FURTHER INFORMATION CONTACT: Mr. Jack Murray, Rates Manager, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 605–2442, e-mail *jmurray@wapa.gov.*

SUPPLEMENTARY INFORMATION: Rate Schedule BCP–F7, Rate Order No. WAPA–120, effective October 1, 2005, through September 30, 2010, allows for an annual recalculation of the rates.[1]

Under Rate Schedule BCP–F7, the existing composite rate, effective on October 1, 2007, was 17.64 mills per kilowatthour (mills/kWh). The base charge was $66,975,283, the energy rate was 8.82 mills/kWh, and the capacity rate was $1.63 per kilowattmonth (kWmonth). The re-calculated rates for BCP electric service, to be effective October 1, 2008, will result in an overall composite rate of 18.62 mills/kWh. The proposed rates were calculated using the FY 2009 Final Ten-Year Operating Plan. This resulted in an increase of approximately 5.56 percent when compared with the existing BCP electric service composite rate. The increase is due to a decrease in the projected energy sales and an increase in the annual revenue requirement. The FY 2009 base charge is increasing to $70,213,497. The major contributing factor to the base charge increase is the increase in annual expenses. The FY 2009 energy rate of 9.31 mills/kWh is approximately a 5.56 percent increase from the existing energy rate of 8.82 mills/kWh. The increase in the energy rate is due to a decrease in the projected energy sales resulting from a decrease in projected water releases. The FY 2009 capacity rate of $1.73/kWmonth reflects an increase of approximately 6.13 percent compared to the existing capacity rate of $1.63/kWmonth. The increase in the capacity rate is due to dropping lake elevations. Another factor contributing to the increase in both the energy and capacity rates is the increase in the annual revenue requirement.

The following summarizes the steps taken by Western to ensure involvement of all Interested Parties in determining the Rates:

1. A **Federal Register** notice was published on February 1, 2008 (73 FR 6177), announcing the proposed rate adjustment process, initiating a public consultation and comment period, announcing public information and public comment forums, and presenting procedures for public participation.

2. On February 4, 2008, a letter was mailed from Western's Desert Southwest Customer Service Region to the BCP Contractors and other Interested Parties announcing an informal customer meeting and public information and comment forums.

3. Discussion of the proposed Rates was initiated at an informal BCP Contractor meeting held March 12, 2008, in Phoenix, Arizona. At this informal meeting, representatives from Western and the Bureau of Reclamation (Reclamation) explained the basis for estimates used to calculate the Rates and held a question and answer session.

4. At the public information forum held on April 2, 2008, in Phoenix, Arizona, Western and Reclamation representatives explained the proposed Rates for FY 2009 in greater detail and held a question and answer session.

5. A public comment forum held on April 23, 2008, in Phoenix, Arizona, provided the public an opportunity to comment for the record. Three individuals commented at this forum.

6. Western received one comment letter during the 90-day consultation and comment period. The consultation and comment period ended May 1, 2008. All comments were considered in developing the Rates for FY 2009. Written comments were received from:

Irrigation & Electrical Districts Association of Arizona, Phoenix, Arizona.

Comments and responses, paraphrased for brevity when not affecting the meaning of the statements, are presented below.

Rates Stability

Comment: BCP Contractors expressed concern that the composite rate has increased from 8.93 mills/kWh in 2000 to 18.53 mills/kWh in 2009. The BCP Contractors further suggested that since major projects at Hoover which resulted in increased spending are complete and Lake Mead water levels continue to be low, Western and Reclamation should postpone expenditures where possible and strive to structure budgets in such a way to levelize or reduce rates.

Response: Western and Reclamation appreciate the BCP Contractors' concern over reduced generation and increased spending. Much of the increased spending is aimed toward maintaining the reliability of the Hoover resource and achieving maximum energy and capacity even as Lake Mead water levels decline. However, Western and Reclamation will continue to partner with the Hoover Contractors, through the Engineering and Operating Committee and the Technical Review Committee, to seek ways to structure budgets in such a way to minimize cost increases while maintaining the safe and reliable operation of the project.

Security Costs Legislation

Comment: An Interested Party made a statement with regard to Senate Bill S. 2739. Section 513 of that bill contains post-September 11, 2001, security cost legislation which specifies the amount of security costs which will be considered non-reimbursable. The Interested Party requested that Western and Reclamation adjust their budgets to account for the legislation.

Response: The President of The United States signed Senate Bill S.2739 into law on May 8, 2008 (Pub. L. 110–229). Reclamation will determine if any reimbursable costs in Section 513 will be deemed non-reimbursable under this new law. If the determination is made prior to the finalization of the rate package, Western will implement appropriate changes, if necessary to the FY 2009 Rates. If the determination is made after the rate package is finalized, then any security costs deemed non-reimbursable will roll into carry over, reducing FY 2010 Rates.

[1] WAPA–120 was approved by the Deputy Secretary of Energy on August 11, 2005 (70 FR ¶ 71280), and confirmed and approved by the Federal Energy Regulatory Commission (FERC) on a final basis on August 26, 2005, in Docket No. EF05–5091–000 (115 FERC ¶ 61362).

Hydrology

Comment: An Interested Party sought assurance that Western, in its base charge and rates calculation, take into account the new Reclamation 24-month study. The revised study should show equalization releases from Lake Powell beginning in May and continuing through September. The end result could be increased efficiencies and a reduction in the per-unit cost for capacity charged to customers.

Response: Western will utilize the final master schedule which includes the most current 24-month study prior to submitting the rate package for approval. The final master schedule is normally completed in early June and will have the most up to date information available at that time.

BCP Electric Service Rates

BCP electric service rates are designed to recover an annual revenue requirement that includes operation and maintenance expenses, payments to states, visitor services, the uprating program, replacements, investment repayment, and interest expense. Western's Power Repayment Study (PRS) allocates the projected annual revenue requirement for electric service equally between capacity and energy.

Availability of Information

Information about this base charge and rate adjustment, including power repayment studies, comments, letters, memorandums, and other supporting material developed or maintained by Western that was used to develop the FY 2009 BCP Rates, is available for public review in the Desert Southwest Customer Service Regional Office, Western Area Power Administration, 615 South 43rd Avenue, Phoenix, Arizona. The information is also available on Western's Web site at *http://www.wapa.gov/dsw/pwrmkt/BCP/RateAdjust.htm.*

Ratemaking Procedure Requirements

BCP electric service rates are developed under the Department of Energy Organization Act (42 U.S.C. 7101–7352), through which the power marketing functions of the Secretary of the Interior and Reclamation under the Reclamation Act of 1902 (ch. 1093, 32 Stat. 388), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts that specifically apply to the project involved, were transferred to and vested in the Secretary of Energy, acting by and through Western.

By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated: (1) The authority to develop long-term power and transmission rates on a non-exclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy, and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to FERC. Existing DOE procedures for public participation in electric service rate adjustments are located at 10 CFR part 903, effective September 18, 1985 (50 FR 37835), and 18 CFR part 300. DOE procedures were followed by Western in developing the rate formula approved by FERC on June 22, 2006, at 115 FERC ¶ 61362.[2]

The Boulder Canyon Project Implementation Agreement requires that, prior to October 1 of each rate year, Western determine the annual rates for the next fiscal year. The rates for the first rate year, and each fifth rate year thereafter, will become effective provisionally upon approval by the Deputy Secretary of Energy subject to final approval by FERC. For all other rate years, the rates will become effective on a final basis upon approval by the Deputy Secretary of Energy.

Western will continue to provide annual rates to the BCP Contractors by October 1 of each year using the same ratesetting formula. The rates are reviewed annually and adjusted upward or downward to assure sufficient revenues are collected to achieve payment of all costs and financial obligations associated with the project. Each fiscal year, Western prepares a PRS for the BCP to update actual revenues and expenses including interest, estimates of future revenues, expenses, and capitalized costs.

The BCP ratesetting formula includes a base charge, an energy rate, and a capacity rate. The ratesetting formula was used to determine the BCP FY 2009 Rates.

Western proposes a FY 2009 base charge of $70,213,497, an energy rate of 9.31 mills/kWh, and a capacity rate of $1.73/kWmonth be approved on a final basis.

Consistent with procedures set forth in 10 CFR part 903 and 18 CFR part 300, Western held a consultation and comment period. The notice of the proposed FY 2009 Rates for electric service was published in the **Federal Register** on February 1, 2008 (73 FR 6177).

Under Delegation Order Nos. 00–037.00 and 00–001.00B, and in compliance with 10 CFR part 903 and 18 CFR part 300, I hereby approve the FY 2009 Rates for BCP Electric Service on a final basis under Rate Schedule BCP–F7 through September 30, 2009.

Dated: August 1, 2008.

Jeffrey F. Kupfer,

Acting Deputy Secretary.

[FR Doc. E8–18575 Filed 8–11–08; 8:45 am]

BILLING CODE 6450–01–P

[2] The existing ratesetting formula was established in Rate Order No. WAPA–70 on April 19, 1996, in Docket No. EF96–5091–000 at 75 FERC ¶ 62050, for the period beginning November 1, 1995, and ending September 30, 2000. Rate Order No. WAPA–94, extending the existing ratesetting formula beginning on October 1, 2000, and ending September 30, 2005, was approved on July 31, 2001, in Docket No. EF00–5092–000 at 96 FERC ¶ 61171. Rate Order No. WAPA–120, extending the existing ratesetting formula for another five-year period beginning on October 1, 2005, and ending September 30, 2010, was approved on June 22, 2006, in Docket No. EF05–5091–000 at 115 FERC ¶ 61362.

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OW–2008–0517, FRL–8703–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Study of Unused Pharmaceuticals from Medical and Veterinary Facilities (New), EPA ICR Number 2316.01, OMB Control No. 2040–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB). This is a request for a new collection. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before November 10, 2008.

ADDRESSES: Submit your comments, data and information, identified by Docket ID No. EPA–HQ–OW–2008–0517, by one of the following methods:

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

(2) *E-mail: OW-Docket@epa.gov*, Attention Docket ID No. EPA–HQ–OW–2008–0517.

(3) *Mail:* Water Docket, Environmental Protection Agency, Mailcode: 4203M,

1200 Pennsylvania Ave., NW., Washington, DC 20460, Attention Docket ID No. EPA–HQ–OW–2008–0517. Please include a total of 3 copies.

(4) *Hand Delivery:* Water Docket, EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC, Attention Docket ID No. EPA–HQ–OW–2008–0517. Such deliveries are only accepted during the Docket's normal hours of operation and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OW–2008–0517. 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 through *http://www.regulations.gov* or e-mail that you consider to be CBI or otherwise protected. The federal *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 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 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 EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the index at *http://www.regulations.gov*. 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 at *http://www.regulations.gov* or in hard copy at the Water Docket in the EPA Docket Center, EPA/DC, EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the Water Docket is (202) 566–2426.

FOR FURTHER INFORMATION CONTACT: Meghan Hessenauer, Engineering and Analysis Division, Office of Science and Technology, Mail Code 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number (202) 566–1040; fax number (202) 566–1053; e-mail address *hessenauer.meghan@epa.gov* or Carey Johnston, Engineering and Analysis Division, Office of Science and Technology, Mail Code 4303T, Environmental Protection Agency, 1200 Pennsylvania Ave, NW., Washington, DC 20460; telephone number (202) 566–1014; fax number (202) 566–1053; e-mail address *johnston.carey@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–OW–2008–0517, which is available for online viewing at *http://www.regulations.gov*, or in person at the Water Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8 a.m. to 4:30 p.m., Monday through Friday, excluding holidays. The telephone number for the Water Docket is (202) 566–2426. Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the Paperwork Reduction Act, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the assumptions used;

(iii) Select appropriate entities to receive the questionnaire in terms of what units (e.g., facilities, offices) should be surveyed; how many should be surveyed; and the criteria used to select them;

(iv) Enhance the quality, utility, and clarity of the information to be collected; and

(v) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25 people) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

EPA solicits comments about the questions in each questionnaire and their applicability to the targeted industry. EPA solicits suggestions on how the questions could be changed to be more understandable and to appropriately address facility operations. EPA solicits comments about the scope of the ICR and whether EPA has adequately described the industry sectors that would be subject to the data collection. EPA plans to include health services establishments including hospitals, hospices, long-term care facilities (LTCFs), and veterinary facilities. EPA may consider including veterinary clinics, medical and dental offices, as well as university and prison health clinics within the scope of inquiry and encourages these groups to comment and meet with EPA to discuss their practices. EPA solicits comments on whether EPA has adequately described the population in terms of inclusions and exclusions, and what additional entities, if any, should be included in the scope of the ICR. In DCN 05999 (Docket ID No. EPA–HQ–OW–2008–0517), EPA provides more explanation about its definitions and other considerations related to identifying the appropriate population for the data collection.

What Should I Consider When I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Affected Entities: Entities potentially affected by this action are health services establishments including hospitals, hospices, long-term care facilities (LTCFs), and veterinary hospitals. In addition, EPA may include veterinary clinics, medical and dental offices, and university and prison health clinics.

Title: Study of Unused Pharmaceuticals from Medical and Veterinary Facilities (New).

ICR Numbers: EPA ICR No. 2316.01, OMB Control No. 2040–NEW.

ICR Status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: This Information Collection Request (ICR) will support EPA's study of unused pharmaceuticals from health care facilities which is part of EPA's overall strategy to address the risks associated with emerging contaminants. This four-pronged strategy is aimed at improving science, communicating risks, identifying partnership and stewardship opportunities, and taking regulatory action as appropriate.

This ICR involved two questionnaires, one for medical facilities and one for veterinary facilities. EPA identified the health services industry as a candidate for a study in the 2006 Clean Water Act (CWA) Section 304(b) Effluent Guidelines Review (71 FR 76661; December 21, 2006). EPA is collecting information about disposal of unused pharmaceuticals to better understand the current management practices and the magnitude of discharges to waters of the United States.

In most respects, the discharge of pharmaceuticals to publicly owned treatment works (POTWs) is not currently regulated or monitored under the federal Clean Water Act and thus, wastewater data are generally not available. Facilities within the health services industry (e.g., hospitals, hospices, long-term care facilities (LTCFs), and veterinary facilities) may dispose of excess, expired, and unwanted medications (referred to collectively as ''unused pharmaceuticals'') down the drain or toilet, after which drugs may pass through POTWs and into surface waters.

EPA believes that the health services industry accounts for the majority of institutional (nonresidential) discharges of unused pharmaceuticals to wastewater. Areas for investigation include:

- What are the current industry practices for disposing of unused pharmaceuticals?
- Which pharmaceuticals are being disposed of and at what quantities?
- What are the options for disposing of unused pharmaceuticals other than down the drain or toilet?
- What factors influence disposal decisions?
- Do disposal practices differ within industry sectors?
- What Best Management Practices (BMPs) could facilities implement to reduce the generation of unused pharmaceuticals?
- What reductions in the quantities of pharmaceuticals discharged to POTWs would be achieved by implementing BMPs or alternative disposal methods?
- What are the costs of current disposal practices compared to the costs of implementing BMPs or alternative disposal methods?

To collect this information, EPA will distribute a mandatory questionnaire to a sample of medical and veterinary facilities. There are two versions of the questionnaire, one tailored to facilities that treat people (i.e., hospitals, hospices, and LTCFs) and one tailored to facilities that treat animals (i.e., veterinary facilities). Copies of both questionnaires are available as attachments to the supporting statement.

To complete the questionnaire, respondents will be required to report 30 days worth of pharmaceutical disposal data, which may require development of a tracking system for unused pharmaceuticals and time to train staff on proper tracking protocols. EPA estimates the total respondent burden and costs associated with completing the questionnaires are approximately 145,000 hours and $5,200,000. There are no capital costs associated with responding to these questionnaires. Operation and maintenance (O&M) costs include only photocopying and postage or express delivery. In its calculations of the burden estimates, EPA has assumed that one facility in seven (approximately 3,500 facilities) would be selected to receive the detailed questionnaire.

However, in the actual selection process, EPA intends to use a more sophisticated statistical technique to select facilities. Numerous textbooks and technical journals describe a variety of ways of drawing valid probability samples to collect information that will be representative of the entire population (e.g., *Sampling Techniques* by William Cochran, 1963). In DCN 05999 (Docket ID No. EPA–HQ–OW–2008–0517), EPA describes several designs that it intends to investigate further before the second **Federal Register** notice. The selected sampling methodology may result in a larger or smaller sample size. One sample design that EPA is considering is a two-phase design. First, EPA would send a screener questionnaire to a large segment of the population. This screener questionnaire would only contain a few simple questions, but the information would allow EPA to better identify appropriate facilities for the detailed questionnaire. Although EPA might send more questionnaires (i.e., screeners plus detailed questionnaires) under this approach, it might result in a lower overall burden to industry if fewer facilities were selected for the detailed questionnaire.

After evaluating comments, EPA will decide whether or not to include veterinary clinics, medical and dental offices, and university and prison health clinics. EPA will then change the estimated size of the respondent universe as needed. The public will have an opportunity to comment on the selected scope and methodology following publication of the second **Federal Register** notice associated with this project. Respondents have the option to identify any data submitted as confidential. EPA will treat all confidential submissions according to approved CBI procedures.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 41 hours per

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

EPA estimates that the total annual burden hours would be approximately 145,000 at a cost of $5,200,000. Additional details on burden can be found in the supporting statement. An overview of the questionnaire burden is provided below:

- Estimated total number of potential respondents: 3,544.
- Frequency of response: 1 time.
- Estimated total average number of responses for each respondent: 1.
- Estimated total annual burden hours: 145,304.
- Average burden hours per respondent: 41.
- Average cost per respondent: $1,463.

What Is the Next Step in the Process for This ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical persons listed under **FOR FURTHER INFORMATION CONTACT**.

Dated: July 25, 2008.

Ephraim S. King,

Director, Office of Science and Technology.

[FR Doc. E8–18606 Filed 8–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2007–0480; FRL–8702–4]

Agency Information Collection Activities; Proposed Collection; Comment Request; Comprehensive Procurement Guidelines Supplier Directory Information Form; EPA ICR No. 2305.01, OMB Control No. 2050–NEW

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request for a new Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before October 14, 2008.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–RCRA–2007–0480, by one of the following methods:

- *http://www.regulations.gov*: Follow the on-line instructions for submitting comments.
- *E-mail: rcra-docket@epa.gov*.
- *Fax:* 202–566–9744.
- *Mail:* Resource Conservation and Recovery Act (RCRA) Docket, Environmental Protection Agency, Mail Code: 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.
- *Hand Delivery:* EPA Docket Center, Public Reading Room, EPA West Building, Room 3334, 1301 Constitution Avenue, NW., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No EPA–HQ–RCRA–2007–0480 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. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

FOR FURTHER INFORMATION CONTACT: Anthony D. Carrell, Office of Solid Waste, Municipal and Industrial Solid Waste Division, MC–5306P, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–308–0458; fax number: 703–605–0595; *carrell.anthony@epa.gov*.

SUPPLEMENTARY INFORMATION:

How Can I Access the Docket and/or Submit Comments?

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2007–0480 which is available for online viewing at *http://www.regulations.gov*, or in person viewing at the RCRA Docket in the EPA Docket Center (EPA/DC), EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The EPA/DC Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Reading Room is 202–566–1744, and the telephone number for the RCRA Docket is 202–566–0270.

Use *http://www.regulations.gov* to obtain a copy of the draft collection of information, submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the public docket that are available electronically. Once in the system, select ''search,'' then key in the docket ID number identified in this document.

What Information is EPA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, EPA specifically solicits comments and information to enable it to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. In particular, EPA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that EPA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider when I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES.**

7. To ensure proper receipt by EPA, be sure to identify the docket ID number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

What Information Collection Activity or ICR Does this Apply to?

Affected entities: Companies that voluntarily submit product information to EPA's CPG Product Supplier Directory.

Title: Comprehensive Procurement Guidelines Supplier Directory Information Form.

ICR numbers: EPA ICR No. 2305.01, OMB Control No. 2050–NEW.

ICR status: This ICR is for a new information collection activity. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations in title 40 of the CFR, after appearing in the **Federal Register** when approved, are listed in 40 CFR Part 9, are displayed either by publication in the **Federal Register** or by other appropriate means, such as on the related collection instrument or form, if applicable. The display of OMB control numbers in certain EPA regulations is consolidated in 40 CFR Part 9.

Abstract: The Comprehensive Procurement Guideline (CPG) program is authorized by Congress under Section 6002 of the Resource Conservation and Recovery Act (RCRA). EPA is required to designate products that are or can be made with recovered materials, and to recommend practices for buying these products.

As part of the program, EPA has developed the CPG Product Supplier Directory to support government agencies in meeting their responsibilities. The CPG Product Supplier Directory allows users to search for companies of a specific CPG product, product category, or type of material. In addition, users can search directly for a specific company by typing all or part of the company's name in a search field. All companies identified in the CPG Product Supplier Directory have self-selected to be included and volunteered product specification information. All information in the Directory is available to the public.

EPA would like to update the CPG Product Supplier Directory through voluntary information collections, as follows:

- EPA has created a Supplier Directory Information Form to enable companies to submit information to the CPG Product Supplier Directory about their company and products. The form would be available on-line so that companies can submit this information at any time.
- EPA intends to send a letter to the companies in the CPG Product Supplier Directory every two years, asking them to update their entries in the Directory as needed. Companies would review their entries and send updates to EPA by e-mail. EPA would then reflect the updates in the Directory as appropriate.

Burden Statement: The average annual public reporting and recordkeeping burden for EPA's proposed collections is estimated to be about 30 minutes per response. All responses are voluntary. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The ICR will provide a detailed explanation of the Agency's estimate, which is only briefly summarized here:

Estimated average annual number of respondents: 641.

Average frequency of response: Once every two years.

Estimated total average annual respondent burden hours: 458 hours.

Estimated total average annual costs: $31,239. This includes an estimated labor cost of $31,239 and $0 for capital investment, maintenance, and operational costs.

What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: July 10, 2008.

Matthew Hale,

Director, Office of Solid Waste.

[FR Doc. E8–18611 Filed 8–11–08; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8702–8; Docket ID No. EPA–HQ–OAR–2007–1145]

Draft Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; Second External Review Draft

AGENCY: Environmental Protection Agency.

ACTION: Notice of Public Comment Period on Draft Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the second external review draft of a document titled, ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; Second External Review Draft'' (EPA/600/R–08/082).

EPA is releasing this draft document solely for the purpose of seeking public comment and for review by the Clean Air Scientific Advisory Committee (CASAC) (meeting date and location to be specified in a separate **Federal Register** notice). It does not represent and should not be construed to represent any Agency policy, viewpoint, or determination. EPA will consider any public comments submitted in accordance with this notice when revising the document.

DATES: The public comment period begins on or about August 11, 2008. Comments must be received on or before October 1, 2008.

ADDRESSES: The ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; Second External Review Draft'' will be available primarily via the Internet on the National Center for Environmental Assessment's home page under the Recent Additions and Publications menus at *http://www.epa.gov/ncea.* A limited number of CD–ROM or paper copies will be available. Contact Ms. Ellen Lorang by phone (919–541–2771), fax (919–541–5078), or e-mail (*lorang.ellen@epa.gov*) to request either of these, and please provide your name, your mailing address, and the document title, ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; Second External Review Draft'' (EPA/600/R–08/082) to facilitate processing of your request.

FOR FURTHER INFORMATION CONTACT: For technical information, contact Dr. Tara Greaver, NCEA; telephone: 919–541–2435; facsimile: 919–541–5078; or e-mail: *greaver.tara@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Information About the Document

Section 108 (a) of the Clean Air Act directs the Administrator to identify certain pollutants which ''cause or contribute to air pollution which may reasonably be anticipated to endanger public health and welfare'' and to issue air quality criteria for them. These air quality criteria are to ''accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of [a] pollutant in the ambient air* * *.'' Under section 109 of the Act, EPA is then to establish national ambient air quality standards (NAAQS) for each pollutant for which EPA has issued criteria. Section 109(d) of the Act subsequently requires periodic review and, if appropriate, revision of existing air quality criteria to reflect advances in scientific knowledge on the effects of the pollutant on public health and welfare. EPA is also to revise the NAAQS, if appropriate, based on the revised air quality criteria.

Oxides of nitrogen and sulfur are two of six principal (or ''criteria'') pollutants for which EPA has established air quality criteria and NAAQS. EPA periodically reviews the scientific basis for these standards by preparing an Integrated Science Assessment (ISA) (formerly called an Air Quality Criteria Document). The ISA and supplementary annexes, in conjunction with additional technical and policy assessments, provide the scientific basis for EPA decisions on the adequacy of a current NAAQS and the appropriateness of new or revised standards. The Clean Air Scientific Advisory Committee (CASAC), an independent science advisory committee established pursuant to section 109 of the Clean Air Act and part of the EPA's Science Advisory Board (SAB), provides independent scientific advice on NAAQS matters, including advice on EPA's draft ISAs.

EPA formally initiated its current review of the criteria for oxides of nitrogen and sulfur in December 2005 (70 FR 73236) and May 2006 (71 FR 28023) respectively, requesting the submission of recent scientific information on specified topics. In the initial stages of the criteria reviews, EPA recognized the merit of integrating the science assessment for these two pollutants due to their combined effects on atmospheric chemistry, deposition processes, and environment-related public welfare effects. In July 2007 (72 FR 34004), a workshop was held to discuss, with invited scientific experts, initial draft materials prepared in the development of the ISA and supplementary annexes for oxides of nitrogen and sulfur. EPA's ''Draft Plan for Review of the Secondary National Ambient Air Quality Standards for Nitrogen Dioxide and Sulfur Dioxide'' was made available in September 2007 for public comment and was discussed by the Clean Air Scientific Advisory Committee (CASAC) via a publicly accessible teleconference consultation on October 30, 2007 (72 FR 57568). The Plan was made available on EPA's Web site *http://www.epa.gov/ttn/naaqs/standards/no2so2sec/cr_pd.html.* The draft ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; First External Review Draft'' was released for review on December 21, 2007 (72 FR 72719). The CASAC reviewed the draft document at a public peer review meeting on April 2–3, 2008; comments from the CASAC and the public have been addressed in this second external review draft document. The draft ''Integrated Science Assessment for Oxides of Nitrogen and Sulfur—Environmental Criteria; Second External Review Draft'' will be discussed by CASAC at a future public meeting; public comments that have been received prior to the public meeting will be provided to the CASAC review panel. A future **Federal Register** notice will inform the public of the exact date and time of that CASAC meeting.

II. How To Submit Technical Comments to the Docket at http://www.regulations.gov

Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2007–1145, by one of the following methods:

- *http://www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *E-mail: ORD.Docket@epa.gov.*
- *Fax:* 202–566–1753.
- *Mail:* Office of Environmental Information (OEI) Docket (Mail Code: 2822T), U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. The phone number is 202–566–1752.
- *Hand Delivery:* The OEI Docket is located in the EPA Headquarters Docket Center, Room 3334 EPA West Building, 1301 Constitution Ave., NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is 202–566–1744. Such deliveries are only accepted during the docket's normal hours of operation, and special arrangements

should be made for deliveries of boxed information.

If you provide comments by mail or hand delivery, please submit three copies of the comments. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–007–1145. Please ensure that your comments are submitted within the specified comment period. Comments received after the closing date will be marked ''late,'' and may only be considered if time permits. It is EPA's policy to include all comments it receives in the public docket without change and to make the comments available online at *http://www.regulations.gov*, including any personal information provided, unless a comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *http://www.regulations.gov* or e-mail. The *http://www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through *http://www.regulations.gov*, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm*.

Docket: Documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other materials, such as copyrighted material, are publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at the OEI Docket in the EPA Headquarters Docket Center.

Dated: August 1, 2008.

Rebecca Clark,

Acting Director, National Center for Environmental Assessment.

[FR Doc. E8–18610 Filed 8–11–08; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices, Acquisition of Shares of Bank or Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. E8–18107 published on pages 46005 and 46006 of the issue for Thursday, August 7, 2008.

Under the Federal Reserve Bank of Kansas City heading, the entry for The Schifferdecker Limited Partnersip, Girard, Kansas, is revised to read as follows:

A. Federal Reserve Bank of Kansas City (Todd Offenbacker, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001:

1. The Schifferdecker Limited Partnership, Girard, Kansas; Mark W. Schifferdecker, Girard, Kansas; Susan B. Friesen, Omaha, Nebraska; and Joy L. Shoop, Hiawatha, Kansas; as general partners, to acquire control of GN Bankshares, Inc., and thereby indirectly aacquire control of The Girard National Bank, both in Girard, Kansas.

Comments on this application must be received by August 21, 2008.

Board of Governors of the Federal Reserve System, August 7, 2008.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E8–18554 Filed 8–11–08; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act; Notice of Meeting

TIME AND DATE: 10 a.m. (Eastern Time), August 18, 2008.

PLACE: 4th Floor Conference Room, 1250 H Street, NW., Washington, DC 20005.

STATUS: Parts will be open to the public and parts closed to the public.

MATTERS TO BE CONSIDERED:

Parts Open to the Public

1. Approval of the minutes of the July 21, 2008 Board member meeting
2. Thrift Savings Plan activity report by the Executive Director
   a. Monthly Participant Activity Report
   b. Legislative Report
   c. Investment Performance Report
3. Report on Potential Risk of Loss to TSP Assets as a result of the Theoretical Insolvency of Barclays Global Investors

Parts Closed to the Public

4. Procurement

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: August 8, 2008.

Thomas K. Emswiler,

Secretary, Federal Retirement Thrift Investment Board.

[FR Doc. E8–18682 Filed 8–8–08; 12:00 pm]

BILLING CODE 6760–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0439]

Agency Information Collection Activities; Proposed Collection; Comment Request; Blood Establishment Registration and Product Listing, Form FDA 2830

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection requirements relating to the blood establishment registration and product listing requirements in the agency's regulations and Form FDA 2830.

DATES: Submit written or electronic comments on the collection of information by October 14, 2008.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov*. Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All

comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Jonna Capezzuto, Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3794.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Blood Establishment Registration and Product Listing, Form FDA 2830—21 CFR Part 607 (OMB Control Number 0910–0052)—Extension

Under section 510 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360), any person owning or operating an establishment that manufactures, prepares, propagates, compounds, or processes a drug or device must register with the Secretary of Health and Human Services, on or before December 31 of each year, his or her name, place of business, and all such establishments, and must submit, among other information, a listing of all drug or device products manufactured, prepared, propagated, compounded, or processed by him or her for commercial distribution. In part 607 (21 CFR part 607), FDA has issued regulations implementing these requirements for manufacturers of human blood and blood products.

Section 607.20(a), in brief, requires owners or operators of certain establishments that engage in the manufacture of blood products to register and to submit a list of every blood product in commercial distribution. Section 607.21, in brief, requires the owners or operators of establishments entering into the manufacturing of blood products to register within 5 days after beginning such operation and to submit a list of every blood product in commercial distribution at the time. If the owner or operator of the establishment has not previously entered into such operation for which a license is required, registration must follow within 5 days after the submission of a biologics license application. In addition, establishments are required to register annually between November 15 and December 31 and update their blood product listing every June and December of each year. Section 607.22 requires the use of Form FDA 2830, Blood Establishment Registration and Product Listing, for initial registration, for annual registration, and for blood product listing. Section 607.25 indicates the information required for establishment registration and blood product listing. Section 607.26, in brief, requires certain changes to be submitted on FDA Form 2830 as amendments to the establishment registration within 5 days of such changes. Section 607.30(a), in brief, indicates the information required for owners or operators of establishments to update their blood product listing information every June and December, or at the discretion of the registrant at the time the change occurs. Section 607.31 requires that additional blood product listing information be provided upon FDA request. Section 607.40, in brief, requires certain foreign blood product establishments to register and submit the blood product listing information, and to provide the name and address of the establishment and the name of the individual responsible for submitting blood product listing information as well as the name, address, and phone number of its U.S. agent.

Among other uses, this information assists FDA in its inspections of facilities, and its collection is essential to the overall regulatory scheme designed to ensure the safety of the nation's blood supply. Form FDA 2830 is used to collect this information.

Respondents to this collection of information are human blood and plasma donor centers, blood banks, certain transfusion services, other blood product manufacturers, and independent laboratories that engage in quality control and testing for registered blood product establishments.

FDA estimates the burden of this collection of information based upon information obtained from FDA's Center for Biologics Evaluation and Research's database and FDA experience with the blood establishment registration and product listing requirements.

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	Form FDA 2830	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
607.20(a), 607.21, 607.22, 607.25, and 607.40	Initial Registration	111	1	111	1	111
607.21, 607.22, 607.25, 607.26, 607.31, and 607.40	Re-registration	2,621	1	2,621	0.5	1,311

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]—Continued

21 CFR Section	Form FDA 2830	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours Per Response	Total Hours
607.21, 607.25, 607.30(a), 607.31, and 607.40	Product Listing Update	180	1	180	0.25	45
Total						1,467

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Please note that on January 15, 2008, the FDA Division of Dockets Management Web site transitioned to the Federal Dockets Management System (FDMS). FDMS is a Government-wide, electronic docket management system. Electronic comments or submissions will be accepted by FDA only through FDMS at *http://www.regulations.gov*.

Dated: August 5, 2008.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E8–18570 Filed 8–11–08; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Commission on Childhood Vaccines; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: September 4, 2008, 1 p.m. to 5 p.m. EDT. September 5, 2008, 8 a.m. to 12 p.m. EDT.

Place: Parklawn Building (and via audio conference call), Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The ACCV will meet on Thursday, September 4 from 1 p.m. to 5 p.m. (EDT) and Friday, September 5 from 9 a.m. to 12 p.m. (EDT). The public can join the meeting via audio conference call by dialing 1–888–220–3083 on September 4 & 5 and providing the following information:

Leader's Name: Dr. Geoffrey Evans.

Password: ACCV.

Agenda: The agenda items for the September meeting will include, but are not limited to: updates from the Division of Vaccine Injury Compensation (DVIC), Department of Justice, National Vaccine Program Office, Immunization Safety Office (Centers for Disease Control and Prevention), National Institute of Allergy and Infectious Diseases (National Institutes of Health), and Center for Biologics, Evaluation and Research (Food and Drug Administration). Agenda items are subject to change as priorities dictate.

Public Comments: Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Michelle Herzog, DVIC, Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), Room 11C–26, 5600 Fishers Lane, Rockville, Maryland 20857 or e-mail: *mherzog@hrsa.gov.* Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. DVIC will notify each presenter by mail or telephone of their assigned presentation time. Persons who do not file an advance request for a presentation, but desire to make an oral statement, may announce it at the time of the comment period. These persons will be allocated time as it permits.

FOR FURTHER INFORMATION CONTACT: Anyone requiring information regarding the ACCV should contact Michelle Herzog, DVIC, HSB, HRSA, Room 11C–26, 5600 Fishers Lane, Rockville, MD 20857; telephone (301) 443–6593 or e-mail: *mherzog@hrsa.gov.*

Dated: August 7, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–18630 Filed 8–11–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Committee on Training in Primary Care Medicine and Dentistry; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following meeting:

Name: Advisory Committee on Training in Primary Care Medicine and Dentistry (ACTPCMD).

Date and Time: September 15, 2008, 10 a.m.–1 p.m. Eastern Standard Time (EST).

Place: (Audio Conference Call).

Status: The meeting will be open to the public; audio conference access limited only by availability of telephone ports.

Purpose: The Advisory Committee provides advice and recommendations on a broad range of issues dealing with programs and activities authorized under section 747 of the Public Health Service Act as amended by The Health Professions Education Partnership Act of 1998, Public Law 105–392. At this meeting the Advisory Committee will finalize its seventh report on the topic of primary care providing a medical/dental home within the health care system. It will begin work on its eighth report on the topic of the redesign of primary care and its impact on training and Title VII, section 747. Reports are submitted to Congress and to the Secretary of the Department of Health and Human Services.

Agenda: The agenda includes final approval of the recommendations and finalization of the seventh report as a whole. The Advisory Committee will plan the process for completion of the eighth report on the redesign of primary care training. An opportunity will be provided for public comment. Agenda items are subject to change as dictated by the priorities of the Advisory Committee.

Supplementary Information: The ACTPCMD will convene on Monday, September 15 from 10 a.m. to 1 p.m. EST via audio conference. To participate in this audio conference call, please dial the toll-free number 1–800–475–0478 and provide the numeric passcode: 2219205. Anyone interested in participating in the audio conference should notify either Jerilyn K. Glass, M.D., Ph.D., or Anne F. Patterson by calling 301–443–6822 prior to September 8.

For Further Information Contact: Anyone requesting information regarding the Advisory Committee should contact Jerilyn K. Glass, Designated Federal Official for the ACTPCMD, Bureau of Health Professions, Health Resources and Services Administration, Room 9A–27, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6822. The Web address for information on the Advisory Committee is *http://bhpr.hrsa.gov/medicine-dentistry/actpcmd.*

Dated: August 7, 2008.

Alexandra Huttinger,

Director, Division of Policy Review and Coordination.

[FR Doc. E8–18631 Filed 8–11–08; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Microbial Member Conflict.

Date: August 26, 2008.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Soheyla Saadi, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3211, MSC 7808 Bethesda, MD 20892, 301–435–0903, *saadisoh@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Health of the Population.

Date: September 5, 2008.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Fungai F. Chanetsa, PhD Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3135, MSC 7770, Bethesda, MD 20892, 301–435–1262, *chanetsaf@csr.nih.gov.*

Name of Committee: Center for Scientific Review, Special Emphasis Panel, Member Conflict: Sensory.

Date: September 10–11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Bernard F. Driscoll, PhD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5184, MSC 7844, Bethesda, MD 20892, (301) 435–1242, *driscolb@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Integrative and Clinical Endocrinology and Reproduction Study Section.

Date: September 25, 2008.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: The Legacy Hotel, 1775 Rockville Pike, Rockville, MD 20852.

Contact Person: Michael Knecht, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6176, MSC 7892, Bethesda, MD 20892, (301) 435–1046 *knechtm@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: August 4, 2008.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8–18353 Filed 8–11–08; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG–2003–16158]

RIN 1625–AA77

Commercial Fishing Industry Vessels

AGENCY: Coast Guard, DHS.

ACTION: Notice of public meetings; reopening of comment period.

SUMMARY: The Coast Guard will hold public meetings to let members of the public present comments on the advance notice of proposed rulemaking (ANPRM) for commercial fishing industry vessels and reopen the previously announced public comment period. Two public meetings will be held at the Pacific Marine Expo in Seattle, WA, on November 21 and 22, 2008. This proposed rulemaking would consider several changes to the current regulations.

DATES: The Coast Guard will hold the public meetings on Friday, November 21, from 9 a.m. to 12 noon, and Saturday, November 22, from 9 a.m. to 12 noon, except that the meetings may close early if all business is finished. Other comments and related material must reach the Docket Management Facility on or before December 15, 2008. The comment period is reopened from August 12, 2008 to December 15, 2008.

ADDRESSES: The Coast Guard will hold these public meetings in conjunction with the Pacific Marine Expo in Seattle, WA, at the Qwest Field Event Center, 800 Occidental Ave S, Seattle, WA 98134.

You may submit comments identified by Coast Guard docket number USCG–2003–16158 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(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:* Same as mail address above, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(4) *Fax:* 202–493–2251.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call M.M. Rosecrans, Chief, Fishing Vessel Safety Division (CG–5433), U.S. Coast Guard, telephone 202–372–1245, or e-mail *Michael.m.rosecrans@uscg.mil.*

If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to submit comments and related material on the Commercial Fishing Industry Vessels advance notice of proposed rulemaking (ANPRM) published in the **Federal Register** on March 31, 2008 (73 FR 16815). All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Submitting comments: If you submit a comment, please include the docket number for this notice (USCG–2003–16158), and give the reason for each comment. 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 your comments and material by only one means. We recommend that

you include your name and a mailing address, an e-mail address, or a phone number in the body of your document so that we can contact you if we have questions regarding your submission. If you submit them by mail or delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. The comment period is hereby reopened; comments and related material must reach the Docket Management Facility on or before December 15, 2008.

Viewing the comments as well as other background documents available in the docket: To view the comments and other documents listed in the ANPRM, go to *http://www.regulations.gov* at any time. Enter the docket number for this notice (USCG–2003–16158) in the Search box, and click ''Go >>.'' If you do not have access to the internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

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

Procedural

These meetings are open to the public. Please note that the meetings may close early if all business is finished.

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(s), contact the Coast Guard at the number listed in the **FOR FURTHER INFORMATION CONTACT** as soon as possible.

Background and Purpose

In addition to announcing public meetings, the Coast Guard is reopening the public comment period announced in the ANPRM from August 12, 2008 to December 15, 2008.

Commercial fishing remains one of the most hazardous occupations in the United States. Congress addressed this problem by enacting the Commercial Fishing Industry Vessel Safety Act of 1988 (''the 1988 Act,'' Pub. L. 100–424, as subsequently amended; see generally, 46 U.S.C. chapter 45, ''Uninspected Commercial Fishing Industry Vessels''). The Act directed the Secretary of Transportation to provide safety requirements for fishing vessels, fish processing vessels, and fish tender vessels. It also established the Commercial Fishing Industry Vessel Safety Advisory Committee (CFIVSAC) to advise the Secretary on matters relating to the safe operation of commercial fishing vessels.

Coast Guard regulations under the 1988 Act were first issued on August 14, 1991 (56 FR 40364), and were further addressed in the following documents:

- August 3, 1992, interim rule (57 FR 34188) that amended the 1991 immersion suit requirements in 46 CFR 28.110, but advised the public that immersion suits would be the subject of further rulemaking;
- October 27, 1992, SNPRM (57 FR 48670) that proposed the adoption of stability regulations for vessels less than 79 feet in length;
- May 20, 1993, NPRM (58 FR 29502) that proposed further changes to immersion suit requirements;
- October 24, 1995, final rule (60 FR 54441) that adopted regulations for Aleutian Trade Act vessels;
- November 5, 1996, interim rule (61 FR 57268) that adopted safety equipment and vessel operating procedure regulations and deferred further action on the 1992 SNPRM's proposal to extend stability regulations to smaller vessels;
- September 4, 1997, final rule (62 FR 46672) that finalized the 1996 regulations with some changes; and
- July 15, 1998, notice (63 FR 38141) that announced the termination of the 1993 NPRM and the Coast Guard's plans for a subsequent rulemaking to address immersion suits, vessel stability, and other commercial fishing industry vessel issues.

These documents, as well as other background documents, are available in the docket. Each document may be downloaded.

Dated: August 1, 2008.

J.G. Lantz,

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

[FR Doc. E8–18532 Filed 8–11–08; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1776–DR]

Kansas; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Kansas (FEMA–1776–DR), dated July 9, 2008, and related determinations.

DATES: *Effective Date:* August 4, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Kansas is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 9, 2008.

Elk, Haskell, Reno, and Wilson Counties for Public Assistance.

(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; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18525 Filed 8–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1772–DR]

Minnesota; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Minnesota (FEMA–1772–DR), dated June 25, 2008, and related determinations.

DATES: *Effective Date:* August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Minnesota is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of June 25, 2008.

Cook County for Public Assistance.

(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; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18523 Filed 8–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[FEMA–1772–DR]

Minnesota; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Minnesota (FEMA–1772–DR), dated June 25, 2008, and related determinations.

DATES: *Effective Date:* August 5, 2008.

FOR FURTHER INFORMATION CONTACT: Peggy Miller, Disaster Assistance Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–3886.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this declared disaster is now June 6–12, 2008.

(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; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households in Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.)

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8–18524 Filed 8–11–08; 8:45 am]

BILLING CODE 9110–10–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–R–2008–N0213; 40136–1265–0000–S3]

Merritt Island National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of the Final Comprehensive Conservation Plan and Finding of No Significant Impact.

SUMMARY: The Fish and Wildlife Service announces that a Final Comprehensive Conservation Plan (CCP) and Finding of No Significant Impact (FONSI) for Merritt Island National Wildlife Refuge is available for distribution. This CCP was prepared pursuant to the National Wildlife Refuge System Improvement Act of 1997, and in accordance with the National Environmental Policy Act of 1969, and describes how the refuge will be managed for the next 15 years.

ADDRESSES: A copy of the CCP/FONSI is available on compact diskette or hard copy, and you may obtain a copy by writing: Merritt Island National Wildlife Refuge (CCP), P.O. Box 2683, Titusville, Florida 32781. You may also access and download a copy of the CCP/FONSI from the Service's Web site address: *http://southeast.fws.gov/planning/.*

FOR FURTHER INFORMATION CONTACT: Ron Hight, Telephone: 321/861–0667.

SUPPLEMENTARY INFORMATION: With this notice, we finalize the CCP process for Merritt Island National Wildlife Refuge begun as announced in the **Federal Register** on August 26, 2002 (67 FR 54816). We released the Draft CCP/EA to the public, announcing and requesting comments for 60 days in a notice of availability in the **Federal Register** on December 27, 2006 (71 FR 77783).

Purpose of the Refuge: Merritt Island National Wildlife Refuge was established in 1963, to protect migratory birds through an agreement with the National Aeronautics and Space Administration, as an overlay of John F. Kennedy Space Center. The over 140,000 acres of beaches and dunes, estuarine waters, forested and non-forested wetlands, impounded wetlands, and upland shrub lands and forests of the refuge support over 500 wildlife species and over 1,000 plant species, including a variety of waterfowl, shorebirds, and neotropical migratory birds.

Alternatives and Preferred Alternative: The Draft CCP/EA addressed several priority issues raised by the Service, the Florida Fish and Wildlife Conservation Commission, other governmental partners, and the public. These issues included the spread of exotic, invasive, and nuisance species; the threats to threatened, endangered, and other imperiled species; the threats and impacts of an ever-increasing human population and the associated demand for public use activities; the management/maintenance of impounded wetlands; the coordination between intergovernmental partners; and the decline in migratory birds and their habitats.

To address these priority issues, four alternatives were developed and evaluated during the planning process.

Alternative A continued current refuge management activities and programs. Under this alternative, the refuge would continue to maintain 550 Florida scrub jay family groups across 15,000 acres, 11–13 nesting pairs of bald eagles, and 6.3 miles of sea turtle nesting beaches.

Alternative B expanded refuge management actions on needs of threatened and endangered species. The refuge would aggressively manage for Florida scrub jays, restoring and maintaining 19,000–20,000 acres in optimal condition to support 900 family groups. Habitat management activities would support the number of nesting pairs of bald eagles to expand to 20, with increased protection of nest sites, development of artificial nesting platforms, and increased cultivation of future nest areas and nesting trees.

Alternative C focused refuge management actions on the needs of migratory birds. Current management activities for threatened and endangered species would remain the same or would be decreased. The refuge would manage intensively for waterfowl, increasing the acres of impounded wetlands managed to over 16,000 acres and annually supporting targets of 250 breeding pairs of mottled duck, 60,000 lesser scaup, 25,000 dabbling ducks, and 38,000 diving ducks. The refuge would also intensively manage for shorebirds, increasing to over 5,000 acres managed in impounded wetlands.

Alternative D, the Service's preferred alternative, takes a more landscape view of the refuge and its resources, focusing refuge management on wildlife and habitat diversity. The refuge will support 500–650 Florida scrub jay family groups with 350–500 territories in optimal conditions across 15,000–16,000 acres. With active management, the refuge will support 11–15 nesting pairs of bald eagles; maintain 6.3 miles of sea turtle nesting beaches; and maintain 100 acres of habitat for the southeastern beach mouse, while the refuge population will serve as a source for reintroduction of the beach mouse to other sites. Manatee-focused management will be re-established on the refuge. The refuge will manage 15,000–16,000 acres in impounded wetlands with a waterfowl focus and will support targets of 250 breeding pairs of mottled ducks, 60,000 lesser scaup, 25,000 dabbling ducks, and 38,000 other diving ducks. Visitor services, programs, and messages will be focused on wildlife and habitat diversity, while also including threatened and endangered species, migratory birds, and climate change.

The actions outlined in the CCP and in two included step-down plans provide direction and guidance for management of Merritt Island National Wildlife Refuge. Successful implementation will depend on coordination and partnerships between the public, the Service, and other governmental agencies.

Authority: This notice is published under the authority of the National Wildlife Refuge System Improvement Act of 1997, Public Law 105–57.

Dated: June 29, 2007.

Cynthia K. Dohner,

Acting Regional Director.

Editorial Note: This document was received in the Office of the Federal Register on August 5, 2008.

[FR Doc. E8–18411 Filed 8–11–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

Denali Park Road Vehicle Management Plan Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The National Park Service (NPS) intends to prepare an Environmental Impact Statement (EIS) to develop and implement a plan to manage vehicles along the Denali park road, including carrying capacity (the maximum number of vehicles that can be accommodated on the Denali park road May–September). The goal of the plan is to provide a high quality experience for visitors while protecting wilderness resource values, scenic values, wildlife and other park resources, and maintaining the unique character of the park road. The plan will comprehensively evaluate the existing visitor transportation system to determine its effectiveness in protecting park resources and providing for visitor access and enjoyment. Demand for bus seats exceeds capacity in some cases and trends indicate that visitation will continue to increase. There is also a need to accommodate the changing demographics, interests, and needs of visitors.

The EIS will evaluate a no action alternative of maintaining the existing vehicle management system on the Denali park road including current bus schedules, vehicle allocation, and carrying capacity. The effectiveness of the existing transportation system will be assessed and used to guide development of a range of action alternatives.

Action alternatives will consider potential changes to transportation system components including carrying capacity, and allocation of vehicle use among shuttle buses, tours, inholders, professional photographers, and administrative vehicles. It will also consider changes to bus scheduling and spacing; the size and type of buses; tour services; educational opportunities and interpretive services; wildlife viewing opportunities; and possibly other factors. Alternatives may also consider operational improvements such as the quality of the buses, space for backpacks and bicycles, communications, accessibility and interpretive services (both on the buses or prior to departure). The NPS may consider utilizing an adaptive management approach based on a Before-After-Control-Impact (BACI) experimental design to implement any proposed changes. This BACI approach would increase the ability to detect and correct any future negative impacts on visitor experience or park resources and values caused by management actions.

The NPS will consider a wide range of information including data collected from the 1930's to the present. Intensive studies conducted over the last three years on wildlife populations and behavior, social science studies on visitor experience, and extensive modeling of traffic patterns on the park road will be considered in the development and analysis of alternatives.

This EIS is being prepared in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4331 *et seq.*), and its implementing regulations at 40 CFR part 1500.

Scoping: The planning team requests input from interested federal and state agencies, local governments, groups, organizations, park visitors, and the public. Written and verbal scoping comments are being solicited. Further information on this planning process will be available through public scoping meetings, press releases, and the park Web site. Public scoping meetings will be held in Anchorage, Denali Park, Susitna Valley, and Fairbanks, Alaska in 2008. Additional locations may be added as appropriate. Specific dates, times, and locations of scoping meetings will be announced in local media and posted on the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/DENA.*

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.

DATES: Comments concerning the scope of this project should be received on or before September 30, 2008. The draft EIS is projected to be available in early 2010.

ADDRESSES: Written comments may be mailed to the address below. Electronic comments may be submitted to the NPS Planning, Environment, and Public Comment (PEPC) Web site: *http://parkplanning.nps.gov/DENA.* To comment using PEPC, select the ''Denali Park Road Vehicle Management Plan'', then select ''Open for Public Comment''.

FOR FURTHER INFORMATION CONTACT: Adrienne Lindholm, Outdoor Recreation Planner, Denali Planning, 240 West 5th Avenue, Anchorage, AK 99501, (907) 644–3613.

SUPPLEMENTARY INFORMATION: Denali National Park contains one of the most intact predator-prey ecosystems in the world as well as one of the best opportunities in North America to view wildlife in its natural setting. Denali National Park was established in 1917 as a game refuge and conserving wildlife and protecting opportunities to view wildlife remain its most important values. Key resources and values include: Wildlife populations, wildlife habitat, and the processes and components of the park's natural ecosystem; wilderness character, wilderness resource values, and wilderness recreational opportunities; scenic and geologic values of Mount McKinley and surrounding mountain landscape; and visitor enjoyment and inspiration from observing wildlife in its natural habitat and other natural features. Denali is now one of the most visited subarctic national parks in the world, with the vast majority of visitation focused along the 90-mile park road. Park managers must ensure that Denali's vehicle management plan protects these critical resource values.

Before 1972, Denali visitation was low because travelers arrived either by train or by an arduous overland route on the unimproved Denali Highway. In 1972 park visitation increased 100% in direct response to the opening of the George Parks Highway which created a direct corridor from Anchorage to the park. Anticipating this increase, park managers implemented a mandatory visitor transportation system that same year to minimize disturbances to wildlife and scenery. This was one of the first visitor transportation systems in the national park system and it set the standard for transportation systems in other park units.

With the sustained growth in Alaska's tourism industry, Denali continues to be a featured part of travelers' itineraries. To better manage the park experience in light of increased pressures, the 1986 General Management Plan (GMP) for the park established a limit of 10,512 motor vehicle trips annually on the park road. This limit, which affects the existing allocation of vehicle trips (among tour buses, shuttle buses, private vehicles, administrative vehicles, and private inholders and their guests) will be comprehensively evaluated in this EIS. The transportation system enabled Denali to maintain vehicle use levels below this figure while providing visitors the opportunity to travel the park road. However, visitation continues to increase and demand exceeds capacity in some cases. Trends indicate that visitation will continue to increase and that there will continue to be a demand for access to Denali. There is also a need to accommodate the changing demographics, interests, and needs of visitors. This will require a comprehensive review of the current system and evaluation of alternatives for developing a system to better serve the needs of visitors while protecting park resources.

Dated: June 20, 2008.

Victor Knox,

Acting Regional Director, Alaska.

[FR Doc. E8–18571 Filed 8–11–08; 8:45 am]

BILLING CODE 4310–PF–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Prepare a General Management Plan and Environmental Impact Statement for the Ice Age National Scenic Trail Interpretive Site and Cross Plains Unit of the Ice Age National Scientific Reserve, WI

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Intent to Prepare a General Management Plan and Environmental Impact Statement for the Ice Age National Scenic Trail Interpretive Site and Cross Plains Unit of the Ice Age National Scientific Reserve, Wisconsin.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C), the National Park Service (NPS) with the Wisconsin Department of Natural Resources (DNR), is preparing a General Management Plan/Environmental Impact Statement (GMP/EIS) for the Ice Age National Scenic Trail (NST) Interpretive Site and Cross Plains Unit of the Ice Age National Scientific Reserve in Wisconsin. The GMP/EIS will prescribe the resource conditions and visitor experiences that are to be achieved and maintained in these areas over the next 15 to 20 years.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the GMP/EIS and obtain suggestions and information from other Agencies and the public on the scope of issues to be addressed in the GMP/EIS. Because the planning area involves a complex of public lands with different State and Federal designations, the NPS is partnering with the Wisconsin DNR in developing this plan. The U.S. Fish and Wildlife Service will participate in the planning team. Comments and participation in this scoping process are invited. Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open house meetings. The NPS will conduct public scoping meetings to explain the planning process and to solicit opinions about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in the NPS newsletters.

ADDRESSES: Additionally, if you wish to comment on any issues associated with the GMP/EIS, you may submit your comments by any one of several methods. You may mail or hand-deliver comments to Superintendent, Ice Age and North Country National Scenic Trails, 700 Rayovac Drive, Suite 100, Madison, Wisconsin 53711. You may provide comments electronically by entering them into the NPS's Planning, Environment and Public Comment Web site *http://parkplanning.nps.gov.* Information will be available for public review and comment from the Office of the Superintendent at the above address.

Requests to be added to the project mailing list should be sent to Manager, Ice Age NST, 700 Rayovac Drive, Suite 100, Madison, Wisconsin 53711; telephone 608–441–5610.

Before including your address, telephone 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 comments to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. We will make all submissions from organizations or businesses, from individuals identifying themselves as representatives or officials, or organizations or businesses available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Superintendent, Ice Age and North Country National Scenic Trails, 700 Rayovac Drive, Suite 100, Madison, Wisconsin 53711; telephone 608–441–5610.

SUPPLEMENTARY INFORMATION: The primary purpose of the Ice Age NST is to create an outstanding 1,000-mile hiking trail that follows the terminal moraines and other landscape features left by the last glacial advance and retreat approximately 10,000 years ago. The Ice Age National Scientific Reserve (Reserve), a companion project to the Ice Age NST, is a network of nine units that contain clusters of the most significant examples of landscape features formed by continental glaciation. The Ice Age NST and Reserve are the only authorized areas in the National Park System that focus on interpreting the landscape formed by continental glaciation. The Ice Age NST Interpretive Site lies within the boundary of the Wisconsin DNR Cross Plains Unit of the Reserve.

The NPS efforts to establish, develop, and manage the Ice Age NST are guided by the 1983 Comprehensive Plan for Management and Use of the Ice Age NST. The plan does not address or resolve the many detailed issues associated with owning, operating, and organizing a major interpretive site along the trail, although it cites the NPS authority to establish such a site. The development of a new GMP/EIS for the Ice Age NST Interpretive Site and Cross Plains Unit of the Reserve will result in a long-term (15–20 year) vision for the management and protection of this unique area. The outcome of the GMP/EIS will achieve a consistent management over the entire project, identify necessary developments, and support facilities to achieve the desired outcomes for the Ice Age NST and Interpretive Site, provide direction for restoring and managing the significant geologic and biologic features on the site, and define appropriate visitor use activities.

Dated: May 19, 2008.

Ernest Quintana,

Regional Director, Midwest Region.

[FR Doc. E8–18572 Filed 8–11–08; 8:45 am]

BILLING CODE 4312–KN–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation and are new, modified, discontinued, or completed since the last publication of this notice on May 9, 2008. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Water and Environmental Resources Office, Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225–0007; telephone 303–445–2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the ''Final Revised Public Participation Procedures'' for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall

determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

BCP—Boulder Canyon Project
Reclamation—Bureau of Reclamation
CAP—Central Arizona Project
CVP—Central Valley Project
CRSP—Colorado River Storage Project
FR—Federal Register
IDD—Irrigation and Drainage District
ID—Irrigation District
M&I—Municipal and Industrial
NMISC—New Mexico Interstate Stream Commission
O&M—Operation and Maintenance
P–SMBP—Pick-Sloan Missouri Basin Program
PPR—Present Perfected Right
RRA—Reclamation Reform Act of 1982
SOD—Safety of Dams
SRPA—Small Reclamation Projects Act of 1956
USACE—U.S. Army Corps of Engineers
WD—Water District

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706–1234, telephone 208–378–5344.

Discontinued Contract Action

6. North Unit ID, Deschutes Project, Oregon: Warren Act contract with cost of service charge to allow for use of project facilities to convey nonproject water.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825–1898, telephone 916–978–5250.

New Contract Actions

34. Ivanhoe ID, CVP, California: Proposed partial assignment of 1,200 acre-feet of class 1 and 7,400 acre-feet of class 2 of the district's CVP water supply to Kaweah Delta Conservation District for irrigation purposes.

35. Cawelo WD, CVP, California: Long-term Warren Act contract for conveying up to 10,000 acre-feet of nonproject water (exchanged banked groundwater) via the Friant-Kern Canal for irrigation and M&I purposes.

Modified Contract Action

21. Delta Lands Reclamation District No. 770, CVP, California: Long-term Warren Act contract for conveying up to 300,000 acre-feet of nonproject flood flows via the Friant-Kern Canal for flood control purposes.

Completed Contract Action

31. Contract for exchange of water among the United States, San Luis WD, and Meyers Farms Family Trust. The contract will allow for an exchange with Reclamation of previously banked water for a like amount of project water made available to San Luis WD on behalf of Meyers Farms. Contract executed May 2, 2008.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006–1470, telephone 702–293–8192.

The Lower Colorado Region has no update to report for this quarter.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102, telephone 801–524–3864.

New Contract Actions

1. (e) Mesa County (Solid Waste), Aspinall Storage Unit, CRSP: The County has requested a 40-year water service contract for 44 acre-feet of M&I water out of Blue Mesa Reservoir, which requires them to present a Plan of Augmentation to the Division 4 Water Court.

1. (f) Mike and Marsha Jackson, Aspinall Storage Unit, CRSP: The Jackson's have requested a 40-year water service contract for 1 acre-foot of M&I out of Blue Mesa Reservoir, which requires them to present a Plan of Augmentation to the Division 4 Water Court.

1. (g) Dick Morfitt, Aspinall Storage Unit, CRSP: Mr. Morfitt has requested a 40-year water service contract for 35 acre-feet of M&I water out of Blue Mesa Reservoir, which requires him to present a Plan of Augmentation to the Division 4 Water Court.

1. (h) Western Gravel, Aspinall Storage Unit, CRSP: Western Gravel has requested a 40-year water service contract for 3 acre-feet of M&I water out of Blue Mesa Reservoir, which requires them to present a Plan of Augmentation to the Division 4 Water Court.

33. Elkhead Reservoir Enlargement: This contract will supersede contract No. 05–WC–40–420. The proposed contract will include the Recovery Programs pro-rata share of the actual construction cost plus fish screen costs. Also identified in this proposed contract is the pro-rata share of the actual construction costs for the other signatory parties. Upon payment by Recovery Program, this proposed contract will ensure permanent water supply for the endangered fish.

Completed Contract Actions

1. (b) Maureen A. Call, Aspinall Storage Unit, CRSP: Ms. Call has requested a 40-year water service contract for 1 acre-foot of M&I water out of Blue Mesa Reservoir, which requires Ms. Call to present a Plan of Augmentation to the Division 4 Water Court. Contract was executed February 15, 2008.

1. (c) Vanessa Rueckert (Hidden Mesa Estates), Aspinall Storage Unit, CRSP: Ms. Rueckert has requested a 40-year water service contract for 1 acre-foot of M&I water out of Blue Mesa Reservoir, which requires Ms. Rueckert to present a Plan of Augmentation to the Division 4 Water Court. Contract was executed February 15, 2008.

1. (d) Thomas Alan Kay (North Fork Reserve), Aspinall Storage Unit, CRSP: Mr. Kay has requested a 40-year water service contract for 11 acre-feet of M&I water out of Blue Mesa Reservoir, which requires them to present a Plan of Augmentation to the Division 4 Water Court. Contract was executed February 12, 2008.

1. (e) Mesa County (Solid Waste), Aspinall Storage Unit, CRSP: The County has requested a 40-year water service contract for 44 acre-feet of M&I water out of the Blue Mesa Reservoir, which requires them to present a Plan of Augmentation to the Division 4 Water Court. Contract was executed February 12, 2008.

24. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Contract providing for the district to repay to the United States 15 percent of the cost of Phase I SOD modifications to the foundation at Arthur V. Watkins Dam. Contract was executed April 7, 2008.

25. Weber Basin Water Conservancy District, Weber Basin Project, Utah: Contract providing for the district to repay to the United States 15 percent of the cost of Phase II SOD modifications to the foundation at Arthur V. Watkins Dam. Contract was executed May 2, 2008.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406–247–7752.

New Contract Actions

40. LU Sheep Company, Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

41. Busch Farms, Inc., Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

42. Gorst Ranch, Boysen Unit, P–SMBP, Wyoming: Contract renewal of long-term water service contract.

Modified Contract Actions

5. Highland-Hanover ID, Hanover-Bluff Unit, P–SMBP, Wyoming: Execute long-term water service contract.

6. Upper Bluff ID, Hanover-Bluff Unit, P–SMBP, Wyoming: Execute long-term water service contract.

37. Big Horn Canal ID, Boysen Unit, P–SMBP, Wyoming: Big Horn Canal ID has requested the renewal of their long-term water service contract.

38. Treeline Springs, LLC., Canyon Ferry Unit, Montana: Request for water service contract for up to 620 acre-feet of water per year for replacement of water for senior water rights.

39. Hanover ID, Boysen Unit, P–SMBP, Wyoming: Hanover ID has requested the renewal of their long-term water service contract.

Dated: June 25, 2008.

Roseann Gonzales,

Director, Policy and Program Services, Denver Office.

[FR Doc. E8–18556 Filed 8–11–08; 8:45 am]

BILLING CODE 4310–MN–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that a proposed Consent Decree with Victor A. Horne, in the case of *United States* v. *Donald E. Horne, et al.*, Civil Action No. 4:05–00497, was lodged with the United States District Court for the Western District of Missouri on August 6, 2008. The United States filed the Complaint on May 27, 2005 on behalf of the Administrator of the Environmental Protection Agency pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601, *et seq.* (CERCLA), seeking recovery of costs incurred in responding to the release or threat of release of hazardous substances at or in connection with the Armour Road Superfund Site located at 2251 Armour Road North Kansas City, Missouri (Site). The complaint alleges claims against Victor Horne and five other defendants.

The Consent Decree referred to in this Notice addresses only the claims against Victor Horne. The Consent Decree will resolve the United States' claims against Victor Horne for the Site in return for a total payment of $2,500.00.

For thirty (30) days after the date of this publication, the Department of Justice will receive comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In either case, the comments should refer to *United States* v. *Donald E. Horne, et al.*, DOJ Ref. No. 90–11–3–08035/1.

The proposed consent decree may be examined at the United States Attorney's Office, Western District of Missouri, Charles Evans Whittaker Courthouse, 400 East Ninth Street, Room 5510, Kansas City, Missouri 64106, and at the Region VII Office of the Environmental Protection Agency, 901 North Fifth Street, Kansas City, Kansas 66101. During the comment period, the Consent Decree may be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/Consent_Decrees.html.* A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $6.00 (25 cents per page reproduction cost) payable to the United States Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–18547 Filed 8–11–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act and the Resource Conservation and Recovery Act

Notice is hereby given that on August 7, 2008, a proposed Consent Decree (''Decree'') in *United States* v. *Republic Dumpco, Inc., et al.*, Civil Action No. 2:08–cv–01024 (D. Nev.) was lodged with the United States District Court for the District of Nevada.

The civil action relates to the Sunrise Mountain Landfill in Las Vegas, Nevada. In this action the United States sought to obtain injunctive relief and assessment of civil penalties against Republic Dumpco, Inc. and Republic Silver State Disposal Inc. (doing business as Republic Services of Southern Nevada) (hereinafter ''Republic Services of Southern Nevada''), for alleged violations of the Clean Water Act (''CWA''), 33 U.S.C. 1251–1387. The complaint also sought injunctive relief and assessment of civil penalties against Republic Services of Southern Nevada and Clark County, Nevada, under Section 7003 of the Resource Conservation and Recovery Act (''RCRA''), 42 U.S.C. 6973. The complaint also states claims for damages for trespass against all three defendants, and breach of contract and violations of permits against Clark County.

The proposed Decree would require Republic Services of Southern Nevada to pay $1 million as a civil penalty, and to implement a comprehensive closure of the Landfill estimated to cost $36.3 million, including storm water controls, upgrades to the cover, methane gas collection, groundwater monitoring, and long-term operation and maintenance. In addition, Clark County agrees to accept ownership of the landfill from the United States Bureau of Land Management. The Consent Decree resolves the violations alleged in the complaint. In addition, the United States grants a covenant not to sue for the Landfill under Section 7003 of RCRA, and under sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (''CERCLA''), 42 U.S.C. 9606 and 9607.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should reference *United States* v. *Republic Dumpco*, Civil Action No. 2:08–cv–01024, and DOJ Ref. No. 90–7–1–06725/2. Commenters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The Decree may be examined at the Office of the United States Attorney, 333 Las Vegas Blvd. South, Suite 5000, Las Vegas, Nevada 89101. During the public comment period, the Decree may also be examined on the following Department of Justice Web site: *http://www.usdoj.gov/enrd/*

Consent_Decrees.html. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $16.50 (25 cents per page reproduction cost) for a copy of the consent decree without attachments or $42.25 for a copy of the consent decree with the attachments, payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

Maureen Katz,

Assistant Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. E8–18621 Filed 8–11–08; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,640]

3M Touch Systems; A Subsidiary of 3M, Electro & Communications Division, Milwaukee, WI; Notice of Affirmative Determination Regarding Application for Reconsideration

By application Dated July 30, 2008, a company official requested administrative reconsideration of the negative determination regarding workers' eligibility to apply for Trade Adjustment Assistance (TAA) and Alternative Trade Adjustment Assistance (ATAA) applicable to workers and former workers of the subject firm. The determination was issued on July 16, 2008. The Notice of Determination was published in the **Federal Register** on July 30, 2008 (73 FR 44284).

The initial investigation resulted in a negative determination based on the finding that imports of touch screens for mobile phones 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 about the customers of the subject firm.

The Department has carefully reviewed the request for reconsideration and the existing record and has determined that 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 U.S. Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 1st day of August 2008.

Elliott S. Kushner,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–18586 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–60,887]

Clayton Marcus Co., a Division of Rowe Fine Furniture, Inc. (''Rowe''), Plant 1 Bethlehem, Hickory, NC; 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 Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on March 21, 2007, applicable to workers of Clayton Marcus Co., Plant 1 Bethlehem, Hickory, North Carolina. The notice was published in the **Federal Register** on April 6, 2007 (72 FR 17184).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of upholstered furniture.

New information shows that in October 2007, Rowe Fine Furniture, Inc. (''Rowe'') purchased Clayton Marcus Co., Plant 1 Bethlehem and that some of the workers' wages at the subject firm are being reported under the Unemployment Insurance (UI) tax accounts for Rowe Fine Furniture, Inc. (''Rowe'').

Accordingly, the Department is amending this certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Clayton Marcus Co., Plant 1 Bethlehem, a division of Rowe Fine Furniture, Inc. (''Rowe'') who were adversely affected by increased imports of upholstered furniture.

The amended notice applicable to TA–W–60,887 is hereby issued as follows:

''All workers of Clayton Marcus Co., a division of Rowe Fine Furniture, Inc. (''Rowe''), Plant 1 Bethlehem, Hickory, North Carolina, who became totally or partially separated from employment on or after April 22, 2006, through March 21, 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 5th day of August 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–18581 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–61,716]

Clayton Marcus Co., Inc., Plant #9, a Subsidiary of La-Z-Boy Inc., Currently a Division of Rowe Fine Furniture, Inc. (''Rowe''), Hickory, NC; 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 Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on June 25, 2007, applicable to workers of Clayton Marcus Company, Inc., Plant #9, a subsidiary of La-Z-Boy Inc., Hickory, North Carolina. The notice was published in the **Federal Register** on July 19, 2007 (72 FR 39643).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the production of cut and sewn materials used for upholstered furniture.

New information provided by the company shows that in October 2007,

Rowe Fine Furniture, Inc. (''Rowe'') purchased Clayton Marcus Co., Inc., Plant #9, a subsidiary of La-Z-Boy Inc. and that some of the workers' wages at the subject firm are being reported under the Unemployment Insurance (UI) tax account for Rowe Fine Furniture, Inc. (''Rowe'').

Accordingly, the Department is amending the certification to include workers of the subject firm whose UI wages are reported by the successor firm, Rowe Fine Furniture, Inc. (''Rowe'').

The amended notice applicable to TA–W–61,716 is hereby issued as follows:

''All workers of Clayton Marcus Co., Inc., Plant #9, a subsidiary of La-Z-Boy Inc., currently a division of Rowe Fine Furniture, Inc. (''Rowe''), Hickory, North Carolina, who became totally or partially separated from employment on or after February 26, 2007, through June 25, 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 6th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–18582 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–62,833; TA–W–62,833B; TA–W–62,833C; TA–W–62,833D; TA–W–62,833E]

Megtec Systems, Inc., a Subsidiary of Sequa Corporation, Depere, WI, Including Employees of Megtec Systems, Inc., a Subsidiary of Sequa Corporation, Depere, WI, Working Out of: Wellford, SC; Jacksonville, FL; Las Cruces, NM; Mesa, AZ; 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 Regarding Eligibility to Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance on May 16, 2008, applicable to workers of Megtec Systems, Inc., a subsidiary of Sequa Corporation, DePere, Wisconsin. The notice was published in the **Federal Register** on May 29, 2008 (73 FR 30977). The certification was amended on June 26, 2008 to include an employee working out of Fayetteville, Georgia. The notice was published in the **Federal Register** on July 14, 2008 (73 FR 40386).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm.

New information shows that worker separations have occurred involving employees (Mr. Jimmy Gosnell, Mr. Dino Kimbrell, Mr. David Lettner, and Ms. Jody Meetz) of Megtec Systems, Inc., a subsidiary of Sequa Corporation DePere, Wisconsin, working out of Wellford, South Carolina, Jacksonville, Florida, Las Cruces, New Mexico and Mesa, Arizona.

Based on these findings, the Department is amending this certification to include employees of the DePere, Wisconsin location of the subject firm working out of Wellford, South Carolina, Jacksonville, Florida, Las Cruces, New Mexico and Mesa, Arizona.

The intent of the Department's certification is to include all workers of Megtec Systems, Inc., a subsidiary of Sequa Corporation, DePere, Wisconsin, who were adversely affected by increased imports of air flotation drying, pollution control and paper handling equipment.

The amended notice applicable to TA–W–62,833 is hereby issued as follows:

''All workers of Megtec Systems, Inc., a subsidiary of Sequa Corporation, DePere, Wisconsin (TA–W–62,833), including employees of Megtec Systems, Inc., a subsidiary of Sequa Corporation, DePere, Wisconsin, working out of Wellford, South Carolina (TA–W–62,833B), Jacksonville, Florida (TA–W–62,833C), Las Cruces, New Mexico (TA–W–62,833D), and Mesa, Arizona (TA–W–62,833E), who became totally or partially separated from employment on or after February 11, 2007, through May 16, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 6th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–18583 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,659]

Unilever Illinois Manufacturing, LLC, Food Solutions Division, Including On-Site Leased Workers of Manpower, Account Resources and Intertech, Franklin Park, IL; 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 17, 2008, applicable to workers of Unilever Illinois Manufacturing, LLC, Food Solutions Division, Franklin Park, Illinois. The notice was published in the **Federal Register** on July 30, 2008 (73 FR 44284).

At the request of a company official, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of commercial soup bases.

New information shows that leased workers of Manpower, Account Resources and InterTech were employed on-site at the Franklin Park, Illinois location of Unilever Illinois Manufacturing, LLC, Food Solutions Division. The Department has determined that these workers were sufficiently under the control of Unilever Illinois Manufacturing, LLC, Food Solutions Division to be considered leased workers.

Based on these findings, the Department is amending this certification to include leased workers of Manpower, Account Resources and InterTech working on-site at the Franklin Park, Illinois location of the subject firm.

The intent of the Department's certification is to include all workers employed at Unilever Illinois Manufacturing, LLC, Food Solutions Division, Franklin Park, Illinois who were adversely affected by a shift in production of commercial soup bases to Canada.

The amended notice applicable to TA–W–63,659 is hereby issued as follows:

''All workers of Unilever Illinois Manufacturing, LLC, Food Solutions Division, including on-site leased workers of Manpower, Account Resources and

InterTech, Franklin Park, Illinois, who became totally or partially separated from employment on or after July 9, 2007, through July 17, 2010, are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974, and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.''

Signed at Washington, DC, this 5th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–18587 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) number and alternative trade adjustment assistance (ATAA) by (TA–W) number issued during the period of July 21 through August 1, 2008.

In order for an affirmative determination to be made for workers of a primary firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(a) of the Act must be met.

I. Section (a)(2)(A)—all of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. The sales or production, or both, of such firm or subdivision have decreased absolutely; and

C. Increased imports of articles like or directly competitive with articles produced by such firm or subdivision have contributed importantly to such workers' separation or threat of separation and to the decline in sales or production of such firm or subdivision; or

II. Section (a)(2)(B)—both of the following must be satisfied:

A. A significant number or proportion of the workers in such workers' firm, or an appropriate subdivision of the firm, have become totally or partially separated, or are threatened to become totally or partially separated;

B. There has been a shift in production by such workers' firm or subdivision to a foreign country of articles like or directly competitive with articles which are produced by such firm or subdivision; and

C. One of the following must be satisfied:

1. The country to which the workers' firm has shifted production of the articles is a party to a free trade agreement with the United States;

2. The country to which the workers' firm has shifted production of the articles is a beneficiary country under the Andean Trade Preference Act, African Growth and Opportunity Act, or the Caribbean Basin Economic Recovery Act; or

3. There has been or is likely to be an increase in imports of articles that are like or directly competitive with articles which are or were produced by such firm or subdivision.

Also, in order for an affirmative determination to be made for secondarily affected workers of a firm and a certification issued regarding eligibility to apply for worker adjustment assistance, each of the group eligibility requirements of Section 222(b) of the Act must be met.

(1) Significant number or proportion of the workers in the workers' firm or an appropriate subdivision of the firm have become totally or partially separated, or are threatened to become totally or partially separated;

(2) The workers' firm (or subdivision) is a supplier or downstream producer to a firm (or subdivision) that employed a group of workers who received a certification of eligibility to apply for trade adjustment assistance benefits and such supply or production is related to the article that was the basis for such certification; and

(3) Either—

(A) The workers' firm is a supplier and the component parts it supplied for the firm (or subdivision) described in paragraph (2) accounted for at least 20 percent of the production or sales of the workers' firm; or

(B) A loss or business by the workers' firm with the firm (or subdivision) described in paragraph (2) contributed importantly to the workers' separation or threat of separation.

In order for the Division of Trade Adjustment Assistance to issue a certification of eligibility to apply for Alternative Trade Adjustment Assistance (ATAA) for older workers, the group eligibility requirements of Section 246(a)(3)(A)(ii) of the Trade Act must be met.

1. Whether a significant number of workers in the workers' firm are 50 years of age or older.

2. Whether the workers in the workers' firm possess skills that are not easily transferable.

3. The competitive conditions within the workers' industry (i.e., conditions within the industry are adverse).

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) of the Trade Act have been met.

TA–W–63,698; Filtran, Inc., Ogdensburg, NY: July 7, 2007.

TA–W–63,692; Firewire Surfboards, San Diego, CA: July 3, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) of the Trade Act have been met.

None.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) of the Trade Act have been met.

None.

Affirmative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

The following certifications have been issued. The date following the company name and location of each determination references the impact date for all workers of such determination.

The following certifications have been issued. The requirements of Section 222(a)(2)(A) (increased imports) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,694; Klaussner Furniture Industries, Inc., Asheboro, NC: July 31, 2008.

TA–W–63,521; Daltile, Inc., A Subsidiary of Mohawk Industries, Dallas, TX: June 10, 2007.

TA–W–63,382; Stanley-National Manufacturing Co, National Sales Co., National Manufacturing, Sterling, IL: March 2, 2008.
TA–W–63,361; H & R 1871, LLC, Gardner, MA: May 7, 2007.
TA–W–63,691; NewPage Corporation, Niagara Mill, Niagara, WI: July 11, 2007.
TA–W–63,687; International Wood LLC, Weslaco, TX: July 11, 2007.
TA–W–63,672; ECD, Inc., Hillside, NJ: July 9, 2007.
TA–W–63,576; Matador Tool and Die, Inc., Grand Rapids, MI: June 19, 2007.
TA–W–63,555; Monarchy Holding Inc., Hurd Window and Door, Medford, WI: June 17, 2007.
TA–W–63,531; William Pinchbeck, Inc., dba Pinchbeck Roses, Guilford, CT: June 12, 2007.
TA–W–63,462; Carthage Fabrics, Inc., Carthage, NC: May 28, 2007.
TA–W–63,436; Ponderay Newsprint Company, Usk, WA: May 20, 2007.
TA–W–63,384; Robertshaw Controls Company, d/b/a Invensys Controls, West Plains, MO: May 1, 2007.
TA–W–63,276; Quip Industries, Inc., Carlyle, IL: April 28, 2007.
TA–W–62,849; NewPage Corporation, Formerly Known as Stora Enso North America, Stamford, CT: February 13, 2007.
TA–W–62,726; Metaldyne Corporation, QC Select, Farmington Hills, MI: January 17, 2007.
TA–W–63,705; Border Apparel Laundry, Ltd, 6969 B Industrial Avenue, El Paso, TX: July 15, 2007.
TA–W–63,482; Northridge Mills, Inc., San Fernando, CA: May 22, 2007.

The following certifications have been issued. The requirements of Section 222(a)(2)(B) (shift in production) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,756; Avery Dennison Corporation, Paxar Americas, Inc & Brand, Foothills Temp, Lenoir, NC: May 19, 2008.
TA–W–63,741; KLA-Tencor Corporation, ADE Div., Superior, Adecco, Adecco Tech, MRI, Aerotek, Tucson, AZ: July 23, 2007.
TA–W–63,697; MTD Southwest, Inc., Plastics Department, Tempe, AZ: July 12, 2007.
TA–W–63,690; Burle Industries, Inc., A subsidiary of Photonis Holding SAS, Lancaster, PA: July 8, 2008.
TA–W–63,683; Numatech, Inc., A Subsidiary of Emerson Electric Company, Wixom, MI: July 10, 2007.
TA–W–63,682; Artistics Plating and Metal Finishing, Inc., Anaheim, CA: July 14, 2007.
TA–W–63,662; SteelCase Inc., City of Industry Plant, City of Industry, CA: July 9, 2007.
TA–W–63,660; Advance Transformer, Philips Lighting Division, Boscobel, WI: August 11, 2008.
TA–W–63,657; Delta Apparel, Inc., Maiden Division, Maiden, NC: July 4, 2007.
TA–W–63,650; Orcon Corporation, Union City, CA: June 27, 2007.
TA–W–63,602; Talport Industries, LLC, Yazoo City, MS: June 24, 2007.
TA–W–63,602A; Talport Industries, LLC, Hattiesburg, MS: June 24, 2007.
TA–W–63,591; Southwest Metal Finishing, Inc., New Berlin, WI: June 23, 2007.
TA–W–63,587; SAF Holland USA, Inc., A Division of SAF Holland, Inc., Holland, MI: June 10, 2007.
TA–W–63,503; 3 Day Blinds, Inc., Anaheim, CA: June 6, 2007.
TA–W–63,585; CAPS Group Acquisition, LLC, Black Dot Group, Crystal Lake, IL: June 23, 2007.
TA–W–63,684; Orbeco-Hellige, Inc., Orbeco Analytical Systems, Farmingdale, NY: July 13, 2007.
TA–W–63,670; American of Martinsville, GCA Temporary Staffing and Ameristaff, Martinsville, VA: July 9, 2007.
TA–W–63,644; Siemens Medical Solutions Diagnostics, Reagent Mfg. 5210 Pacific Concourse Drive, Los Angeles, CA: July 1, 2007.
TA–W–63,644A; Siemens Medical Solutions Diagnostics, Reagent Mfg. 5700 W. 96th Street Facility, Los Angeles, CA: July 1, 2007.
TA–W–63,282; Barco Medical Imaging Div., Operating and Shipping Group, Beaverton, OR: April 29, 2007.

The following certifications have been issued. The requirements of Section 222(b) (supplier to a firm whose workers are certified eligible to apply for TAA) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

TA–W–63,695; Tubular Metal Systems, LLC, A Subsidiary of Global Automotive Systems, LLC, Pinconning, MI: July 14, 2007.
TA–W–63,689; Brazeway, Inc., Adrian, MI: July 2, 2007.
TA–W–63,642; Enercon, Bonney Staffing and Kelley Services, Gray, ME: July 1, 2007.
TA–W–63,642A; Enercon, Bonney Staffing and Kelley Services, Auburn, ME: July 1, 2007.
TA–W–63,631; Hoover Universal, Subsidiary of Johnson Controls, West Carrollton Div, West Carrollton, OH: August 11, 2008.

The following certifications have been issued. The requirements of Section 222(b) (downstream producer for a firm whose workers are certified eligible to apply for TAA based on increased imports from or a shift in production to Mexico or Canada) and Section 246(a)(3)(A)(ii) of the Trade Act have been met.

None.

Negative Determinations for Alternative Trade Adjustment Assistance

In the following cases, it has been determined that the requirements of 246(a)(3)(A)(ii) have not been met for the reasons specified.

The Department has determined that criterion (1) of Section 246 has not been met. The firm does not have a significant number of workers 50 years of age or older.

TA–W–63,698; Filtran, Inc., Ogdensburg, NY.
TA–W–63,692; Firewire Surfboards, San Diego, CA.

The Department has determined that criterion (2) of Section 246 has not been met. Workers at the firm possess skills that are easily transferable.

None.

The Department has determined that criterion (3) of Section 246 has not been met. Competition conditions within the workers' industry are not adverse.

None.

Negative Determinations for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

In the following cases, the investigation revealed that the eligibility criteria for worker adjustment assistance have not been met for the reasons specified.

Because the workers of the firm are not eligible to apply for TAA, the workers cannot be certified eligible for ATAA.

The investigation revealed that criteria (a)(2)(A)(I.A.) and (a)(2)(B)(II.A.) (employment decline) have not been met.

None.

The investigation revealed that criteria (a)(2)(A)(I.B.) (Sales or production, or both, did not decline) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,272; Lifetime Brands, Inc., Product Development-Direct to Consumer Div., York, PA.

The investigation revealed that criteria (a)(2)(A)(I.C.) (increased imports) and (a)(2)(B)(II.B.) (shift in production to a foreign country) have not been met.

TA–W–63,717; Auxora, Inc., Baldwin Park, CA.
TA–W–63,713; Canterbury Printing Company of Rome Incorporated, Rome, NY.
TA–W–63,661; Samuel Aaron Inc., Long Island City, NY.
TA–W–63,609; C.A. Garner Veneer, Inc., Smithfield, KY.
TA–W–63,530; McNaughton Apparel Group, Inc., Moderate Sportsware Division, New York, NY.
TA–W–63,507; RF Micro Devices, Broomfield, CO.
TA–W–63,487; Occidental Chemical Corporation, Muscle Shoals, AL.
TA–W–63,467; JM Eagle, A Subsidiary of JM Manufacturing Company, Inc., Hastings, NE.
TA–W–63,383; WT Solutions, St. Johnsbury, VT.
TA–W–63,359; Mania Technologie Production Systems, Inc., South Windsor, CT.
TA–W–63,359A; Mania Technologie, Inc. (US), South Windsor, CT.
TA–W–63,295; Visteon Corporation Regional Assembly, Fuel Delivery—Climate Group Div., Concordia, MO.
TA–W–63,130; Sea Gull Lighting Products LLC, Riverside, NJ.
TA–W–63,192; Shiloh Industries, Liverpool Manufacturing Division, Valley City, OH.
TA–W–62,895; Siny Corp. d/b/a Monterey Mills, Janesville, WI.

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–63,720; Alvan Motor Freight, Inc., Kalamazoo, MI.
TA–W–63,714; Publishers Circulation Fulfillment, Customer Care Center, Waltham, MA.
TA–W–63,693; Classic Components Corporation, Scottsdale, AZ.
TA–W–63,681; Invensys Controls/Ranco, Plain City, OH.
TA–W–63,678; Volex, Inc., VIS–US Division, Hickory, NC.
TA–W–63,665; University at Buffalo Foundation Inc., Millard Fillmore College, Buffalo, NY.
TA–W–63,664; WM. Wright Co., Wrights Factory Outlet, Fiskdale, MA.
TA–W–63,653; Chase Home Finance LLC, A Division of J P Morgan Chase & Co., Lexington, KY.
TA–W–63,643; Zafarana Enterprises, Inc., Lathrup Village, MI.
TA–W–63,309; Tache USA, Inc., Long Island City, NY.

The investigation revealed that criteria of Section 222(b)(2) has not been met. The workers' firm (or subdivision) is not a supplier to or a downstream producer for a firm whose workers were certified eligible to apply for TAA.

None.

I hereby certify that the aforementioned determinations were issued during the period of July 21 through August 1, 2008. Copies of these determinations are available for inspection in Room C–5311, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 8, 2008.

Erin Fitzgerald,

Director, Division of Trade Adjustment Assistance.

[FR Doc. E8–18580 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,617]

Comprehensive Logistic, Inc., Including Leased Workers of Source Providers, Inc., Youngstown, Ohio; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, as amended, an investigation was initiated on June 30, 2008, in response to a worker petition filed by a company official on behalf of workers of Comprehensive Logistics, Inc., including leased workers of Source Providers, Inc. employed on-site at the Ford Motor Company, Louisville Assembly Plant, Vehicle Operations Division, Louisville, Kentucky.

The petitioning group of workers is covered by an active certification, (TA–W–62,214 as amended) which expires on November 8, 2009. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC, this 31st day of July 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–18585 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,729]

Manugraph DGM, Inc., Millersburg, PA; Notice of Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, as amended, an investigation was initiated on July 23, 2008 in response to a petition filed by a company official on behalf of workers at Manugraph DGM, Inc., Millersburg, Pennsylvania. The workers at the subject facility produce web offset printing presses.

The petitioner has requested that the petition be withdrawn. Consequently, the investigation has been terminated.

Signed in Washington, DC, this 1st day of August 2008.

Richard Church,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–18578 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance and Alternative Trade Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 22, 2008.

Interested persons are invited to submit written comments regarding the

subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than August 22, 2008.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room C–5311, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 6th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

APPENDIX

TAA petitions instituted between 7/28/08 and 8/1/08

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
63748	Great Eastern Mussel Farms, Inc. (Comp)	Tenants Harbor, ME	07/28/08	07/25/08
63749	Lear Corporation (Wkrs)	Bridgeton, MO	07/28/08	07/24/08
63750	Hi-Jon, Inc. (Wkrs)	San Francisco, CA	07/28/08	07/18/08
63751	Comau, Inc., Novi Industries (Comp)	Novi, MI	07/28/08	07/23/08
63752	San Francisco Network (Wkrs)	San Rafael, CA	07/28/08	07/18/08
63753	Elbeco Inc, Transcontinental Acquisition Grp Div. (Comp)	Los Angeles, CA	07/28/08	07/25/08
63754	Lane Furniture Ind. (Wkrs)	Belden, MS	07/29/08	07/28/08
63755	MWR (CWA)	Sidney, NY	07/29/08	07/09/08
63756	Avery Dennison Corporation (Comp)	Lenoir, NC	07/29/08	07/28/08
63757	Continental Sprayers International, Inc. (State)	Bridgeport, CT	07/29/08	07/28/08
63758	Lear Corporation (Wkrs)	El Paso, TX	07/29/08	07/25/08
63759	S. Shamash and Sons (Wkrs)	New York, NY	07/29/08	07/21/08
63760	American Racing Equipment (Rep)	Rancho Dominguez, CA	07/29/08	06/24/08
63761	Level 3 (Wkrs)	Austin, TX	07/29/08	07/28/08
63762	Westin Automotive (State)	St. James, MN	07/29/08	07/28/08
63763	Bennington Paperboard (Comp)	N. Hoosick, NY	07/29/08	07/28/08
63764	Haverhill Paperboard (Comp)	Bradford, MA	07/29/08	07/28/08
63765	Campbell Manufacturing (State)	Sparta, MO	07/29/08	07/25/08
63766	Federal-Mogul Corporation (Comp)	Boyertown, PA	07/29/08	07/24/08
63767	Pride Manufacturing Co., LLC (Comp)	Guilford, ME	07/30/08	07/28/08
63768	Zagaroli Classics, Inc. (State)	Hickory, NC	07/30/08	07/28/08
63769	TSI Graphics (State)	Effingham, IL	07/30/08	07/28/08
63770	ACCO Brands—GBC (Wkrs)	Pleasant Prairie, WI	07/30/08	07/28/08
63771	Blue Water Automotive Systems, Inc. (Wkrs)	Burlington, NC	07/30/08	07/25/08
63772	Rogue Valley Door (Wkrs)	Grants Pass, OR	07/30/08	07/29/08
63773	Enviro-Powder Company (Comp)	Caledonia, MI	07/30/08	07/29/08
63774	AME Manufacturing, Inc. (Wkrs)	Riverside, CA	07/30/08	07/25/08
63775	Duncan Solutions (State)	Harrison, AR	07/31/08	07/30/08
63776	GE Consumer and Industrial Lighting (IUECWA)	Cleveland, OH	07/31/08	07/29/08
63777	Wilton Armetale (Comp)	Mount Joy, PA	07/31/08	07/09/08
63778	Chuck Roast Equipment, Inc. (Comp)	Conway, NH	07/31/08	07/31/08
63779	Wee Ones, Inc. (Wkrs)	Louisiana, MO	07/31/08	07/30/08
63780	Newell Rubbermaid (State)	Maryville, TN	07/31/08	07/30/08
63781	Dow Reichhold Specialty Latex, LLC (Comp)	Chickamauga, GA	07/31/08	07/30/08
63782	Whirlpool Corporation (Comp)	LaVergne, TN	07/31/08	07/29/08
63783	Kellsport Industries, Inc. (Comp)	Fall River, MA	07/31/08	07/30/08
63784	Stimson Lumber Company (Wkrs)	Colville, WA	07/31/08	07/22/08
63785	American Wood Mark (State)	Ham Lake, MN	08/01/08	07/31/08
63786	International Automotive Components—North America (State).	Rochester Hills, MI	08/01/08	07/29/08
63787	Bowne (Wkrs)	Atlanta, GA	08/01/08	07/25/08
63788	Hanes Dye and Finishing (Wkrs)	Butner, NC	08/01/08	07/30/08
63789	Spectra-Physics (Wkrs)	Tucson, AZ	08/01/08	07/28/08
63790	The Fish Harder Companies, LLC (Wkrs)	Indiana, PA	08/01/08	07/31/08
63791	Thermo Fisher Scientific—SAMCO (Wkrs)	San Fernando, CA	08/01/08	07/28/08
63792	Caraaustar—Chattanooga Paperboard (AFLCIO)	Chattanooga, TN	08/01/08	07/31/08

[FR Doc. E8–18579 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–63,604]

Destron Fearing Corporation, Animal Applications Division, South Saint Paul, MN; Notice of Revised Determination on Reconsideration of Alternative Trade Adjustment Assistance

By letter dated July 30, 2008, a State agency representative requested administrative reconsideration regarding Alternative Trade Adjustment Assistance (ATAA) applicable to workers of the subject firm. The negative determination was signed on July 17, 2008 and published in the **Federal Register** on July 30, 2008 (73 FR 44284).

The workers of Destron Fearing Corporation, Animal Applications Division, South Saint Paul, Minnesota were certified eligible to apply for Trade Adjustment Assistance (TAA) on July 17, 2008.

The initial ATAA investigation determined that the skills of the subject worker group are easily transferable to other positions in the local area.

In the request for reconsideration, the petitioner provided sufficient information confirming that the skills of the workers at the subject firm are not easily transferable in the local commuting area.

Additional investigation has determined that the workers possess skills that are not easily transferable. A significant number or proportion of the worker group are age fifty years or over. Competitive conditions within the industry are adverse.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that the requirements of Section 246 of the Trade Act of 1974, as amended, have been met for workers at the subject firm.

In accordance with the provisions of the Act, I make the following certification:

All workers of Destron Fearing Corporation, Animal Applications Division, South Saint Paul, Minnesota, who became totally or partially separated from employment on or after June 26, 2007 through July 17, 2010, are eligible to apply for trade adjustment assistance under Section 223 of the Trade Act of 1974 and are also eligible to apply for alternative trade adjustment assistance under Section 246 of the Trade Act of 1974.

Signed in Washington, DC, this 6th day of August 2008.

Linda G. Poole,

Certifying Officer, Division of Trade Adjustment Assistance.

[FR Doc. E8–18584 Filed 8–11–08; 8:45 am]

BILLING CODE 4510–FN–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to section 189a. (2) of the Atomic Energy Act of 1954, as amended (the Act), the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. The Act requires the Commission publish notice of any amendments issued, or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from July 17, 2008 to July 30, 2008. The last biweekly notice was published on July 29, 2008 (73 FR 43953).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day period provided that its final determination is that the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area O1F21, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E-Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for

leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also set forth the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner/requestor intends to rely in proving the contention at the hearing. The petitioner/requestor must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner/requestor intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner/requestor to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing.

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least five (5) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearingdocket@nrc.gov*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E-Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html*. Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html*.

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html*. A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing

requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)-(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as Social Security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this amendment action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois.

AmerGen Energy Company, LLC, et al., Docket No. 50–219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Docket Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units 2 and 3, York and Lancaster Counties, Pennsylvania.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois.

Date of amendment request: June 9, 2008.

Description of amendment request: The proposed amendments would adopt the Technical Specification Task Force (TSTF) Standard Technical Specification (STS) change TSTF–475, Revision 1. The amendments would: (1) (a) Revise the TS surveillance requirement (SR) frequency in TS 3.1.3, ''Control Rod OPERABILITY'' (except for Oyster Creek Nuclear Generating Station), and (b) revise the TS surveillance requirement in TS 4.2, ''Reactivity Control,'' Specification D (for Oyster Creek Nuclear Generating Station); (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, ''Source Range Monitoring Instrumentation'' (Clinton Power Station only); and (3) revise Example 1.4–3 in section 1.4 ''Frequency'' to clarify the applicability of the 1.25 surveillance test interval extension (Oyster Creek Nuclear Generating Station excluded).

The Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on November 13, 2007 (72 FR 63935), on possible license amendments adopting TSTF–475 using the NRC's consolidated line item improvement process (CLIIP) for amending licensees' TSs, which included a model safety evaluation (SE) and model no significant hazards consideration (NSHC) determination. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on August 16, 2007 (72 FR 46103), which included the resolution of public comments on the model SE. The August 16, 2007, notice of availability referenced the November 13, 2007, notice. The licensee has affirmed the applicability of the November 13, 2007, NSHC determination in its application.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change generically implements TSTF–475, Revision 1, ''Control Rod Notch Testing Frequency and SRM Insert Control Rod Action.'' TSTF–475, Revision 1, modifies NUREG–1433 (BWR/4) and NUREG–1434 (BWR/6) STS. The changes: (1) Revise TS testing frequency for surveillance requirement (SR) 3.1.3.2 in TS 3.1.3, for the subject plants, except Oyster Creek Nuclear Generating Station, and the TS surveillance requirement in TS 4.2, Specification D for Oyster Creek Nuclear Generating Station, (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, Required Action E.2, ''Source Range Monitoring Instrumentation'' (NUREG–1434 only), and (3) revise Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension. This change does not affect either the design or operation of the Control Rod Drive Mechanism (CRDM). The affected surveillance and Required Action is not considered to be an initiator of any analyzed event. Revising the frequency for notch testing fully withdrawn control rods will not affect the ability of the control rods to shutdown the reactor if required. Given the extremely reliable nature of the CRDM, as demonstrated through industry operating experience, the proposed monthly notch testing of all withdrawn control rods continues to provide a high level of confidence in control rod operability. Hence, the overall intent of the notch testing surveillances, which is to detect either random stuck control rods or identify generic concerns affecting control rod operability, is not significantly affected by the proposed change. Requiring

control rods to be fully inserted when the associated SRM is inoperable is consistent with other similar requirements and will increase the shutdown margin. The clarification of Example 1.4–3 in Section 1.4, ''Frequency,'' is an editorial change made to provide consistency with other discussions in Section 1.4. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The consequences of an accident after adopting TSTF–475, Revision 1, are no different than the consequences of an accident prior to adoption. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From any Accident Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. The proposed change will not introduce new failure modes or effects and will not, in the absence of other unrelated failures, lead to an accident whose consequences exceed the consequences of accidents previously analyzed. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

TSTF–475, Revision 1, will: (1) Revise the TS SR 3.1.3.2 frequency in TS 3.1.3, ''Control Rod OPERABILITY,'' (2) clarify the requirement to fully insert all insertable control rods for the limiting condition for operation (LCO) in TS 3.3.1.2, ''Source Range Monitoring Instrumentation,'' and (3) revise Example 1.4–3 in Section 1.4, ''Frequency,'' to clarify the applicability of the 1.25 surveillance test interval extension. The GE Nuclear Energy Report, ''CRD Notching Surveillance Testing for Limerick Generating Station,'' dated November 2006, concludes that extending the control rod notch test interval from weekly to monthly is not expected to impact the reliability of the scram system and that the analysis supports the decision to change the surveillance frequency. Therefore, the proposed changes in TSTF–475, Revision 1, do not involve a significant reduction in a margin of safety.

The NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Bradley Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Carolina Power & Light Company, et al., Docket No. 50–400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina.

Date of amendment request: April 30, 2008.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) section 3.7.5a to restore the Ultimate Heat Sink (UHS) Main Reservoir minimum level to the value allowed by the initial operating license as a result of improvements made to the Emergency Service Water system. The change will allow continued plant operation to a Main Reservoir minimum level of 206 feet (ft) Mean Sea Level (MSL) in Modes 1–4, versus the current minimum allowed level of 215 ft MSL.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change to decrease the UHS Main Reservoir minimum level does not alter the function, design, or operating practices for plant systems or components. The UHS is utilized to remove heat loads from plant systems during normal and accident conditions. This function is not expected or postulated to result in the generation of any accident and continues to adequately satisfy the associated safety functions with the proposed change. Therefore, the probability of an accident presently evaluated in the safety analyses will not be increased because the UHS function does not have the potential to be the source of an accident.

The heat loads that the UHS is designed to accommodate have been evaluated for functionality with the reduced level requirement. The result of these evaluations is that there is existing margin associated with the systems that utilize the UHS for normal and accident conditions. This margin is sufficient to accommodate the postulated normal and accident heat loads with the proposed change to the UHS. Since the safety functions of the UHS are maintained, the systems that ensure acceptable offsite dose consequences will continue to operate as designed. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not introduce any new modes of plant operation and will not result in a change to the design function of any structure, system, or component that is used for accident mitigation. By allowing the proposed change in the UHS Main Reservoir level, only the parameters for UHS operation are changed, while the safety functions of the UHS and systems that provide heat sink capability continue to be maintained. The UHS function provides accident mitigation capabilities and does not reflect the potential for accident generation. Therefore, the possibility for creating a new or different kind of accident is not feasible because the UHS is only utilized for heat removal functions that are not a potential source for accident generation.

The proposed change does not result in any credible new failure mechanisms, malfunctions, or accident initiators not considered in the original design and licensing basis. The engineering analyses performed to support the proposed change demonstrate that affected safety-related systems and components are capable of performing their intended safety functions at the reduced Main Reservoir level. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

The proposed change has been evaluated for systems that are needed to support accident mitigation functions as well as normal operational evolutions. Operational margins were found to exist in the systems that utilize the UHS capabilities such that this proposed change will not result in the loss of any safety function necessary for normal or accident conditions. While operating margins have been reduced by the proposed changes, safety margins have been maintained as assumed in the accident analyses for postulated events. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: David T. Conley, Associate General Counsel II—Legal Department, Progress Energy Service Company, LLC, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Branch Chief: Thomas H. Boyce.

Exelon Generation Company, LLC, Docket Nos. 50–373 and 50–374, LaSalle

County Station, Units 1 and 2, LaSalle County, Illinois.

Date of amendment request: May 2, 2008.

Description of amendment request: The proposed amendments would revise Technical Specification (TS) 3.8.3, ''Diesel Fuel Oil and Starting Air,'' to replace the numerical volume requirements for stored diesel fuel oil inventory with requirements that state that volumes equivalent to seven days and six days of fuel oil are available. Exelon Generation Company is requesting to move the diesel fuel oil numerical volumes equivalent to seven-day and six-day supplies to the TS Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed TS change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change relocates the numerical volume of diesel fuel oil required to support seven-day operation of the onsite DGs [diesel generators], and the numerical volume equivalent to a six-day supply, to licensee control. The specific volumes of fuel oil equivalent to a seven-day and six day supply is calculated considering the DG manufacturer's fuel oil consumption rates and the energy content of ULSD [ultra low sulfur diesel] fuel. Moreover, these calculations consider the entire range of API [American Petroleum Industry] gravities allowed by the LSCS [LaSalle County Station] Diesel Fuel Oil Testing Program. The requirement to meet UFSAR [Updated Final Safety Analysis Report] 9.5.4.1.1.d, diesel loading assumptions, maintain a seven-day supply, and the actions taken when the volume of fuel oil available is less than a six-day supply have not changed. These requirements remain consistent with the assumptions in the accident analyses, and neither the probability, nor the consequences of any accident previously evaluated will be affected by the proposed change.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed TS change create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed change does not involve any physical alteration of the plant (i.e., no new or different type of equipment will be installed), or affect the control parameters governing unit operation, or the response of plant equipment to transient conditions. The proposed change is consistent with the safety analysis assumptions.

Based on the above information, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed TS change involve a significant reduction in a margin of safety?

Response: No.

The proposed change relocates the numerical volumes of diesel fuel oil required to support seven-day operation of the onsite DGs, and the numerical volumes equivalent to a six-day supply, to licensee control. As the bases for the existing limits on diesel fuel oil are not changed, no change is made to the accident analysis assumptions, and no margin of safety is reduced as part of this change.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota.

Date of amendment request: June 26, 2008.

Description of amendment request: The licensee proposed to amend the Technical Specifications, revising existing Condition D of Specification 3.5.1, ''ECCS [Emergency Core Cooling System]—Operating,'' to: (1) Apply to two entire Low-Pressure Core Injection (LPCI) subsystems being inoperable (currently, the Condition applies when two LPCl subsystems are inoperable due to inoperable injection paths); (2) add a new Condition E to provide a 72-hour completion time when one Core Spray subsystem and one LPCl subsystem (or one or two LPCl pump(s) are inoperable; (3) add a new Condition F to provide a 72-hour completion time when both Core Spray subsystems are inoperable; and (4) re-designate the Conditions and Required Actions (starting at existing letter E) to reflect the insertion of new Conditions E and F (i.e., these are purely editorial changes).

Basis for proposed no significant hazards consideration determination: As required by Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (NSHC). The licensee's NSHC analysis is reproduced below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The low pressure Emergency Core Cooling System (ECCS) subsystems are designed to inject to reflood or to spray the core after any size break up to and including a design basis Loss of Coolant Accident (LOCA). The proposed changes to the Required Actions and associated Completion Times do not change the conditions, operating configurations, or minimum amount of operating equipment assumed in the safety analysis for accident mitigation. No changes are proposed to the manner in which the ECCS provides plant protection or which would create new modes of plant operation.

The proposed changes will not affect the probability of any event initiators. There will be no degradation in the performance of, or an increase in the number of challenges imposed on, safety related equipment assumed to function during an accident situation. There will be no change to normal plant operating parameters or accident mitigation performance.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

There are no hardware changes nor are there any changes in the method by which any plant systems perform a safety function. This request does not affect the normal method of plant operation.

The proposed changes do not introduce new equipment, which could create a new or different kind of accident. No new external threats, release pathways, or equipment failure modes are created. No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of this request.

Therefore, the implementation of the proposed changes will not create a possibility for an accident of a new or different type than those previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The ECCS are designed with sufficient redundancy such that a division of low pressure ECCS may be removed from service for maintenance or testing. The remaining subsystems are capable of providing water and removing heat loads to satisfy the Updated Safety Analysis Report requirements for accident mitigation or unit safe shutdown.

There will be no change to the manner in which the safety limits or limiting safety system settings are determined nor will there be any change to those plant systems necessary to assure the accomplishment of protection functions. There will be no change to post-LOCA peak clad temperatures.

For these reasons, the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on the NRC staff's own analysis above, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.22(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina.

Date of application for amendment: July 17, 2007, as supplemented by letters dated November 9, 2007, and April 1, 2008.

Brief description of amendment: The amendment establishes more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope in accordance with the NRC-approved Technical Specification Task Force (TSTF) Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Habitability.'' This technical specification improvement was initially made available in the **Federal Register** by the NRC on January 17, 2007 (72 FR 2022).

Date of issuance: July 23, 2008.

Effective date: Effective as of the date of issuance and shall be implemented within 180 days.

Amendment No: 219.

Renewed Facility Operating License No. DPR–23: The amendment revises the Technical Specifications and Facility Operating License.

Date of initial notice in ***Federal Register:*** August 28, 2007 (72 FR 49570). The supplements dated November 9, 2007, and April 1, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendment is contained in a safety evaluation dated July 23, 2008.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.

Date of application for amendment: March 13, 2008, as supplemented by letter dated July 1, 2008.

Brief description of amendment: The amendment relocates the Technical Specification (TS) 3.4.7, ''Reactor Coolant System Chemistry,'' to the Technical Requirements Manual (TRM). The change is consistent with the NUREG 1432, ''Standard Technical Specifications for Combustion Engineering Plants.''

Date of issuance: July 23, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 280.

Renewed Facility Operating License No. NPF–6: Amendment revised the Technical Specifications/license.

Date of initial notice in ***Federal Register:*** May 6, 2008 (73 FR 25039). The supplement dated July 1, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 23, 2008.

No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois.

Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois.

Date of application for amendments: August 1, 2007, as supplemented by letters dated February 26 and May 1, 2008.

Brief description of amendments: The amendments revise the technical specification allowable value (AV) for the Reactor Protection System (RPS) Instrumentation Function 10, ''Turbine Condenser Vacuum—Low,'' specified in TS Table 3.3.1.1–1, ''Reactor Protection System Instrumentation,'' for Dresden Nuclear Power Station, Units 2 and 3 (DNPS), and Quad Cities Nuclear Power Station, Units 1 and 2. The amendments also revise the Channel Functional Test and Channel Calibration Surveillance Test Interval (STI) for DNPS TS Table 3.3.1.1–1, Function 10. As part of the DNPS STI revision, surveillance requirement 3.3.1.10, ''Channel Calibration,'' which is specific to the Turbine Condenser Vacuum—Low instrument function, is deleted since it is no longer applicable.

Date of issuance: July 22, 2008.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment Nos.: 227, 219, 239, 234.

Renewed Facility Operating License Nos. DPR–19, DPR–25, DPR–29 and DPR–30. The amendments revise the Technical Specifications and Licenses.

Date of initial notice in ***Federal Register:*** December 4, 2007 (72 FR

68214) The February 26 and May 1, 2008, supplements contained clarifying information and did not change the NRC staff's initial proposed finding of no significant hazards consideration. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 22, 2008.

No significant hazards consideration comments received: No.

FPL Energy, Point Beach, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin.

Date of application for amendments: March 31, 2008.

Brief description of amendments: These amendments to the Technical Specification delete the definition of E Bar and replace the current limits on reactor coolant system (RCS) gross specific activity with a new limit on RCS noble gas activity. The noble gas activity is now based on dose equivalent Xenon-133 definition and replaces the E Bar definition. The changes are consistent with Nuclear Regulatory Commission-approved Industry/Technical Specification Task Force (TSTF) Standard Technical Specification Change Traveler, TSTF–490, Revision 0.

Date of issuance: July 14, 2008.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 233, 238.

Renewed Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications/License.

Date of initial notice in ***Federal Register:*** May 6, 2008 (73 FR 25041). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 14, 2008.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit No. 2 (NMP–2), Oswego County, New York.

Date of application for amendment: July 12, 2007, as supplemented on June 19, 2008.

Brief description of amendment: The amendment establishes more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope in accordance with the NRC-approved Technical Specification (TS) Task Force Traveler (TSTF)–448, Revision 3, and changes the NMP2 TSs related to control room envelope habitability in TS section 3.7.2, ''Control Room Envelope Filtration (CREF) System,'' and TS section 5.5, ''Programs and Manuals.'' The amendment also adds a license condition to support implementation of the TS changes.

Date of issuance: July 15, 2008.

Effective date: As of the date of issuance to be implemented within 120 days.

Amendment No.: 126

Renewed Facility Operating License No. DPR–69: Amendment revised the License and TSs.

Date of initial notice in ***Federal Register:*** September 11, 2007 (72 FR 51864). The supplemental letter dated June 19, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the Nuclear Regulatory Commission staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 2008.

No significant hazards consideration comments received: No.

Nine Mile Point Nuclear Station, LLC, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit No. 1 (NMP1), Oswego County, New York.

Date of application for amendment: July 12, 2007, as supplemented on June 19, 2008.

Brief description of amendment: The amendment establishes more effective and appropriate action, surveillance, and administrative requirements related to ensuring the habitability of the control room envelope in accordance with the NRC-approved Technical Specification (TS) Task Force Traveler (TSTF)–448, Revision 3, and changes the NMP1 TSs related to control room envelope habitability in TS Section 3.4.5, ''Control Room Air Treatment System,'' and TS Section 6.5, ''Programs and Manuals.'' The amendment also adds a license condition to support implementation of the TS changes.

Date of issuance: July 15, 2008.

Effective date: As of the date of issuance to be implemented within 120 days.

Amendment No.: 195.

Renewed Facility Operating License No. DPR–63: Amendment revised the License and TSs.

Date of initial notice in ***Federal Register:*** September 11, 2007 (72 FR 51863). The supplemental letter dated June 19, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the NRC staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated July 15, 2008.

No significant hazards consideration comments received: No.

Nuclear Management Company, LLC, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota.

Date of application for amendments: July 19, 2007, as supplemented by letter dated June 25, 2008.

Brief description of amendments: The amendments revise surveillance requirements for the duration of the heater tests for technical specification (TS) 3.6.9, ''Shield Building Ventilation System (SBVS),'' TS 3.7.12, ''Auxiliary Building Special Ventilation System (ABSVS),'' TS 3.7.13, ''Spent Fuel Pool Special Ventilation System (SFPSVS),'' and the frequency for performance of filter tests in TS 5.5.9, ''Ventilation Filter Testing Program (VFTP).

Date of issuance: July 18, 2008.

Effective date: As of the date of issuance and shall be implemented within 90 days.

Amendment Nos.: 186, 176.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register***:* October 9, 2007 (72 FR 57355). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 18, 2008. The information contained in the June 25, 2008, supplement is clarifying in nature and does not change either the scope of the amendment request or the no significant hazards consideration determination.

No significant hazards consideration comments received: No.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas.

Date of amendment request: June 26, 2007, as supplemented by letters dated April 29 and May 27, 2008.

Brief description of amendments: The amendments added a new license condition (12) for Unit 1 and new license condition (10) for Unit 2 on the control room envelope (CRE) habitability program. In addition, the amendments revised the Technical Specification (TS) requirements related to the habitability of the CRE in TS 3.7.7, ''Control Room Makeup and Cleanup Filtration System (CRMCFS),'' and added the new Control Room Envelope Habitability Program to TS Section 6.8, ''Administrative Controls—Procedures, Programs, and Manuals.'' These changes are consistent with the NRC-approved TS Task Force (TSTF)

Standard Technical Specification change traveler TSTF–448, Revision 3, ''Control Room Envelope Habitability.'' The availability of the TS improvement was published in the **Federal Register** on January 17, 2007 (72 FR 2022), as part of the Consolidated Line Item Improvement Process.

Date of issuance: July 29, 2008.

Effective date: As of the date of issuance and shall be implemented within 60 days of issuance.

Amendment Nos.: Unit 1—185; Unit 2—172.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register****:* August 14, 2007 (72 FR 45460). The supplemental letters dated April 29 and May 27, 2008, provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination as published in the **Federal Register**. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated July 29, 2008.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System's (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737 or by e-mail to *pdr.resource@nrc.gov.*

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. Within 60 days after the date of publication of this notice, person(s) may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request via electronic submission through the NRC E–Filing system for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's ''Rules of Practice for Domestic Licensing Proceedings'' in 10 CFR Part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the Commission's PDR, located at One White Flint North, Public File Area 01F21, 11555 Rockville Pike (first floor), Rockville, Maryland, and electronically on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If there are problems in accessing the document, contact the PDR Reference staff at 1 (800) 397–4209, (301) 415–4737, or by e-mail to *pdr.resource@nrc.gov.* If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or

petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact.[1] Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner/requestor who fails to satisfy these requirements with respect to at least one contention will not be permitted to participate as a party.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns/issues relating to technical and/or health and safety matters discussed or referenced in the applications.

2. Environmental—primarily concerns/issues relating to matters discussed or referenced in the environmental analysis for the applications.

3. Miscellaneous—does not fall into one of the categories outlined above.

As specified in 10 CFR 2.309, if two or more petitioners/requestors seek to co-sponsor a contention, the petitioners/requestors shall jointly designate a representative who shall have the authority to act for the petitioners/requestors with respect to that contention. If a petitioner/requestor seeks to adopt the contention of another sponsoring petitioner/requestor, the petitioner/requestor who seeks to adopt the contention must either agree that the sponsoring petitioner/requestor shall act as the representative with respect to that contention, or jointly designate with the sponsoring petitioner/requestor a representative who shall have the authority to act for the petitioners/requestors with respect to that contention.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for hearing or a petition for leave to intervene must be filed in accordance with the NRC E–Filing rule, which the NRC promulgated in August 28, 2007, (72 FR 49139). The E–Filing process requires participants to submit and serve documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E–Filing, at least five (5) days prior to the filing deadline, the petitioner/ requestor must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV*, or by calling (301) 415–1677, to request (1) a digital ID certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E–Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/ requestor will need to download the Workplace Forms Viewer™ to access the Electronic Information Exchange (EIE), a component of the E–Filing system. The Workplace Forms Viewer™ is free and is available at *http://www.nrc.gov/site-help/e-submittals/install-viewer.html.* Information about applying for a digital ID certificate is available on NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/apply-certificates.html.*

Once a petitioner/requestor has obtained a digital ID certificate, had a docket created, and downloaded the EIE viewer, it can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the filer submits its documents through EIE. To be timely, an electronic filing must be submitted to the EIE system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E–Filing system time-stamps the document and sends the submitter an e-mail notice confirming receipt of the document. The EIE system also distributes an e-mail notice that provides access to the document to the NRC Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E–Filing system.

A person filing electronically may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC technical help line, which is available between 8:30 a.m. and 4:15 p.m., Eastern Time, Monday through Friday. The help line number is (800) 397–4209 or locally, (301) 415–4737.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR

[1] To the extent that the applications contain attachments and supporting documents that are not publicly available because they are asserted to contain safeguards or proprietary information, petitioners desiring access to this information should contact the applicant or applicant's counsel and discuss the need for a protective order.

2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland, 2085 *Attention* 2,: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp*, unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

Tennessee Valley Authority, Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee.

Date of amendment request: July 24, 2008.

Description of amendment request: This amendment allows the implementation of a temporary alteration that will be used to restore Train A of the Essential Raw Cooling Water (ERCW) to a functional condition and to provide additional time to restore the operability of at least one of the inoperable ERCW pumps. Additionally, this amendment adds a temporary CONDITION and a Note to Technical Specification 3.7.8, ''Essential Raw Cooling Water,'' reflecting the restoration of functionality of Train A ERCW by the temporary alteration.

Date of issuance: July 24, 2008.

Effective date: July 24, 2008, and shall be implemented as of the date of issuance.

Amendment No.: 69.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications and License.

Public comments requested as to proposed no significant hazards consideration (NSHC):

No. The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated July 24, 2008.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 6A West Tower, ET 11H, 400 West Summit Hill Drive, Knoxville, TN 37902.

NRC Branch Chief: L. Raghavan.

Dated at Rockville, Maryland, this 31st day of July 2008.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E8–18185 Filed 8–11–08; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATE: Weeks of August 11, 18, 25, September 1, 8, 15, 2008.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of August 11, 2008

Tuesday, August 12, 2008

1:30 p.m. Meeting with FEMA and State and Local Representatives on Offsite Emergency Preparedness Issues (Public Meeting) (Contact: Lisa Gibney, 301–415–8376).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, August 14, 2008

1:30 p.m. Meeting with Organization of Agreement States (OAS) and Conference of Radiation Control Program Directors (CRCPD) (Public Meeting) (Contact: Andrea Jones, 301–415–2309).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of August 18, 2008—Tentative

There are no meetings scheduled for the week of August 18, 2008.

Week of August 25, 2008—Tentative

There are no meetings scheduled for the week of August 25, 2008.

Week of September 1, 2008—Tentative

There are no meetings scheduled for the week of September 1, 2008.

Week of September 8, 2008—Tentative

There are no meetings scheduled for the week of September 8, 2008.

Week of September 15, 2008

There are no meetings scheduled for the week of September 15, 2008.

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Michelle Schroll, (301) 415–1662.

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (e.g. braille, large print), please notify the NRC's Disability Program Coordinator, Rohn Brown, at 301–492–2279, TDD: 301–415–2100, or by e-mail at *REB3@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov.*

Dated: August 7, 2008.

R. Michelle Schroll,

Office of the Secretary.

[FR Doc. E8–18689 Filed 8–8–08; 12:00 pm]

BILLING CODE 7590–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Fiscal Year 2008 Tariff-Rate Quota Allocations of Raw Cane Sugar, Refined and Specialty Sugar, and Sugar-Containing Products; Correction

AGENCY: USTR.

ACTION: Notice; correction.

SUMMARY: The Office of the United States Trade Representative published a document in the **Federal Register** of August 24, 2007 concerning Fiscal Year 2008 Tariff-Rate Quota allocations of raw cane sugar, refined and specialty sugar, and sugar-containing products. The document contained incorrect data.

Correction to Previous Notice

In the **Federal Register** of August 24, 2007, Volume 72, Page 48695, the Office of the United States Trade Representative published a notice entitled ''Fiscal Year 2008 Tariff-Rate Quota Allocations of Raw Cane Sugar, Refined and Specialty Sugar, and Sugar-Containing Products.'' A correction is being made to the information in the table in the second column, which contains the country-specific allocations for raw sugar. The figure for the allocation for the country of Nicaragua is incorrect. The correct figure is 22,114 Metric Tons Raw Equivalent (MTRV) rather than 22,538 MTRV. All other information remains unchanged and will not be repeated in this correction.

FOR FURTHER INFORMATION CONTACT: Leslie O'Connor, Office of Agricultural Affairs, telephone: 202–395–6127 or facsimile: 202–395–4579.

Susan C. Schwab,

United States Trade Representative.

[FR Doc. E8–18520 Filed 8–11–08; 8:45 am]

BILLING CODE 3190–W8–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58324; File Nos. SR–BSE–2008–02; SR–BSE–2008–23; SR–BSE–2008–25; SR–BSECC–2008–01]

Self-Regulatory Organizations; Boston Stock Exchange, Incorporated; Boston Stock Exchange Clearing Corporation; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Amending the Certificate of Incorporation of Boston Stock Exchange, Incorporated; Notice of Filing of Amendment No. 1 to a Proposed Rule Change Relating to the Acquisition of the Boston Stock Exchange, Incorporated by The NASDAQ OMX Group, Inc., and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1; Notice of Filing of Amendment No. 1 to a Proposed Rule Change Relating to a Proposal To Transfer Boston Stock Exchange, Incorporated's Ownership Interest in Boston Options Exchange Group, LLC and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1; Notice of Filing of Amendment No. 1 to a Proposed Rule Change by the Boston Stock Exchange Clearing Corporation Relating to Amendment of Its Articles of Organization and By-Laws in Connection With the Planned Acquisition by The NASDAQ OMX Group, Inc., and Order Granting Accelerated Approval of the Proposed Rule Change, as Modified by Amendment No. 1

August 7, 2008.

I. Introduction

On April 21, 2008, the Boston Stock Exchange, Inc. (''BSE'') filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder[2] to: (1) Amend and restate the BSE Certificate in its entirety to reflect the planned acquisition of BSE by The NASDAQ OMX Group, Inc. (''NASDAQ OMX''), the parent corporation of The NASDAQ Stock Market LLC (''Nasdaq''); (2) replace the BSE Constitution in its entirety with proposed new BSE By-Laws; (3) adopt a written operating agreement for its subsidiary, Boston Options Exchange Regulation, LLC (''BOXR''), and amend the BOXR By-Laws; (4) obtain approval for a change of control of BSX Group, LLC (''BSX''), which would operate, upon Commission approval of certain proposed rule changes, BSE's equities trading facility, and make related amendments to the Operating Agreement of BSX; (5) adopt two rules; and (6) obtain Commission approval for the affiliation between BSE and certain broker-dealer subsidiaries of NASDAQ OMX (collectively, the ''BSE Governance Proposal''). The BSE Governance Proposal was published for comment in the **Federal Register** on May 8, 2008.[3] The Commission received no comments on the BSE Governance Proposal. On July 28, 2008, BSE filed Amendment No. 1 to the BSE Governance Proposal.[4] This order provides notice of and requests comment on Amendment No. 1 to the BSE Governance Proposal and approves the BSE Governance Proposal, as modified by Amendment No. 1, on an accelerated basis.

On April 23, 2008, BSE filed with the Commission a proposed rule change (''BOX Transfer Proposal'') to transfer its ownership interest in the Boston Options Exchange Group, LLC (''BOX''), the operator of BSE's Boston Options Exchange facility (''BOX Market''), to MX U.S. 2, Inc. (''MX US''), a wholly-owned U.S. subsidiary of the Montréal Exchange Inc. (''MX''), and to amend the BOX LLC Agreement. The BOX Transfer Proposal was published for comment in the **Federal Register** on May 8, 2008.[5] The Commission received no comments on the BOX Transfer Proposal. On July 28, 2008, BSE filed Amendment No. 1 to the BOX Transfer Proposal.[6] This order provides notice of and requests comment on Amendment No. 1 to the BOX Transfer Proposal and approves the BOX Transfer Proposal, as modified by Amendment No. 1, on an accelerated basis.

On April 23, 2008, BSE filed with the Commission a proposed rule change (''BSE Interim Certificate Proposal'') to amend the BSE Certificate to permit BSE to make distributions to BSE membership owners in connection with the transfer of its ownership interest in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57757 (May 1, 2008), 73 FR 26159 (SR–BSE–2008–23) (''BSE Governance Proposal Notice'').

[4] In Amendment No. 1 to the BSE Governance Proposal, BSE filed NASDAQ OMX's Certificate and By-Laws, as proposed to be amended in connection with the acquisition of BSE by NASDAQ OMX, and proposed to make a non-substantive correction in the purpose section of the original filing. *See infra* note 104 and accompanying text.

[5] *See* Securities Exchange Act Release No. 57762 (May 1, 2008), 73 FR 26170 (SR–BSE–2008–25) (''BOX Transfer Proposal Notice'').

[6] In Amendment No. 1 to the BOX Transfer Proposal, BSE proposes to clarify Section 8.4(g) of the BOX LLC Agreement.

BOX. The BSE Interim Certificate Proposal was published for comment in the **Federal Register** on May 7, 2008.[7] The Commission received no comment letters regarding the BSE Interim Certificate Proposal. On July 28, 2008, BSE filed Amendment No. 1 to the BSE Interim Certificate Proposal.[8] This order approves the BSE Interim Certificate Proposal as modified by Amendment No. 1.

On April 24, 2008, the Boston Stock Exchange Clearing Corporation (''BSECC'') filed with the Commission a proposed rule change (''BSECC Governance Proposal''). The BSECC Governance Proposal was published for comment in the **Federal Register** on May 13, 2008.[9] The Commission received no comments on the BSECC Governance Proposal. On July 28, 2008, BSECC filed Amendment No. 1 to the BSECC Governance Proposal.[10] This order provides notice of and requests comment on Amendment No. 1 to the BSECC Governance Proposal and approves the BSECC Governance Proposal, as modified by Amendment No. 1, on an accelerated basis.

II. Discussion and Commission Findings

After careful review, the Commission finds that the BSE Interim Certificate Proposal, the BSE Governance Proposal, and the BOX Ownership Transfer Proposal are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission finds that these proposed rule changes are consistent with Section 6(b)(5) of the Act,[12] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest. The Commission also finds that these proposed rule changes are consistent with Section 6(b)(1) of the Act,[13] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange; Section 6(b)(3) of the Act,[14] which requires, in part, that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs; and Section 6(b)(7) of the Act,[15] which requires, in part, that the rules of an exchange provide a fair procedure for disciplining members.

The Commission also finds that the BSECC Governance Proposal is consistent with Section 17A(b)(3)(C) of the Act,[16] which requires, in part, that the rules of a registered clearing agency assure the fair representation of its shareholders (or members) and participants in the selection of its board of directors and administration of its affairs.

The discussion below does not review every detail of each of the proposed rule changes, but focuses on the most significant rules and policy issues considered by the Commission in reviewing the proposals.

NASDAQ OMX, the parent corporation of Nasdaq, and BSE have entered into an agreement pursuant to which NASDAQ OMX would acquire all of the outstanding membership interests in BSE (''BSE Acquisition'').[17] Following the BSE Acquisition, BSE would be a wholly-owned subsidiary of NASDAQ OMX. The BSE Acquisition would have the effect of: (1) converting BSE, a registered national securities exchange, from a Delaware, non-stock corporation into a Delaware stock corporation; and (2) demutualizing BSE by separating equity ownership in BSE from trading privileges on BSE. BSE members would receive cash as consideration for their ownership interests in BSE and would not retain any ownership interest in BSE or its affiliates. NASDAQ OMX plans that BSE would operate as a separate self-regulatory organization (''SRO'') with rules, memberships, and listings that are separate and distinct from those of Nasdaq.[18]

BSE has four affiliates: BSX, BOX, BOXR, and BSECC. BSE owns 53.21 percent of BSX, which operated the Boston Equities Exchange (''BeX'') until BeX ceased operations in September 2007.[19] The remaining 46.79 percent of BSX is owned by Citigroup Financial Strategies Inc., Credit Suisse First Boston Next Fund Inc., LB 1 Group, Inc., Fidelity Global Brokerage Group, Inc., and Merrill Lynch L.P. Holdings Inc. Following the BSE Acquisition, NASDAQ OMX indirectly would own, through its ownership of BSE, the 53.21 percent of BSX that BSE would continue to own. In addition, NASDAQ OMX would acquire the 46.79 percent interest in BSX that is not presently owned by BSE. Consequently, BSX would become a wholly-owned subsidiary of NASDAQ OMX.[20]

NASDAQ OMX would not acquire BSE's interest in BOX, the transfer of which to a third party is a condition to the closing of the BSE Acquisition.[21] BSE proposes to transfer its 21.87 percent ownership interest in BOX to MX US, a wholly-owned subsidiary of MX.[22] BSE intends to distribute the proceeds from the BOX transfer to its member owners by redeeming a portion of each BSE member ownership for a pro rata share of the net proceeds.[23] Although BSE no longer would hold an ownership interest in BOX, as discussed in greater detail below,[24] the BOX Market would remain a facility of BSE and, therefore, BSE would continue to have self-regulatory obligations with respect to the BOX Market.[25]

Finally, BOXR and BSECC are wholly-owned subsidiaries of BSE and,

[7] *See* Securities Exchange Act Release No. 57760 (May 1, 2008), 73 FR 25809 (SR–BSE–2008–02) (''BSE Interim Certificate Proposal Notice'').

[8] In Amendment No. 1 to the BSE Interim Certificate Proposal, BSE proposes to correct typographical errors in the proposed amendments to the current BSE Certificate. Because Amendment No. 1 is technical in nature, the Commission is not publishing it for comment.

[9] *See* Securities Exchange Act Release No. 57782 (May 6, 2008), 73 FR 27583 (SR–BSECC–2008–01) (''BSECC Governance Proposal Notice'').

[10] In Amendment No. 1 to the BSECC Governance Proposal, BSECC filed NASDAQ OMX's Certificate and NASDAQ OMX's By-Laws, as proposed to be amended in connection with the acquisition of BSE by NASDAQ OMX. *See infra* note 258 and accompanying text.

[11] In approving these proposed rule changes, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(3).

[15] 15 U.S.C. 78f(b)(7).

[16] 15 U.S.C. 78q–1(b)(3)(C).

[17] *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR 26159.

[18] See Securities Exchange Act Release No. 57761 (May 1, 2008), 73 FR 26182, at 26183 (SR–NASDAQ–2008–035) (''NASDAQ OMX By-Laws Proposal Notice'').

[19] *See infra* note 222.

[20] *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR at 26159. *See also infra* notes 222–244 and accompanying text.

[21] *See* BSE Interim Certificate Proposal Notice, *supra* note 7, 73 FR at 25810.

[22] *See* BOX Transfer Proposal Notice, *supra* note 5, 73 FR at 26170.

[23] *See* BSE Interim Certificate Proposal Notice, *supra* note 7, 73 FR at 25810.

[24] *See infra* notes 124–136 and accompanying text.

[25] 15 U.S.C. 78c(a)(2). *See also* BOX Transfer Proposal Notice, *supra* note 5, 73 FR at 26171.

therefore, following the BSE Acquisition would become wholly-owned, indirect subsidiaries of NASDAQ OMX.[26]

Following the BSE Acquisition, Nasdaq OMX would own five SROs: Nasdaq, BSE, BSECC, Philadelphia Stock Exchange, Inc. (''Phlx'') and Stock Clearing Corporation of Philadelphia (''SCCP'').[27] As discussed below, the Commission believes that the ownership of BSE and BSECC by the same public holding company that owns Nasdaq, Phlx, and SCCP would not impose any burden on competition not necessary or appropriate in furtherance of the Act's purposes.[28] The Commission previously has approved proposals in which a holding company owns multiple SROs.[29] However, the BSE Acquisition is the first instance in which the Commission is approving the ownership by one holding company of three exchanges and two clearing agencies.[30] The Commission's experience to date with the issues raised by the ownership by a holding company of one or more SROs has not presented any concerns that have not been addressed, for example, by Commission-approved measures at the holding company level that are designed to protect the independence of each SRO.[31]

The Commission believes that the current market for cash equity trading venues is highly competitive. Existing exchanges face significant competition from other exchanges and from non-exchange entities such as alternative trading systems that trade the same or similar financial instruments.[32] New entrants to the market do not face significant barriers to entry. In this regard, the Chicago Board Options Exchange, Incorporated and the International Securities Exchange, LLC a few years ago commenced trading of cash equity securities.[33] In addition, other entities have recently applied for exchange registration, which provides evidence that they have determined there are benefits in starting a new exchange to compete in the marketplace.[34] In addition, since BeX ceased operating in September 2007, BSE has zero market share in cash equity trading, and prior to September 2007, BSE had a very small market share. Therefore, the BSE Acquisition would not change the number of active exchanges or the distribution of market share across exchanges. Accordingly, the Commission finds that the BSE's proposed rule changes are consistent with Section 6(b)(8), which requires that the rules of an exchange not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

With regard to NASDAQ OMX's ownership of two registered clearing agencies following the BSE Acquisition, the Commission does not believe the acquisition of BSECC and SCCP by NASDAQ OMX would reduce competition with respect to the clearance and settlement of securities transactions. The Commission notes that NSCC currently provides clearance and settlement services and a central counterparty guarantee for virtually all trades on the New York Stock Exchange LLC, Nasdaq, the American Stock Exchange LLC and for all regional exchanges, electronic communications networks and alternative trading systems in the U.S.[35] In September 2007, BSECC ceased processing trades and currently provides only limited account maintenance services to its participants. SCCP continues to forward trades to NSCC for clearance and settlement.[36] The Commission will continue to evaluate the competitive environment should the operations of either BSECC or SCCP expand, taking into account the maintenance of fair competition among brokers and dealers, clearing agencies, and transfer agents.[37] For these reasons, the Commission finds that the BSECC's proposed rule change is consistent with Section 17A(b)(3)(I), which requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purpose of the Act.

Finally, the Commission will continue to monitor holding companies' ownership of multiple SROs for compliance with the Act, the rules and regulations thereunder, as well as the SRO's own rules.

A. BSE

1. Relationship Between NASDAQ OMX and BSE; Jurisdiction Over NASDAQ OMX

After the BSE Acquisition, BSE would become a subsidiary of NASDAQ OMX. Although NASDAQ OMX is not itself an SRO, its activities with respect to the operation of BSE must be consistent with, and must not interfere with, the self-regulatory obligations of BSE. NASDAQ OMX's By-Laws make applicable to all of NASDAQ OMX's SRO subsidiaries, including BSE (after

[26] *See* BSECC Governance Proposal Notice, *supra* note 9, 73 FR at 27583.

[27] *See* Securities Exchange Act Release No. 57703 (April 23, 2008), 73 FR 23293 (April 29, 2008) (SR–Phlx–2008–31) (notice of proposed rule change related to NASDAQ OMX's acquisition of Phlx (''Phlx Acquisition'')). *See also* Securities Exchange Act Release No. 57818 (May 14, 2008), 73 FR 29171 (May 20, 2008) (SR–SCCP–2008–01) (notice of proposed rule change to amend and restate the Articles of Incorporation of the Stock Clearing Corporation of Philadelphia (''SCCP'') in connection with the Phlx Acquisition). *See also* Securities Exchange Act Release Nos. 58179 (July 17, 2008), 73 FR 42874 (July 23, 2008) (order approving SR–Phlx–2008–31) and 58180 (July 17, 2008), 73 FR 42890 (July 23, 2008) (order approving SR–SCCP–2008–01).

[28] 15 U.S.C. 78f(b)(8) and 15 U.S.C. 78q–1(b)(3)(I).

[29] *See, e.g.*, Securities Exchange Act Release Nos. 53382 (February 27, 2006), 71 FR 11251 (March 6, 2006) (SR–NYSE–2005–77) (approving proposed rule change relating to the combination of the New York Stock Exchange, Inc. and Archipelago Holdings, Inc.); 58179, *supra* note 27.

[30] The Depository Trust and Clearing Corporation (''DTCC'') is a holding company that at one point owned five registered clearing agencies: The National Securities Clearing Corporation (''NSCC''), the Depository Trust Company (''DTC''), the Government Securities Clearing Corporation (''GSCC''), the MBS Clearing Corporation (''MBSCC''), and the Emerging Markets Clearing Corporation (''EMCC''). *See* Securities Exchange Act Release Nos. 41786 (August 24, 1999), 64 FR 47882 (September 1, 1999) (SR–DTC–99–17); 41800 (August 27, 1999), 64 FR 48694 (September 7, 1999) (SR–NSCC–99–10); 44987 (October 25, 2001), 66 FR 55218 (November 1, 2001) (SR–EMCC–2001–03); 44988 (October 25, 2001), 66 FR 55222 (November 1, 2001) (SR–MBSCC–2001–01); and 44989 (October 25, 2001), 66 FR 55220 (November 1, 2001) (SR–GSCC–2001–11). These clearing agencies provided clearance and settlement services for different instruments or provided different clearance and settlement services for the same instruments. The GSCC and the MBSCC have since merged to form the Fixed Income Clearing Corporation (''FICC''). *See* Securities Exchange Act Release No. 47015 (December 17, 2002), 67 FR 78531 (December 24, 2002) (SR–GSCC–2002–09 and SR–MBSCC–2002–01). The EMCC no longer operates as a clearing agency.

[31] *See infra* notes 38–47, 258–261 and accompanying text for a discussion of proposals by BSE and BSECC to adopt NASDAQ OMX's By-Laws as part of their rules. *See also* Securities Exchange Act Release No. 58183 (July 17, 2008), 73 FR 42850 (July 23, 2008) (order approving SR–NASDAQ–2008–035) (''NASDAQ OMX By-Laws Approval Order'').

[32] *See, e.g.,* Securities Exchange Act Release No. 58092 (July 3, 2008), 73 FR 40144 (July 11, 2008), in which the Commission recognized that ''[n]ational securities exchanges registered under Section 6(a) of the Exchange Act face increased competitive pressures from entities that trade the same or similar financial instruments * * *.''

[33] *See* Securities Exchange Act Release Nos. 55389 (March 2, 2007), 72 FR 10575 (March 8, 2007) (order approving the establishment of CBOE Stock Exchange, LLC); 55392 (March 2, 2007), 72 FR 10572 (March 8, 2007) (order approving trading rules for non-option securities trading on CBOE Stock Exchange, LLC); 54528 (September 28, 2006), 71 FR 58650 (October 4, 2006) (order approving rules governing ISE's electronic trading system for equities).

[34] *See* Securities Exchange Act Release No. 57322 (February 13, 2008), 73 FR 9370 (February 20, 2008) (File No. 10–182) (notice of application and Amendment No. 1 thereto by BATS Exchange, Inc. for registration as a national securities exchange).

[35] *See* Annual Report for the Depository Trust and Clearing Corporation for 2007, page 14. NSCC is a subsidiary of the DTCC, as are the FICC and the DTC.

[36] In recent years, both BSECC and SCCP have forwarded all trades to NSCC for clearance and settlement.

[37] *See* 15 U.S.C. 78q–1(a)(2)(A).

the BSE Acquisition), certain provisions of NASDAQ OMX's Certificate and NASDAQ OMX's By-Laws that are designed to maintain the independence of each of its SRO subsidiaries' self-regulatory function, enable each SRO subsidiary to operate in a manner that complies with the federal securities laws, and facilitate the ability of each SRO subsidiary and the Commission to fulfill their regulatory and oversight obligations under the Act.[38]

The By-Laws of NASDAQ OMX specify that NASDAQ OMX and its officers, directors, employees, and agents irrevocably submit to the jurisdiction of the United States federal courts, the Commission, and each self-regulatory subsidiary of NASDAQ OMX for the purposes of any suit, action or proceeding pursuant to the United States federal securities laws, and the rules and regulations thereunder, arising out of, or relating to, the activities of any self-regulatory subsidiary.[39] Further, NASDAQ OMX agreed to provide the Commission with access to its books and records.[40] NASDAQ OMX also agreed to keep confidential non-public information relating to the self-regulatory function of BSE and not to use such information for any non-regulatory purpose.[41] In addition, the NASDAQ OMX Board, as well as its officers, employees, and agents are required to give due regard to the preservation of the independence of BSE's self-regulatory function.[42]

[38] Provisions of NASDAQ OMX's Certificate and By-Laws are rules of BSE and BSECC because they are stated policies, practices, or interpretations of BSE and BSECC, pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. Accordingly, BSE and BSECC filed them with the Commission. *See* Amendment No. 1 to the BSE Governance Proposal, *supra* note 4, and Amendment No. 1 to the BSECC Governance Proposal, *supra* note 10 and *infra* note 258 and accompanying text.

[39] *See* proposed Section 12.3, NASDAQ OMX By-Laws.

[40] *See* proposed Section 12.1(c), NASDAQ OMX By-Laws. To the extent that they relate to the activities of BSE, all books, records, premises, officers, directors, and employees of NASDAQ OMX would be deemed to be those of the BSE. *See id.*

[41] *See* proposed Section 12.1(b), NASDAQ OMX By-Laws. This requirement to keep confidential non-public information relating to the self-regulatory function is designed to prevent attempts to limit the Commission's ability to access and examine such information or limit the ability of directors, officers, or employees of NASDAQ OMX from disclosing such information to the Commission. *See id.* Other holding companies with SRO subsidiaries have undertaken similar commitments. *See, e.g.*, Securities Exchange Act Release No. 56955 (December 13, 2007), 72 FR 71979, at 71983 (December 19, 2007) (SR–ISE–2007–101) (order approving the acquisition of International Securities Exchange, LLC's parent, International Securities Exchange Holdings, Inc., by Eurex Frankfurt AG).

[42] *See* Section 12.1(a), NASDAQ OMX By-Laws.

Similarly, the NASDAQ OMX Board, when evaluating any issue, would be required to take into account the potential impact on the integrity, continuity, and stability of its SRO subsidiaries.[43] Finally, the NASDAQ OMX By-Laws require that any changes to the NASDAQ OMX Certificate and By-Laws be submitted to the Board of Directors of each of its SRO subsidiaries, including BSE, and, if such amendment is required to be filed with the Commission pursuant to Section 19(b) of the Act, such change shall not be effective until filed with, or filed with and approved by, the Commission.

The Commission believes that the NASDAQ OMX By-Laws, as amended to accommodate the BSE Acquisition, are designed to facilitate the BSE's ability to fulfill its self-regulatory obligations and are, therefore, consistent with the Act. In particular, the Commission believes these changes are consistent with Section 6(b)(1) of the Act,[44] which requires, among other things, that a national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

Under Section 20(a) of the Act,[45] any person with a controlling interest in NASDAQ OMX would be jointly and severally liable with and to the same extent that NASDAQ OMX is liable under any provision of the Act, unless the controlling person acted in good faith and did not directly or indirectly induce the act or acts constituting the violation or cause of action. In addition, Section 20(e) of the Act[46] creates aiding and abetting liability for any person who knowingly provides substantial assistance to another person in violation of any provision of the Act or rule thereunder. Further, Section 21C of the Act[47] authorizes the Commission to enter a cease-and-desist order against any person who has been ''a cause of'' a violation of any provision of the Act through an act or omission that the person knew or should have known would contribute to the violation.

2. BSE Certificate

In the BSE Governance Proposal, BSE proposes to amend and restate the BSE Certificate in its entirety. The restated BSE Certificate would provide for the issuance of 1,000 shares of common stock (''BSE Common Stock''), all of which would be held by NASDAQ OMX.[48] The restated BSE Certificate would further provide that NASDAQ OMX may not transfer or assign any shares of BSE Common Stock, in whole or in part, to any entity, unless such transfer or assignment is filed with and approved by the Commission under Section 19 of the Act and the rules promulgated thereunder.[49] In addition, the restated BSE Certificate would contain provisions relating to the BSE board of directors (''BSE Board'') including that the total number of directors (''BSE Directors'') constituting the BSE Board would be fixed from time to time by NASDAQ OMX, as the sole stockholder, and would be elected by NASDAQ OMX to hold office until their respective successors have been duly elected and qualified.[50] Of particular importance are the BSE Board composition requirements in the BSE By-Laws relating to independence and fair representation of members.[51] Finally, the restated BSE Certificate would specifically provide that BSE's business would include actions that support its regulatory responsibilities under the Act.[52]

The Commission finds that the BSE Certificate, as proposed to be amended and restated, is consistent with the Act, and, in particular, with Sections 6(b)(1) and 6(b)(3) of the Act. The Commission believes that the restated BSE Certificate is designed to allow BSE to exercise those powers necessary to carry out the purposes of the Act and ensure compliance by its members with the Act and BSE rules. The Commission further believes that the restriction on the transfer or assignment of any shares of BSE Common Stock without Commission approval would minimize the potential that a person could improperly interfere with or restrict the ability of the Commission, BSE, or BOXR to carry out their regulatory responsibilities under the Act.

3. Proposed New BSE By-Laws

In the BSE Governance Proposal, the BSE proposes to replace its Constitution with new BSE By-Laws. The new BSE By-Laws reflect NASDAQ OMX's expectation that BSE would be operated with governance, regulatory, and market structures similar to those of Nasdaq.

[43] *See* proposed Section 12.7, NASDAQ OMX By-Laws.

[44] 15 U.S.C. 78f(b)(1).

[45] 15 U.S.C. 78t(a).

[46] 15 U.S.C. 78t(e).

[47] 15 U.S.C. 78u-3.

[48] *See* Article Fourth, restated BSE Certificate.

[49] *Id.*

[50] *See* Article Fifth, restated BSE Certificate.

[51] *See infra* notes 53–84 and accompanying text.

[52] *See* Article Third, restated BSE Certificate.

Key provisions of these new BSE By-Laws are discussed below.

The property, business, and affairs of BSE would be managed under the direction of the BSE Board.[53] The exact number of BSE Directors would be determined by NASDAQ OMX, as the sole stockholder, but in no event would the BSE Board have fewer than ten directors.[54]

Moreover, the number of Non-Industry Directors,[55] including at least three Public Directors [56] and at least one BSE Director representative of issuers and investors,[57] would have to equal or exceed the sum of the number of Industry Directors [58] and Member Representative Directors.[59] Further, at least 20% of the BSE Directors would have to be Member Representative Directors and, as is currently the case, one Industry Director would have to be selected as a representative of a firm or organization that is registered with BSE for the purposes of participating in options trading on the BOX Market (''BOX Participant Director'').[60] A BSE Director could not be subject to a statutory disqualification.[61] The new BSE By-Laws also permit up to two officers of BSE, who would otherwise be considered Industry Directors, to be designated as Staff Directors,[62] and thereby be excluded from the definition of Industry Director.[63]

The initial BSE Board would be selected by NASDAQ OMX, as the sole stockholder, immediately following the BSE Acquisition. NASDAQ OMX would hold a special meeting (or sign a consent in lieu thereof) for the purpose of electing the BSE Board. The initial BSE Board would satisfy the compositional requirements in the BSE By-Laws.[64] Specifically, the initial BSE Board would consist of at least three Public Directors, one or two Staff Directors, at least two Member Representative Directors,[65] an Industry Director representing BOX Participants,[66] at least one Non-Industry Director representative of issuers and investors, and such additional Industry and Non-Industry Directors as NASDAQ OMX, as the sole stockholder, deems appropriate, consistent with the compositional requirements of the BSE By-Laws.[67] As soon as practicable after election of the initial BSE Board, BSE would hold its annual meeting for the purpose of electing directors in accordance with the procedures set forth in the BSE By-Laws.[68] For subsequent boards, BSE Directors, other than the Member Representative Directors and the BOX Participant Director,[69] would be nominated by a Nominating Committee appointed by the BSE Board [70] and then elected by NASDAQ OMX as sole stockholder.[71]

The BSE Board also would appoint a Member Nominating Committee composed of no fewer than three and no more than six members.[72] All members of the Member Nominating Committee would be associated persons of a current BSE member. The BSE Board would appoint such individuals after appropriate consultation with representatives of BSE members. The Member Nominating Committee would nominate candidates for the Member Representative Director positions to be filled. The candidates nominated by the Member Nominating Committee would be included on a formal list of candidates (''List of Candidates'').

BSE members may nominate additional candidates for inclusion on the List of Candidates by submitting, within the prescribed timeframe that is based on the preceding year's voting date (''Voting Date''),[73] a timely written

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[53] *See* Article IV, BSE By-Laws.

[54] *See* Section 4.2, BSE By-Laws. In addition, no decrease in the number of BSE Directors would shorten the term of any incumbent BSE Director. *See* Article Fifth, restated BSE Certificate.

[55] ''Non-Industry Director'' is a BSE Director (excluding Staff Directors) who is: (i) A Public Director; (ii) an officer or employee of an issuer of securities listed on BSE; or (iii) any other individual who would not be an Industry Director. *See* Article I(bb), BSE By-Laws.

[56] ''Public Director'' is a BSE Director who has no material business relationship with a broker or a dealer, BSE or its affiliates, or FINRA. *See* Article I(gg), BSE By-Laws.

[57] *See* Section 4.3(a), BSE By-Laws. The BSE Director representative of issuers and investors would be nominated by the Nominating and Governance Committee and elected by NASDAQ OMX as the sole stockholder. *See* Sections 4.4(a) and 4.14(b), BSE By-Laws.

[58] ''Industry Director'' is a person who: (i) Is or has served in the prior three years as an officer, director, or employee of a broker or dealer, excluding an outside director or a director not engaged in the day-to-day management of a broker or dealer; (ii) is an officer, director (excluding an outside director), or employee of an entity that owns more than 10% of the equity of a broker or dealer, and the broker or dealer accounts for more than 5% of the gross revenues received by the consolidated entity; (iii) owns more than 5% of the equity securities of any broker or dealer, whose investments in brokers or dealers exceed 10% of his or her net worth, or whose ownership interest otherwise permits him or her to be engaged in the day-to-day management of a broker or dealer; (iv) provides professional services to brokers or dealers, and such services constitute 20% or more of the professional revenues received by the Industry Director or 20% or more of the gross revenues received by the Industry Director's firm or partnership; (v) provides professional services to a director, officer, or employee of a broker, dealer, or corporation that owns 50% or more of the voting stock of a broker or dealer, and such services relate to the director's, officer's, or employee's professional capacity and constitute 20% or more of the professional revenues received by the Industry Director or 20% or more of the gross revenues received by the Industry Director's firm or partnership; or (vi) has a consulting or employment relationship with or provides professional services to BSE or any affiliate thereof or to FINRA or has had any such relationship or provided any such services at any time within the prior three years. *See* Article I(t), BSE By-Laws.

[59] *See* Section 4.3(a), BSE By-Laws. ''Member Representative Director'' is a BSE Director who has been elected by NASDAQ OMX as the sole stockholder after having been nominated by the Member Nominating Committee or voted upon by BSE members pursuant to the BSE By-Laws (or elected by the stockholders without such nomination or voting in the case of the initial Member Representative Directors elected pursuant to Section 4.3(b) of the BSE By-Laws). *See* Article I(x), BSE By-Laws.

[60] *See* Section 4.4, BSE By-Laws, and Section 14, BOXR By-Laws.

[61] *See* Section 4.3(a), BSE By-Laws.

[62] ''Staff Director'' is a BSE Director, selected at the sole discretion of the BSE Board, who is an officer of BSE. *See* Article I(g), BSE By-Laws.

[63] The exclusion of Staff Directors from the definition of Industry Director is consistent with provisions previously approved by the Commission. *See* Securities Exchange Act Release No. 53128 (January 13, 2006), 71 FR 3550 (January 23, 2006) (order approving application of Nasdaq for registration as a national securities exchange) (''Nasdaq Exchange Approval Order''). *See also* Securities Exchange Act Release No. 44280 (May 8, 2001), 66 FR 26892 (May 15, 2001) (order approving amendment to the National Association of Securities Dealers (''NASD'') By-Laws to allow for the treatment of Staff Governors as ''neutral'' for purposes of Industry/Non-Industry balancing on the NASD Board of Governors).

[64] *See* Section 4.3(b), BSE By-Laws.

[65] The initial Member Representative Directors would be officers, directors, or employees of BSE members. *See* BSE Governance Proposal Notice, *supra* note 3, at 73 FR 26162.

[66] ''BOX Participant'' is a firm or organization that is registered with BOX for purposes of participating in options trading on the BOX Market as an order flow provider or market maker. *See* Section 1.1, 6th BOX LLC Agreement. *See also* BOX Rules, Chapter II.

[67] *See* Section 4.3(b), BSE By-Laws. *See also* BSE Governance Proposal Notice, *supra* note 3, 73 FR at 26162.

[68] *Id.* Specifically, in accordance with Section 14.4(b) of the BSE By-Laws, the initial BSE Board selected by NASDAQ OMX would appoint a Nominating Committee and Member Nominating Committee, and such committees would nominate candidates for election pursuant to the procedures set forth in Section 4.4 of the BSE By-Laws, which process is described below. Telephone conversation between John Yetter, Vice President and Deputy General Counsel, Nasdaq, and Nancy Burke-Sanow, Assistant Director, and Jennifer Dodd, Special Counsel, Division of Trading and Markets, Commission, on June 11, 2008. In Amendment No. 1 to the BSE Governance Proposal, BSE states that the initial BSE Board will populate the Committees of the BSE Board and BSE's standing committees in accordance with the compositional requirements of Sections 4.13 and 4.14 of the BSE By-Laws. *See* Amendment No. 1 to the BSE Governance Proposal, *supra* note 4. The Commission notes that this would include the initial Nominating Committee and Member Nominating Committee. *See* Section 4.14(b), BSE By-Laws.

[69] *See infra* notes 207–216 and accompanying text for a description of the nomination and election process for the BOX Participant Director who would serve on the BSE Board.

[70] *See* Section 4.14(b), BSE By-Laws.

[71] *See* Section 4.4(a), BSE By-Laws.

[72] *See* Section 4.14, BSE By-Laws.

[73] The Voting Date is a date selected by the BSE Board for BSE members to vote with respect to

petition executed by the authorized representatives of 10% or more of all BSE members. If there is only one candidate for each Member Representative Director seat by the date on which a BSE member may no longer submit a timely nomination, the Member Representative Directors would be elected by NASDAQ OMX directly from the List of Candidates nominated by the Member Nominating Committee. If the number of candidates on the List of Candidates exceeds the number of Member Representative Director positions to be filled, there would be a Contested Vote,[74] in which case each BSE member would have the right to cast one vote for each Member Representative Director position to be filled.[75] The persons on the List of Candidates who receive the most votes would be submitted to NASDAQ OMX for election,[76] and NASDAQ OMX would elect those candidates.[77]

The Commission finds that the proposed changes regarding the composition of the BSE Board are consistent with the Act, including Section 6(b)(1) of the Act,[78] which requires, among other things, that a national securities exchange be organized to carry out the purposes of the Act and comply with the requirements of the Act. The Commission previously has stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[79] Further, public representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. The Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of the BSE Board to address issues in a non-discriminatory fashion and foster the integrity of BSE. The Commission also finds that the composition of the BSE Board satisfies Section 6(b)(3) of the Act,[80] which requires that one or more directors be representative of issuers and investors and not be associated with a member of the exchange or with a broker or dealer.

The fair representation requirement in Section 6(b)(3) of the Act is intended to give members a voice in the selection of the exchange's directors and the administration of its affairs. The Commission finds that the requirement under BSE By-Laws that at least 20% of the BSE Directors represent members,[81] and the process for selecting Member Representative Directors, are designed to ensure the fair representation of BSE members on the BSE Board. The Commission believes that the method for selecting Member Representative Directors on the BSE Board allows members to have a voice in BSE's use of its self-regulatory authority.[82] In particular, the Commission notes that the Member Nominating Committee is composed solely of persons associated with BSE members and is selected after consultation with representatives of BSE members. In addition, the BSE By-Laws include a process by which members can directly petition and vote for representation on the BSE Board. The Commission therefore finds that the process for selecting Member Representative Directors to the BSE Board is consistent with Section 6(b)(3) of the Act.[83] The Commission also notes that these provisions are consistent with previous proposals approved by the Commission.[84]

4. Committees

The proposed new BSE By-Laws would include provisions governing the composition and authority of various BSE committees established by the BSE Board.[85] The BSE By-Laws would establish several standing BSE Board committees that are composed solely of BSE Directors and would delineate their general duties and compositional requirements.[86] These committees are the Executive Committee, the Finance Committee, the Management Compensation Committee, the Audit Committee, and the Regulatory Oversight Committee (''BSE ROC''). In addition to these committees, the BSE By-Laws provide for the appointment by the BSE Board of certain standing committees, not composed solely of BSE Directors, to administer various provisions of the rules that BSE expects to propose with respect to governance,

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Member Representative Directors in the event there is more than one candidate for a Member Representative Director position (''Contested Vote''). As described below, the BSE Board would select a Voting Date each year. However, a vote would be conducted on the Voting Date only in the event of Contested Vote. *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR at 26161, n.11.

In Amendment No. 1 to the BSE Governance Proposal, BSE states that: ''In order to make the intent of this definition clearer, immediately following the closing of the [BSE Acquisition], [BSE] will propose to the newly constituted Board of the Exchange an amendment to the definition to read as follows: '' 'Voting Date' means the date selected by the Board on an annual basis, on which [BSE members] may vote with respect to Member Representative Directors in the event of a Contested Vote.'' Following approval by the [BSE] Board, [BSE] will immediately file the amendment as a proposed rule change for approval by the Commission. This clarifying change could not be included in this filing because Article XX of [BSE's] current Constitution, which is being replaced by the proposed [BSE] By-Laws, provides that [BSE's] members must approve amendments to the [BSE] Constitution. The [BSE] members voted, on December 4, 2007, to approve the [BSE] By-Laws as submitted in this filing and it would have been impracticable and unduly expensive to seek a second member vote for approval of this clarifying change. Following adoption of the new By-Laws, the [BSE] Board will have authority to approve By-Law amendments.'' *See* Amendment No. 1 to the BSE Governance Proposal, *supra* note 4.

Also, in the case of the first annual meeting held pursuant to the new BSE By-Laws, a nomination for the Member Representative Director positions would be considered timely if delivered not earlier than the close of business on the later of the 120th day prior to the first Voting Date and not later than the close of business on the 90th day prior to the first Voting Date, or the 10th day following the day on which public announcement of such Voting Date is first made. *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR at 26161, n.12. *See* also Section 4.4(d), BSE By-Laws.

[74] *See* Section 1(k), BSE By-Laws.

[75] In Amendment No. 1 to the BSE Governance Proposal, BSE states that: ''In order to limit the influence that a single affiliated group of members might exercise over [BSE], immediately following the closing of the [BSE Acquisition], [BSE] will propose to the newly constituted [BSE Board] an amendment to stipulate that no [BSE member], either alone or together with its affiliates, may account for more than 20% of the votes cast for a candidate, and any votes cast by such [BSE member], either alone or together with its affiliates, in excess of such 20% limitation shall be disregarded. Following approval by the [BSE] Board, [BSE] will immediately file the amendment as a proposed rule change for approval by the Commission. This clarifying change could not be included in this filing because Article XX of [BSE's] current Constitution, which is being replaced by the proposed [BSE] By-Laws, provides that [BSE's] members must approve amendments to the Constitution. The members voted, on December 4, 2007, to approve the By-Laws as submitted in this filing and it would have been impracticable and unduly expensive to seek a second member vote for approval of this clarifying change. Following adoption of the new [BSE] By-Laws, the [BSE] Board will have authority to approve [BSE] By-Law amendments.'' *See* Amendment No. 1 to the BSE Governance Proposal, *supra* note 4.

[76] *See* Section 4.4(f), BSE By-Laws.

[77] *See* Section 4.4(b), BSE By-Laws.

[78] 15 U.S.C. 78f(b)(1).

[79] *See* Regulation of Exchanges and Alternative Trading Systems, Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998). *See also* Securities Exchange Act Release Nos. 53382, *supra* note 29, 71 FR at 11261 n.121 and accompanying text; 53128, *supra* note 63, 71 FR at 3553, n.54 and accompanying text; and 44442 (June 18, 2001), 66 FR 33733, n.13 and accompanying text, (June 25, 2001) (SR–PCX–01–03).

[80] 15 U.S.C. 78f(b)(3).

[81] *See* Section 4.3(a), BSE By-Laws.

[82] In addition, the BSE By-Laws provide that one BSE Director would represent BOX Participants. *See infra* notes 207–216 and accompanying text for a description of the nomination and election process for the BOX Participant Director who would serve on the BSE Board.

[83] 15 U.S.C. 78f(b)(3).

[84] *See, e.g.*, Securities Exchange Act Release Nos. 58179, *supra* note 27; 53128, *supra* note 63; and 49098 (January 16, 2004), 69 FR 3974 (January 27, 2004) (order approving the demutualization of Phlx).

[85] *See* Sections 4.12–4.14, BSE By-Laws.

[86] *See* Section 4.13, BSE By-Laws.

listing, equity trading, and member discipline.[87] These committees include the Member Nominating Committee, the Nominating Committee, the BSE Listing and Hearings Review Council, the BSE Review Council, the Quality of Markets Committee, the Market Operations Review Committee, the Arbitration and Mediation Committee, and the Market Regulation Committee.

As noted above, all members of the Member Nominating Committee must be associated persons of a BSE member. In addition, at least 20% of the members of the BSE Listing and Hearings Review Council, the BSE Review Council, the Quality of Markets Committee, and the Market Operations Review Committee must be composed of Member Representatives. Moreover, the Nominating Committee, the BSE Review Council, the Quality of Markets Committee, the Arbitration and Mediation Committee, and the Market Regulation Committee must be compositionally balanced between Industry members[88] and Non-Industry members.[89] These compositional requirements are designed to ensure that members are protected from unfair, unfettered actions by an exchange pursuant to its rules, and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. The Commission believes that the proposed compositional balance of these BSE committees is consistent with the Section 6(b)(3) of the Act because it provides for the fair representation of BSE members in the administration of the affairs of BSE.[90]

5. Regulatory Oversight Responsibilities and Regulatory Funds

The BSE By-Laws would provide that the BSE Board, when evaluating any proposal, would, to the fullest extent permitted by applicable law, take into account: (i) the potential impact thereof on the integrity, continuity, and stability of BSE and the other operations of BSE, on the ability to prevent fraudulent and manipulative acts and practices and on investors and the public, and (ii) whether such would promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities, or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system.[91] Taken together, these provisions reinforce the notion that BSE, while wholly-owned by NASDAQ OMX, is not solely a commercial enterprise, but rather is an SRO registered pursuant to the Act and subject to the obligations imposed by the Act.

The BSE ROC would be composed of Public Directors, each of whom also would need to qualify as an independent director pursuant to Nasdaq Rule 4200.[92] The BSE ROC would be responsible for monitoring the adequacy and effectiveness of BSE's regulatory program and assisting the BSE Board in reviewing BSE's regulatory plan and the overall effectiveness of BSE's regulatory functions.[93] BSE also would have a Chief Regulatory Officer (''BSE CRO'') who would have general supervision of the BSE's regulatory operations, including responsibility for overseeing BSE's surveillance, examination, and enforcement functions and for administering any regulatory services agreements with another SRO to which BSE is a party.[94] The BSE CRO would have to meet with the BSE ROC in executive session at regularly scheduled meetings of such committee and at any time upon request of the BSE CRO or any member of the BSE ROC. The BSE CRO could also serve as the General Counsel of BSE.[95]

In addition, the BSE By-Laws would contain a stipulation that dividends could not be paid to the stockholders using regulatory funds, which are fees, fines, or penalties derived from the regulatory operations of BSE.[96] This restriction on the use of regulatory funds is intended to preclude BSE from using its authority to raise regulatory funds for the purpose of benefiting its shareholders, or for other non-regulatory purposes, such as executive compensation. Regulatory funds, however, would not be construed to include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of BSE, even if a portion of such revenues are used to pay costs associated with the regulatory operations of BSE.[97]

Section 6(b)(1) of the Act[98] requires an exchange to be so organized and have the capacity to be able to carry out the purposes of the Act. The Commission believes that BSE's regulatory structure is designed to insulate its regulatory functions from its market and other commercial interests so that it can carry out its regulatory obligations and, therefore, BSE's proposal is consistent with the Act.

6. Restrictions on Affiliation Between BSE and Its Members: Proposed BSE Chapter XXXIX

a. Limitations on BSE Members' Ownership of NASDAQ OMX

In connection with the transaction, in the BSE Governance Proposal, BSE proposes to add a new Chapter XXXIX, Section 1 to the BSE Rules to prohibit BSE members and persons associated with BSE members from beneficially owning more than 20% of the then-outstanding voting securities of NASDAQ OMX. Members that trade on an exchange traditionally have had ownership interests in such exchange. As the Commission has noted in the past, however, a member's interest in an exchange could become so large as to cast doubt on whether the exchange can fairly and objectively exercise its self-regulatory responsibilities with respect to that member.[99] A member that is a controlling shareholder of an exchange or an exchange's holding company might be tempted to exercise that controlling influence by pressuring or directing the exchange to refrain from, or the exchange otherwise may hesitate to, diligently monitor and surveil the member's conduct or diligently enforce its rules and the federal securities laws with respect to conduct by the member that violates such provisions.

In addition, the NASDAQ OMX Certificate imposes limits on direct and

[87] *See* Section 4.14 and Articles VI–VII, BSE By-Laws.

[88] *See* Article I(u), BSE By-Laws.

[89] *See* Article I(cc), BSE By-Laws.

[90] *See, e.g.*, Securities Exchange Act Release Nos. 58179, *supra* note 27; 53128, *supra* note 63; and 49098, *supra* note 84.

[91] *See* Section 4.9, BSE By-Laws.

[92] *See* Section 4.13(e), BSE By-Laws.

[93] *Id.*

[94] *See* Section 5.10, BSE By-Laws.

[95] *Id.* The Commission has previously approved a similar structure. *See* Nasdaq Exchange Approval Order, *supra* note 63, 71 FR at 3555, n.103 and accompanying text (order approving application of Nasdaq for registration as a national securities exchange, including the ability of the CRO to serve as General Counsel).

[96] *See* Section 9.8, BSE By-Laws. *See also* Section 1(ii), BSE By-Laws.

[97] The Commission further notes that the BSX Operating Agreement is being amended to adopt a restriction on distributions of regulatory funds comparable to the restriction proposed for inclusion in the BSE By-Laws. *See* proposed Section 9.2, BSX Operating Agreement.

[98] 15 U.S.C. 78f(b)(1).

[99] *See, e.g.*, Securities Exchange Act Release Nos. 57478 (March 12, 2008), 73 FR 14521, 14523 (March 18, 2008) (SR–NASDAQ–2007–004 and SR–NASDAQ–2007–080) (''NOM Approval Order''); 55389, *supra* note 33, 72 FR at 10578; 55293 (February 14, 2007), 72 FR 8033, 8037 (February 22, 2007) (SR–NYSE–2006–120); 53382, *supra* note 29, 71 FR at 11256; 51149 (February 8, 2005), 70 FR 7531, 7538 (February 14, 2005) (SR–CHX–2004–26); 49718 (May 17, 2004), 69 FR 29611, 29624 (May 24, 2004) (SR–PCX–2004–08); 49098, *supra* note 84, 69 FR at 3986; 49067 (January 13, 2004), 69 FR 2761, 2767 (January 20, 2004) (SR–BSE–2003–19) (''BOX LLC Agreement Order''); and Nasdaq Exchange Approval Order, *supra* note 63, 71 FR at 3552.

indirect changes in control, which are designed to prevent any shareholder from exercising undue control over the operation of its SRO subsidiaries and to ensure that its SRO subsidiaries and the Commission are able to carry out their regulatory obligations under the Act. Specifically, no person who beneficially owns shares of common stock, preferred stock, or notes of NASDAQ OMX in excess of 5% of the securities generally entitled to vote may vote shares in excess of 5%.[100] This limitation would mitigate the potential for any NASDAQ OMX shareholder to exercise undue control over the operations of the BSE and facilitate BSE's and the Commission's ability to carry out their regulatory obligations under the Act.

The NASDAQ OMX Board may approve exemptions from the 5% voting limitation for any person that is not a broker-dealer, an affiliate of a broker-dealer, or a person subject to a statutory disqualification under Section 3(a)(39) of the Act,[101] provided that the NASDAQ OMX Board also determines that granting such exemption would be consistent with the self-regulatory obligations of Nasdaq.[102] Further, any such exemption from the 5% voting limitation would not be effective until approved by the Commission pursuant to Section 19 of the Act.[103] The BSE Governance Proposal reflects an amendment to the NASDAQ OMX By-Laws to require the NASDAQ OMX Board, prior to approving any exemption from the 5% voting limitation, to determine that granting such exemptions would also be consistent with BSE's self-regulatory obligations.[104]

The Commission finds that the ownership restriction in proposed Chapter XXXIX, Section 1 of the BSE Rules, combined with the voting limitations in Article Fourth.C of Section 12.5 of the NASDAQ OMX Certificate and the NASDAQ OMX By-Laws, is consistent with the Act, including Sections 6(b)(1) and 6(b)(5) of the Act. These limitations should reduce the potential for a BSE member to improperly interfere with or restrict the ability of the Commission or BSE to effectively carry out their respective regulatory oversight responsibilities under the Act.

b. Limitations on Affiliation Between BSE and Its Members

BSE also proposes to prohibit BSE or an entity with which it is affiliated from acquiring or maintaining an ownership interest in, or engaging in a business venture [105] with, a BSE member or an affiliate of a BSE member in the absence of an effective filing with the Commission under Section 19(b) of the Act.[106] Further, the proposed rule would prohibit a BSE member from becoming an affiliate [107] of BSE or an affiliate of an entity affiliated with BSE in the absence of an effective filing under Section 19(b) of the Act.[108] However, the proposed rule would exclude from this restriction two types of affiliations.

First, a BSE member or an affiliate of a BSE member could acquire or hold an equity interest in NASDAQ OMX that is permitted pursuant to proposed BSE Rules [109] (*i.e.*, less than 20% of the outstanding voting securities) without the need for BSE to file such acquisition or holding under Section 19(b) of the Act.[110] Second, BSE or an entity affiliated with BSE could acquire or maintain an ownership interest in, or engage in a business venture with, an affiliate of a BSE member without filing a proposed rule change relating to such affiliation under Section 19(b) of the Act, if there were information barriers between the BSE member and BSE and its facilities. These information barriers would have to prevent the member from having an ''informational advantage'' concerning the operation of BSE or its facilities or ''knowledge in advance of other [BSE] members'' of any proposed changes to the operations of BSE or its trading systems. Further, BSE may only notify an affiliated member of any proposed changes to its operations or trading systems in the same manner as it notifies non-affiliated members. BSE and its affiliated member may not share employees, office space, or data bases.[111] Finally, the BSE ROC must certify annually that BSE has taken all reasonable steps to implement and comply with the rule.[112]

Proposed BSE Rules Chapter XXXIX is consistent with rules of Nasdaq, which the Commission previously found consistent with the Act.[113] The Commission similarly finds that proposed Chapter XXXIX to the BSE Rules is consistent with the requirements of Section 6(b)(5) of the Act,[114] which requires that an exchange have rules designed, among other things, to promote just and equitable principles of trade, to remove impediments and to perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.[115]

The Commission is concerned about the potential for unfair competition and

[100] *See* Article Fourth.C., NASDAQ OMX Certificate.

[101] 15 U.S.C. 78c(a)(39). *See* Article Fourth.C.6., NASDAQ OMX Certificate.

[102] Specifically, the NASDAQ OMX Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or Nasdaq or the other operations of NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system. *See* Article Fourth.C.6, NASDAQ OMX Certificate.

[103] *See* Section 12.5, NASDAQ OMX By-Laws.

[104] *See* Amendment No. 1 to the BSE Governance Proposal, *supra* note 4. Specifically, the NASDAQ OMX Board must determine that granting such exemption would (1) not reasonably be expected to diminish the quality of, or public confidence in, NASDAQ OMX or its SRO Subsidiaries or the other operations of NASDAQ OMX and its subsidiaries, on the ability to prevent fraudulent and manipulative acts and practices on investors and the public, and (2) promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to and facilitating transactions in securities or assist in the removal of impediments to or perfection of the mechanisms for a free and open market and a national market system. *See* proposed Section 12.5, NASDAQ OMX By-Laws.

[105] Proposed BSE Rule, Chapter XXXIX, Section 2. BSE defines ''business venture'' as an arrangement under which (1) BSE or an entity with which it is affiliated and (2) a BSE member or an affiliate of a BSE member, engage in joint activities with the expectation of shared profit and a risk of shared loss from common entrepreneurial efforts.

[106] *Id.* In connection with the Phlx Acquisition, Phlx proposed, and the Commission approved, a similar rule. *See* Phlx Rule 985(b) and Securities Exchange Act Release No. 58179, *supra* note 27, 73 FR at 42886–42887.

[107] *Id.* BSE defines ''affiliate'' as having the meaning specified in Rule 12b–2 under the Act, 17 CFR 240.12b–2, provided, however, that one entity would not be deemed to be an affiliate of another entity solely by reason of having a common director. *Id.*

[108] 15 U.S.C. 78s(b).

[109] Proposed BSE Rule, Chapter XXXIX, Section 1.

[110] *Id.* As discussed above, the proposed BSE Rules would provide that ''[n]o member or person associated with a member shall be the beneficial owner of greater than twenty percent (20%) of the then-outstanding voting securities of [NASDAQ OMX].''

[111] Proposed BSE Rule, Chapter XXXIX, Section 2(b)(2)(A).

[112] Proposed BSE Rule, Chapter XXXIX, Section 2(b)(2)(B).

[113] *See* Nasdaq Rules 2130 and 2140. *See also* Nasdaq Exchange Approval Order, *supra* note 63, 71 FR at 3552, n. 41 and accompanying text, and Securities Exchange Act Release No. 54170 (July 18, 2006), 71 FR 42149 (July 25, 2006) (SR–NASDAQ–2006–006) (order approving Nasdaq's proposal to adopt Nasdaq Rule 2140, restricting affiliations between Nasdaq and its members). Also, in connection with the Phlx Acquisition, Phlx proposed, and the Commission approved, similar rules. *See* Phlx Rule 985(a) and (b) and Securities Exchange Act Release No. 58179, *supra* note 27, 73 FR at 42886–42887.

[114] 15 U.S.C. 78f(b)(5).

[115] *Id.*

conflicts of interest between an exchange's self-regulatory obligations and its commercial interests that could exist if an exchange were to otherwise become affiliated with one of its members, as well as the potential for unfair competitive advantage that the affiliated member could have by virtue of informational or operational advantages, or the ability to receive preferential treatment.[116] The Commission believes that the proposed additions to the BSE Rules are designed to mitigate these concerns by requiring that BSE file a proposed rule change in connection with proposed affiliations between BSE and its members, unless such affiliation is due to a member's interest in NASDAQ OMX that is permitted under proposed Chapter XXXIX, Section 1 of the BSE Rules or conforms to the specified information barrier requirements.

If BSE entered into an affiliation with a BSE member (or any other party) that resulted in a change to a BSE Rule or the need to establish new BSE Rules, as defined under the Act, then such affiliation would be subject to the rule filing requirements of Section 19(b) of the Act and Rule 19b–4 thereunder.

7. Exceptions to Limitations on Affiliation Between BSE and Its Members

NASDAQ OMX currently owns two broker-dealers: (1) NASDAQ Execution Services, LLC (''NES''), and (2) NASDAQ Options Services, LLC (''NOS''). NES and NOS are members of BSE. Absent relief, after the closing of NASDAQ OMX's acquisition of BSE, NASDAQ OMX's ownership of NES and NOS would cause NES and NOS to violate the provision in proposed BSE Rules Chapter XXXIX, Section 2 prohibiting BSE members from being affiliated with BSE.

BSE has proposed, in the BSE Governance Proposal, that NES and NOS be permitted to become affiliates of BSE, subject to certain conditions and limitations. First, BSE proposes that NES and NOS would only route orders to BSE that first attempt to access liquidity on Nasdaq.[117] Second, NES and NOS would remain facilities of Nasdaq. Under Nasdaq Rules, NES operates as a facility [118] of Nasdaq and routes orders to other market centers as directed by Nasdaq. Similarly, NOS is operated and regulated as a facility of Nasdaq with respect to its routing of System Securities (''NOS facility function''), and, consequently, the operation of NOS in this capacity would be subject to BSE oversight, as well as Commission oversight.[119] Nasdaq is responsible for ensuring that NES and NOS are operated consistent with Section 6 of the Act and Nasdaq's Rules. In addition, Nasdaq must file with the Commission rule changes and fees relating to NES and NOS. Third, use of NES's and NOS's routing function by Nasdaq members would continue to be optional. Parties that do not desire to use NES may enter orders into Nasdaq as immediate-or-cancel orders or any other order-type available through Nasdaq that are ineligible for routing.[120] Similarly, NOM participants are not required to use NOS to route orders, and a NOM participant may route its orders through any available router it selects.[121] In addition, the Commission notes that NES and NOS are members of an SRO unaffiliated with Nasdaq, which serves as their designated examining authority under Rule 17d–1.[122]

In the past, the Commission has expressed concern that the affiliation of an exchange with one of its members raises potential conflicts of interest, and the potential for unfair competitive advantage.[123] Although the Commission continues to be concerned about potential unfair competition and conflict of interest between an exchange's self-regulatory obligations and its commercial interest when the exchange is affiliated with one of its members, the Commission believes that it is appropriate and consistent with the Act to permit NES and NOS to become affiliates of BSE for the limited purpose of providing routing services for Nasdaq for orders that first attempt to access liquidity on Nasdaq's systems before routing to BSE, and in light of the protections afforded by the other conditions described above.

B. BOX

1. BSE Transfer of BOX Interest

The BOX Market is a facility of BSE.[124] BOXR is BSE's wholly-owned subsidiary,[125] to which BSE has delegated, pursuant to a delegation plan (''Delegation Plan''),[126] certain self-regulatory responsibilities related to the BOX Market (BSE together with BOXR with respect to the BOX Market, ''Regulatory Authority'').[127]

In the BOX Transfer Proposal, BSE proposes to transfer its 21.87% ownership interest in BOX to MX US. Following this transfer, BSE no longer would have any ownership interest in BOX and MX US would have a 53.24% ownership interest.[128] Because BSE would no longer have an ownership interest, it no longer would be admitted and named as a BOX Member.[129] The proposed changes to the BOX LLC Agreement reflect this change. However,

[116] *See* Securities Exchange Act Release No. 53382, *supra* note 29. *See also* Securities Exchange Act Release No. 54170, *supra* note 113.

[117] NES currently provides to Nasdaq members optional routing services to other market centers, including BSE, as set forth in Nasdaq's rules. *See* Nasdaq Rules 4751, 4755, and 4758. NES does not currently route to BSE because BSE currently does not trade equity securities. *See infra* note 222. NOS provides to Nasdaq members that are Nasdaq Options Market (''NOM'') participants routing services to other market centers. Pursuant to Nasdaq's rules, NOS: (1) routes orders in options currently trading on NOM, referred to as ''System Securities;'' and (2) routes orders in options that are not currently trading on NOM (''Non-System Securities''). *See* NOM Rules, Chapter VI Sections 1(b) and 11. *See also* NOM Approval Order, *supra* note 99. With respect to System Securities, NOM participants may designate orders to be routed to another market center when trading interest is not available on NOM or to execute only on NOM. *See* NOM Rules, Chapter VI, Section 11. *See also* NOM Approval Order, *supra* note 99, 73 FR at 14532–14533.

[118] *See* Nasdaq Rule 4758(b)(3). *See also* Securities Exchange Act Release No. 56708 (October 26, 2007), 72 FR 61925 (November 1, 2007) (SR–NASDAQ–2007–078) (''NES Routing Release''). As a facility of Nasdaq, Nasdaq Rule 4758(b) acknowledges that Nasdaq is responsible for filing with the Commission rule changes related to the operation of, and fees for services provided by, NES and that NES is subject to exchange non-discrimination requirements.

[119] *See* NOM Rules, Chapter 11(e). *See also* NOM Approval Order, *supra* note 99, 73 FR at 14533.

[120] *See* Nasdaq Rule 4758(b)(7).

[121] *See* NOM Rules, Chapter VI, Section 11(a) (allowing Participants to designate orders as available for routing or not available for routing). *See also* NOM Approval Order, *supra* note 99, 73 FR at 14533, n.91 and accompanying text.

[122] *See* Nasdaq Rule 4758(b)(4), and NOM Rules, Chapter 11(e). *See also* NES Routing Release, *supra* note 118; and NOM Approval Order, *supra* note 99, 73 FR at 14533, n.189 and accompanying text.

[123] *See supra* note 116 and accompanying text.

[124] *See* Securities Exchange Act Release Nos. 49066 (January 13, 2004), 69 FR 2773 (January 20, 2004) (SR–BSE–2003–17); 49065 (January 13, 2004), 69 FR 2768 (January 20, 2004) (SR–BSE–2003–04) (''BOXR Order''); 49068 (January 13, 2004), 69 FR 2775 (January 20, 2004) (SR–BSE–2002–15); and BOX LLC Agreement Order, *supra* note 99. Section 3(a)(2) of the Act states that ''[t]he term 'facility' when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.'' 15 U.S.C. 78c(a)(2).

[125] *See* BOXR Order, *supra* note 124.

[126] *See* BSE Rules, Chapter XXXVI. *See also* BOXR Order, *supra* note 124.

[127] *See* Section 1.1, 6th BOX LLC Agreement.

[128] MX US currently has a 31.37% ownership interest in BOX. *See* Securities Exchange Act Release No. 57260 (February 1, 2008), 73 FR 7617 (February 8, 2008) (SR–BSE–2008–06).

[129] ''BOX Member'' means a person admitted and named as a member on schedules to the 5th BOX LLC Agreement and any person admitted to BOX as an additional or substitute member of BOX, in such person's capacity as a member of BOX. *See* Section 1.1, 5th BOX LLC Agreement.

pursuant to the revised BOX LLC Agreement, the BOX Market would remain a facility of BSE, and BSE would remain the SRO for the BOX Market.[130] BSE, together with BOXR, would retain regulatory control over the BOX Market and BSE, as the SRO, would remain responsible for ensuring compliance with the federal securities laws and all applicable rules and regulations.[131]

Section 8.4(f) of the current BOX LLC Agreement requires that any transfer that results in the acquisition and holding by any person, alone or together with any affiliate of such person, of an aggregate percentage interest which meets or crosses the threshold of 20% or any successive 5% be subject to a rule filing pursuant to Section 19(b)(1).[132] Section 8.4(f) also requires that any transfer that reduces BSE's aggregate ownership interest in BOX below the 20% threshold be subject to a rule filing.[133] BSE has filed the proposed transfer of its interest in BOX to MX US in accordance with these provisions of the BOX LLC Agreement.

The Commission believes that BSE's transfer of its 21.87% interest in BOX to MX US is consistent with the Act. MX US is currently a BOX Member and therefore is bound by all the provisions of the current BOX LLC Agreement [134] and would similarly be bound by the provisions of the revised BOX LLC Agreement.[135] Further, although BSE no longer would hold ownership interest in BOX, BSE would remain the SRO for the BOX Market. As the Commission has noted in the past, ''the Act does not require that an SRO have any ownership interest in the operator of one of its facilities.'' [136] Moreover, BOX is obligated under the BOX LLC Agreement to continue to operate the BOX Market in a manner consistent with the regulatory and oversight responsibilities of BSE and with the Act and rules and regulations thereunder.[137] As discussed below, BSE will have veto power over planned or proposed changes to BOX or the BOX Market, and if the Regulatory Authority, in its sole discretion, determines that a planned or proposed change to BOX or the BOX Market is not consistent with Regulatory Authority Rules or SEC Rules governing the BOX Market or BOX Participants, the Regulatory Authority could direct BOX to modify the proposal.[138] Moreover, the books, premises, officers, directors, agents and employees of BOX are deemed to be the books, premises, officers, directors, agents and employees of BSE.[139] In addition, the Commission has authority to inspect BOX's books and records because BOX is the operator of the BOX Market, a facility of an exchange. Accordingly, the Commission believes that the transfer of BSE's ownership interest in BOX would not impair BSE's or the Commission's ability to discharge their respective regulatory and oversight responsibilities, and is consistent with the Act.

2. BSE Interim Certificate

BSE plans to distribute the net proceeds from the transfer of its interest in BOX to BSE member owners.[140] To effectuate this distribution, in the BSE Interim Certificate Proposal, BSE proposes to amend the BSE Certificate to remove a provision that prevents BSE from making distributions and to add a provision that would allow BSE to redeem a portion of each membership in exchange for a pro rata share of the net proceeds from its transfer of BSE's interest in BOX.[141]

The BSE Certificate as proposed to be amended as just described is referred to as the Interim Certificate and would be effective immediately prior to the transfer of BSE's interest in BOX to MX US.[142] Immediately thereafter, this Interim Certificate would be amended and restated in its entirety in connection with the BSE Acquisition.[143]

The Commission believes that the Interim Certificate is consistent with the Act. The sole purpose of the Interim Certificate is to enable BSE to distribute to BSE member owners the proceeds from the transfer of BSE's interest in BOX to MX US. The Interim Certificate would be in effect only until the BSE Certificate is amended and restated in its entirety, as discussed above, in connection with the BSE Acquisition. The Commission believes that allowing such a distribution would not have any adverse effect on the ability of BSE to fulfill its regulatory obligations in relation to the BOX Market, because funding for the regulation of the BOX Market would be established through a regulatory services agreement between BSE and BOX and not with the proceeds from the transfer of BSE's interest in BOX to MX US.

3. BOX LLC Agreement

In conjunction with BSE's divestiture of BOX, BSE also proposes, in the BOX Transfer Proposal, to amend the BOX LLC Agreement to reflect BSE's

[130] *See* Section 3.2(a)(i), 6th BOX LLC Agreement (''BSE will provide SEC-approved SRO status for the BOX Market, the Regulatory Authority will provide the regulatory framework for the BOX Market and the Regulatory Authority, together with BOX, will have regulatory responsibility for the activities of the BOX Market.''). BSE also proposes that the SRO for the BOX Market may be changed by a vote of the BOX Board and the approval of the Commission. *See* Section 1.1, 6th BOX LLC Agreement.

[131] *See infra* notes 144–164 and notes 185–199 and accompanying text.

[132] *See* Section 8.4(f), 5th BOX LLC Agreement.

[133] *Id.*

[134] MX, a parent corporation of MX US, has agreed to abide by all of the provisions of the 5th BOX LLC Agreement, including those provisions requiring submission to the jurisdiction of the Commission. *See* Securities Exchange Act Release No. 57713 (April 25, 2008), 73 FR 24327 (May 2, 2008) (SR–BSE–2008–28).

[135] These provisions of the BOX LLC Agreement provide that MX US would, among other things, comply with the federal securities laws and the rules and regulations thereunder; cooperate with the Commission and the Regulatory Authority pursuant to their regulatory authority and the provisions of the revised BOX LLC Agreement; and engage in conduct that fosters and does not interfere with BOX's ability to prevent fraudulent and manipulative acts and practices; promote just and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general protect investors and the public interest. *See* Section 5.3, 6th BOX LLC Agreement. *See also* BOX LLC Agreement Order, *supra* note 99, 69 FR at 2765.

[136] In the BOX LLC Agreement Order, the Commission approved the operating agreement governing the BOX Market. At the time of the BOX LLC Agreement Order, BSE did not hold the largest ownership interest in BOX, but the Commission noted that the Act does not require that an SRO have any ownership interest in the operator of its facility. *See* BOX LLC Agreement Order, *supra* note 99, 69 FR at 2764. *See also* Securities Exchange Act Release No. 44983 (October 25, 2001), 66 FR 55225 (November 1, 2001) (''ArcaEx Approval Order''). In the ArcaEx Approval Order, the Commission approved the establishment of Archipelago Exchange (''ArcaEx'') as a facility of the Pacific Exchange, Inc. (''PCX,'' n/k/a NYSE Arca, Inc.). ArcaEx was operated by the Archipelago Exchange, L.L.C. (''Arca L.L.C.''). At the time of the ArcaEx Approval Order, PCX's ownership interest in Arca L.L.C. consisted solely of a 10% interest in Archipelago Holdings, LLC, the parent company of Arca L.L.C. *See also* Securities Exchange Act Release Nos. 41210 (March 24, 1999), 64 FR 15857 (April 1, 1999) (SR–Phlx–96–14) (order approving electronic system offering VWAP that was operated as a facility of Phlx, where Phlx had no ownership interest in the operation of the system) and 54538 (September 29, 2006), 71 FR 59184 (October 6, 2006) (SR–Phlx–2006–43) (order approving Phlx's New Equity Trading system and operation of optional outbound router as a facility of Phlx, where Phlx had no ownership interest in the third party operator).

[137] *See infra* notes 144–164 and notes 185–199 and accompanying text.

[138] *See infra* notes 147–164 and accompanying text.

[139] *See infra* note 187 and accompanying text.

[140] All BSE members, including lessors but not lessees, and excluding electronic access members, would be entitled to receive their pro rata share of equity interest in BOX based on the outstanding number of such BSE memberships.

[141] *See* Article Fourth, Interim Certificate. The Interim Certificate also would delete obsolete text regarding BSE incorporators.

[142] *See* BSE Interim Certificate Proposal Notice, *supra* note 7, 73 FR at 25810.

[143] *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR 26159.

continuing role as the SRO of its facility, the BOX Market.

a. BSE as the SRO for the BOX Market

The BOX LLC Agreement provides that as long as BSE maintains 8% or greater interest in BOX, BSE would have the right to designate and retain two directors on the BOX board of directors (''BOX Board'').[144] BSE no longer would be entitled to maintain two directors on the BOX Board following its transfer of interest to MX US. BSE, therefore, proposes to amend the BOX LLC Agreement to provide that as long as the BOX Market remains a facility of BSE, BSE would have the right to designate and retain one non-voting director (''Regulatory Director'') on the BOX Board.[145] The Regulatory Director would have the right to attend all meetings of the BOX Board and committees thereof and receive notice of meetings and copies of the meeting materials provided to other BOX directors.[146]

Under the current BOX LLC Agreement, BSE holds veto power over certain ''Major Actions,'' which relate to both commercial and regulatory actions. After the transfer of its ownership interest to MX US, BSE, as the SRO for the facility, would continue to have a regulatory interest in the BOX Market. In connection with the sale of BSE's ownership interest, the BOX LLC Agreement is being amended to eliminate BSE's veto power over Major Actions of BOX, but BSE would continue to hold veto power over all regulatory actions.

Specifically, BSE proposes to amend the BOX LLC Agreement to provide that BSE, with certain exceptions discussed below,[147] would have veto power over planned or proposed changes to BOX or the BOX Market.[148] These amendments to the BOX LLC Agreement would provide that the Regulatory Authority [149] would receive notice of planned or proposed changes to BOX, or the BOX Market pursuant to request for change procedures established by the mutual agreement of the Regulatory Authority and BOX.[150] Moreover, if BSE, in its sole discretion, determines that a Regulatory Deficiency exists, BSE may direct BOX to undertake such modifications as are necessary or appropriate to eliminate the Regulatory Deficiency.[151] Prior to implementation, the Regulatory Authority would be required to affirmatively approve such planned or proposed changes.[152] If the Regulatory Authority, in its sole discretion, determines that a proposed or planned change to BOX or the BOX Market is not consistent with Regulatory Authority Rules [153] or SEC Rules [154] governing the BOX Market or BOX Participants, or impedes the Regulatory Authority's ability to regulate the BOX Market or BOX Participants or to fulfill its obligations under the Act,[155] the Regulatory Authority, again in its sole discretion, could direct BOX to modify the proposal such that it does not cause a Regulatory Deficiency.[156] BOX would not implement the proposed change until such change, and any required modifications, are approved by the BOXR board of directors (''BOXR Board'').[157] Further, in the event that the Regulatory Authority, in its sole discretion, determines that a Regulatory Deficiency could exist or would result from the change as planned, the Regulatory Authority could direct BOX to undertake such modifications to BOX or the BOX Market as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency and allow the Regulatory Authority to perform and fulfill its regulatory responsibilities under the Act.[158]

Notice would not be required to be provided to the Regulatory Authority if a proposed change were a ''Non-Market Matter.'' [159] Any planned or proposed change to BOX that has a regulatory component would not fall within the definition of Non-Market Matters.[160] The presence of a Regulatory Director [161] on the BOX Board is designed to help ensure that no matter with a regulatory component is considered a Non-Market Matter by BOX.

These proposed changes to the BOX LLC Agreement, which give the Regulatory Authority notice of changes and the authority to require modification prior to implementation if such changes would cause Regulatory Deficiencies, are designed to replace the current BOX LLC Agreement's provisions that state that, at all times when BSE is a BOX Member, Major Actions of BOX would not be effective unless BSE-designated directors affirmatively vote for such Major Actions.[162] Major Actions of BOX include, among others, merger or consolidation of BOX with any other entity or the sale by BOX of any material portion of its assets, entry by BOX into any line of business other than the business contemplated in the BOX LLC Agreement, and making any fundamental change in the market structure of BOX.[163] Following BSE's divestiture of BOX, however, BSE would no longer have voting directors on the BOX Board. BSE, therefore, would be unable to affirmatively vote on Major Actions of BOX.

The Commission believes that these proposed changes are consistent with the Act. The revised BOX LLC Agreement reflects BSE's continuing status as the SRO for its facility, the BOX Market, by providing that the

[144] *See* Section 4.1(b), 5th BOX LLC Agreement.

[145] *See* Section 4.1(a)(i), 6th BOX LLC Agreement. A Regulatory Director is a member of the senior management of the regulation staff of the Regulatory Authority, who is separated from the business operations of BSE via effective information barriers and is not an employee, officer, or director of NASDAQ OMX or its affiliates, other than BSE and BSE's subsidiaries. *See* Section 1.1, 6th BOX LLC Agreement.

[146] *See* Section 4.2(d), 6th BOX LLC Agreement.

[147] *See infra* note 159 and accompanying text.

[148] *See* Section 3.2, 6th BOX LLC Agreement.

[149] *See supra* text accompanying note 127.

[150] *See* Section 3.2(a)(ii), 6th BOX LLC Agreement.

[151] *See* Section 3.2(a)(iv), 6th BOX LLC Agreement.

[152] *See* Section 3.2(a)(ii), 6th BOX LLC Agreement. The Regulatory Authority would also receive notice of any planned or proposed change, pursuant to which the BOX Market would cease to be a facility of BSE. BOX would not be required, however, to obtain consent from the Regulatory Authority for any such planned or proposed change, provided that the Commission has approved such action. The BOX LLC Agreement does not affect BSE's obligations under Section 19 of the Act to file all proposed rule changes with the Commission. Accordingly, if any proposed change would be required to be filed as a proposed rule change under the Act, BOX could not implement such change until such change became effective under the Act.

[153] ''Regulatory Authority Rules'' means the rules of the Regulatory Authority, including the BOX Rules that constitute ''rules of an exchange'' within the meaning of Section 3 of the Act and that pertain to the BOX Market. *See* Section 1.1, 6th BOX LLC Agreement.

[154] ''SEC Rules'' mean the Act and such statutes, rules, regulations, interpretations, releases, orders, determinations, reports, or statements as are administered, enforced, adopted or promulgated by the Commission. *See* Section 1.1, 6th BOX LLC Agreement.

[155] The operation of BOX or the BOX Market in such manner would be referred to as a ''Regulatory Deficiency.'' *See* Section 1.1, 6th BOX LLC Agreement.

[156] *See* Section 3.2(a)(iii), 6th BOX LLC Agreement.

[157] *Id.*

[158] The cost of any such modifications must be paid by BOX. *See* Section 3.2(a)(iv), 6th BOX LLC Agreement.

[159] Non-Market Matters include changes relating solely to one or more of the following: marketing, administrative matters, personnel matters, social or team-building events, meetings of BOX Members, communication with BOX Members, finance, location, and timing of BOX Board meetings, market research, real property, equipment, furnishings, personal property, intellectual property, insurance, contracts unrelated to the operation of the BOX Market, and de minimis items. *See* Section 3.2(a)(ii), 6th BOX LLC Agreement.

[160] *See* Section 3.2(a)(ii), 6th BOX LLC Agreement.

[161] *See* Section 4.1(a)(i), 6th BOX LLC Agreement.

[162] *See* Section 4.4(b), 5th BOX LLC Agreement.

[163] *Id.*

Regulatory Authority would receive notice of any planned or proposed changes to BOX or the BOX Market, which would include a wider range of matters than those matters considered Major Actions. Further, BOX would not be able to implement a planned or proposed change if the Regulatory Authority, in its sole discretion, determines that such change could cause a Regulatory Deficiency. In addition, if the Regulatory Authority determines that a Regulatory Deficiency exists or is planned, it may direct BOX to undertake such modifications to BOX or the BOX Market as are necessary or appropriate to eliminate or prevent the Regulatory Deficiency. As noted above, the Commission has stated that the Act does not require that an SRO have any ownership interest in the operator of one of its facilities.[164] Although BSE would not have an ownership interest in BOX, the Commission believes that the foregoing changes would not limit BSE's role as the SRO for the BOX Market. The Commission, therefore, finds that these proposed changes would allow BSE to carry out its regulatory and oversight responsibilities under the Act.

b. The BOX Committee

In the BOX Transfer Proposal, BSE proposes to adopt resolutions (''Resolutions'') to establish a committee of the BSE Board, the BOX Committee.[165] The proposed Resolutions are rules of an exchange because they are stated policies, practices, or interpretations (as defined in Rule 19b–4 under the Act) of BSE, and must therefore be filed with the Commission pursuant to Section 19(b) of the Act and Rule 19b–4 thereunder. Accordingly, BSE filed the proposed Resolutions with the Commission.[166]

Pursuant to the proposed Resolutions, the BSE Board would delegate to the BOX Committee all actions and decisions relating to BSE rules that govern the BOX Market, appeals from regulatory decisions of the BOXR Board, and, except to the extent otherwise delegated to the BSE ROC, regulation of the BOX Market.[167] The proposed Resolutions also would provide that the BOX Committee include a director representing the BOX Participants and four other BSE Directors who do not have a material direct or indirect relationship with NASDAQ OMX, its affiliates (other than service as directors of BSE or BOXR), or any provider of BOX-related regulatory functions outsourced by BSE.[168] Furthermore, the proposed Resolutions would provide that at least 50% of members of the BOX Committee must be Public Directors.[169] The proposed Resolutions also would provide that any resolution or other action that would have the effect of dissolving the BOX Committee or altering, amending, removing, or abridging the Resolutions or the powers of the BOX Committee established thereby must be submitted to the BSE Board, and if the same must be filed with, or filed with and approved by, the Commission under Section 19 of the Act, then it would not be effective until filed with, or filed with and approved by, the Commission.[170]

Section 6(b)(3) of the Act provides that the rules of an exchange must assure that its members are fairly represented in the selection of the exchange's directors and in the administration of its affairs.[171] This requirement allows members to have a voice in an exchange's use of its self-regulatory authority. Moreover, the Section 6(b)(3) requirement helps to ensure that members are protected from unfair, unfettered actions by an exchange and that, in general, an exchange is administered in a way that is equitable to all those who trade on its market or through its facilities. Because under the proposed Resolutions, the BSE Board would delegate to the BOX Committee its actions and decisions over the BOX Market, other than matters delegated to the BSE ROC, the Commission believes that the composition of the BOX Committee must be consistent with the fair representation requirement under Section 6(b)(3) of the Act.[172] In this regard, the proposed Resolutions would require that one director of the five BSE Directors on the BOX Committee represent BOX Participants. Because 20% of the BOX Committee would be composed of directors who represent BOX Participants, the Commission believes that the proposed BOX Committee composition satisfies the Section 6(b)(3) requirement. The Commission previously has found 20% representation to satisfy the Section 6(b)(3) requirement.[173]

c. BSE and BOXR Boards

The BOXR By-Laws require that at least 20% of the BOXR Board (but no fewer than two directors) be composed of directors representing BOX Participants.[174] In addition, the BOXR By-Laws require that at least 50% of the directors on the BOXR Board be public directors (''BOXR Public Directors'').[175] In the BSE Governance Proposal, BSE proposes to revise this definition such that a BOXR Public Director could not also have any material business relationship with an affiliate of BSE, BOX, or BOXR.[176] The Commission finds this proposed change to be consistent with the Act. This change would make BOXR's definition of Public Director substantially similar to the use of such term in BSE's By-Laws,[177] which the Commission is approving as part of this Order, and in Nasdaq's By-Laws,[178] which the Commission previously found consistent with the Act.[179] The Commission has previously stated its belief that the inclusion of public, non-industry representatives on exchange oversight bodies is critical to an exchange's ability to protect the public interest.[180] The Commission believes that public representatives help to ensure that no single group of market participants has the ability to systematically disadvantage other market participants through the exchange governance process. Further, the Commission believes that public directors can provide unique, unbiased perspectives, which should enhance the ability of BOXR to address issues in a

[164] *See supra* note 136 and accompanying text.

[165] *See* Section 4.1(f), 6th BOX LLC Agreement.

[166] *See* Exhibit 3B to the BOX Transfer Proposal Notice.

[167] The BSE ROC would be responsible for monitoring the adequacy and effectiveness of BSE's regulatory program and assisting the BSE Board in reviewing BSE's regulatory plan and the overall effectiveness of BSE's regulatory function. Regulatory actions and decisions delegated to the BSE ROC are not subject to the power and authority of the BOX Committee. *See supra* note 93 and accompanying text.

[168] *See* proposed Resolutions. Material direct or indirect relationship include, without limitation, any of the following: being an affiliate; serving as a board member, employee, officer, consultant, advisor, or any provider of BOX-related regulatory functions outsourced by BSE; being a party to any contractual or other relationship pursuant to which more than $50,000 is paid; reporting to, controlling, being controlled by or holding an investment greater than 5% in any such person; and being a parent, child, sibling, spouse or in-law of such person. *See* Section 4.1(f), 6th BOX LLC Agreement.

[169] *See* proposed Resolutions. *See* also infra note 207 and accompanying text.

[170] *See* proposed Resolutions.

[171] 15 U.S.C. 78f(b)(3).

[172] 15 U.S.C. 78f(b)(3).

[173] *See, e.g.*, Securities Exchange Act Release Nos. 54494 (September 25, 2006), 71 FR 58023 (October 2, 2006) (SR–CHX–2006–23) (order approving amendments to exchange by-laws and other governance changes) and 53382, *supra* note 29.

[174] *See* Section 4, BOXR By-Laws.

[175] Currently, a BOXR Public Director is a director who has no material relationship with a broker or dealer, BSE, BOX, or BOXR. *See* Section 1(p), BOXR By-Laws.

[176] *See* proposed Section 1(q), BOXR By-Laws.

[177] *See* BSE By-Laws, Article I(gg) and *supra* notes 56 and 78–80 and accompanying text.

[178] *See* Nasdaq By-Laws, Article I(y).

[179] *See* Nasdaq Exchange Approval Order, supra note 63, 71 FR at 3553, n.47.

[180] *Id.* at 3553. *See also* Securities Exchange Act Release No. 40760, *supra* note 79.

nondiscriminatory fashion and foster the integrity of BOXR.

In addition, in the BOX Transfer Proposal, BSE proposes to change the BOX LLC Agreement to require BSE, for so long as the BOX Market remains a facility of BSE, to allow BOX to designate one non-voting participant to the BSE Board and to recommend at least 10%, but no fewer than one, of the BOXR directors to the BOXR Board.[181] BSE also would be required to include on the BOXR Board at least two directors representing BOX Participants, but no fewer than 20% of all directors,[182] and at least four directors who do not have a material direct or indirect relationship with NASDAQ OMX, its affiliates, or any provider of BOX-related regulatory functions outsourced by BSE, other than service as directors of BSE or BOXR.[183] The proposed changes to the BOX LLC Agreement would further require that the directors on the BOXR Board, any committees thereof, or the BOX Committee, or the directors otherwise engaged in BOX-related meetings not have a material direct or indirect relationship with NASDAQ OMX or its affiliates or any provider of BOX-related regulatory functions outsourced by BSE, other than service as directors of BSE or BOXR.[184] The Commission finds that, with respect to the composition of the BOXR Board, the proposed changes satisfy the requirements of Section 6(b)(3) of the Act because at least 20% of BOXR Board directors must represent BOX Participants. The Commission further finds that the prohibition on BOXR Board directors, committee members, and others from having a material direct or indirect relationship with NASDAQ OMX or its affiliates or any provider of BOX-related regulatory functions outsourced by BSE are designed to preserve the independence of the self-regulatory functions of BSE that have been delegated to BOXR, BSE's wholly-owned subsidiary, and to enable BSE, together with BOXR, to carry out its SRO functions.

d. Oversight of BOX Market

Although BOX does not carry out any regulatory functions, all of its activities must be consistent with the Act. The BOX Market is a facility of BSE and is not solely a commercial enterprise, and is subject to the Act.[185] Accordingly, the current BOX LLC Agreement [186] has provisions designed to enable BOX to operate in a manner that complies with the federal securities laws, including the objectives and requirements of the Act. Because BOX's obligations endure as long as the BOX Market is a facility of BSE, regardless of the BSE's transfer of its ownership interest in BOX to MX US, BSE does not propose to amend the aforementioned provisions, except as provided below.

In accordance with BSE's obligations as the SRO for the BOX Market, the books, records, premises, officers, directors, agents, and employees of BOX are currently deemed to be the books, premises, officers, directors, agents, and employees of BSE for the purpose of, and subject to, oversight pursuant to the Act.[187] Furthermore, the books and records of BOX are subject at all times to inspection and copying by BSE and the Commission.[188] To this provision, BSE proposes to add in the BOX Transfer Proposal that inspection, copying, and review of the books and records of BOX by the Regulatory Authority at the premises of BOX, and access to any copied books and records removed from the premises of BOX or produced to the Regulatory Authority at its request, would in all cases be conducted by, or limited to, certain individuals (such individuals referred to as, ''Permitted Recipients'') [189] and directors or employees of BOXR.[190] BSE also proposes that the Regulatory Authority would inspect, copy, and review the books and records of BOX, and would use any information obtained thereby, only for purposes of fulfilling its regulatory obligations and for no other purpose.[191] Further, BSE proposes to add language stating that although BOX would not be entitled to refuse the inspection, review, and/or copying its books and records by the Regulatory Authority, it would be entitled to damages in the event that such inspection, review, and/or copying was conducted for any purpose other than to fulfill the Regulatory Authority's regulatory responsibilities.[192]

The Commission finds that these provisions are consistent with the Act. The Commission notes that BSE proposes to delegate to BOXR, together with the BOX Committee, much of its regulatory responsibilities over the BOX Market. Therefore, although BSE proposes that access to books and records would be limited to Permitted Recipients and BOXR directors and employees, within BSE's proposed regulatory framework, this limitation would not exclude any individuals who may need access to BOX books and records. Moreover, the Commission has authority under the Act to inspect BOX's books and records because BOX is the operator of the BOX Market, a facility of an exchange. In addition, the Commission finds it consistent with the Act that BSE proposes to specify that inspection, copying, and review of books and records and the use of any information obtained thereby be for purposes of fulfilling BSE's regulatory obligations. The Commission notes that, because BOX would not be entitled to preclude BSE from inspecting, reviewing, or copying of its books and records, BOX could not rely on the books and records provisions of the revised BOX LLC Agreement to improperly hinder BSE from carrying out its regulatory and oversight responsibilities under the Act.[193]

In the BOX Transfer Proposal, BSE also proposes to add certain other provisions to the BOX LLC Agreement. Specifically, BSE proposes to provide that all confidential information

[181] The non-voting participant would have the right to attend all meetings of the BOX Committee and all BOX-related deliberations of the BSE Board and committees thereof and receive equivalent notice and meeting materials as BSE directors. *See* Section 4.1(f), 6th BOX LLC Agreement.

[182] *See* Section 4.1(f), 6th BOX LLC Agreement. *See also infra* note 208 and accompanying text.

[183] *Id. See also supra* note 168.

[184] *Id.* Moreover, all other persons permitted to attend meetings of the BOXR Board or any committees thereof or the BOX Committee or otherwise engaged in BOX-related meetings could not have a material direct or indirect relationship with NASDAQ OMX or its affiliates or any provider of BOX-related regulatory functions outsourced by BSE unless they are Permitted Recipients (as defined below), BOXR directors, officers, or employees, other parties making presentations to directors of the BSE Board engaged in BOX-related meetings, the BOXR Board, the BOX Committee or the BSE ROC if such parties' participation is only to the extent necessary to make such presentations, or consented to by BOX. *See* Section 4.1(f), 6th BOX LLC Agreement.

[185] *See* BOX LLC Agreement Order, *supra* note 99, 69 FR at 2765.

[186] *See* Sections 4.2, 12.1, 15, 16.5, and 19.6, 5th BOX LLC Agreement.

[187] *See* Section 12.1, 5th BOX LLC Agreement.

[188] *Id.*

[189] *See* Section 12.1, 6th BOX LLC Agreement. Permitted Recipients are (i) the BSE CRO and those regulatory staff members responsible for regulatory technology and budget, counsel to BSE CRO, or staff of BSE's internal audit department, (ii) any member of the BSE Board serving on the BOX Committee or BSE ROC, (iii) NASDAQ OMX CRO and staff in the Office of General Counsel, (iv) any member of the NASDAQ OMX Board of Directors serving on the NASDAQ OMX ROC, and (v) any Professional Services provider. ''Professional Services'' means services performed by outside counsel, consultants, any provider of BOX-related regulatory functions outsourced by BSE, or subcontractors for the benefit of BOX or the BOX Market. *See* Section 1.1, 6th BOX LLC Agreement.

[190] *See* Section 12.1, 6th BOX LLC Agreement.

[191] *Id.*

[192] *Id.*

[193] *See* Section 12.1, 6th BOX LLC Agreement. Instead, BSE proposes that BOX would be entitled to damages in the event any inspection, copying, or review of BOX books and records by the Regulatory Authority is, in whole or in part, used by the Regulatory Authority or any of its affiliates for any purpose other than to fulfill the Regulatory Authority's regulatory obligations. *See* Section 12.1, 6th BOX LLC Agreement.

pertaining to regulatory matters of BOX and the BOX Market (including, but not limited to, disciplinary matters, trading data, trading practices, and audit information) contained in the books and records of BOX would not be made available to any persons other than to those officers, directors, employees, and agents of BOX that have a reasonable need to know the contents thereof and that such confidential information be retained in confidence by BOX and the officers, directors, employees, and agents of BOX and not be used for any commercial purposes.[194] BSE also proposes to add a provision in the BOX LLC Agreement requiring BOX to provide prompt notice to the Regulatory Authority and the Regulatory Director of any amendments, modifications, waivers, or supplements to the BOX LLC Agreement presented to the BOX Board for approval.[195] Any proposed change to the BOX LLC Agreement would be submitted to the BOX Committee and if such change is required under Section 19 of the Act and rules thereunder to be filed with, or filed with and approved by, the Commission before such change may be effective, then such change would not be effective until filed with, or filed with and approved by, the Commission, as the case may be.[196]

The current BOX LLC Agreement provides that each BOX Member and its officers, directors, agents, and employees must submit to the jurisdiction of the federal courts, the Commission, and BSE for the purposes of any suit, action, or proceeding pursuant to federal securities laws, rules, or regulations thereunder, arising out of, or relating to, BOX activities.[197] BSE proposes to extend this provision such that BOX and its officers, directors, agents, and employees also would submit to the jurisdiction of the U.S. federal courts, the Commission, and the Regulatory Authority.[198]

Finally, the current BOX LLC Agreement provides that BSE, as a party to the agreement, and BOX Members would take such action as is necessary to ensure that their officers, directors, and employees consent to the applicability of certain provisions in the BOX LLC Agreement, including the requirement to submit to the jurisdiction of the U.S. federal courts, the Commission, and BSE. BSE proposes to amend this provision such that BOX's officers, directors, and employees would also consent to the same provisions.[199]

The Commission believes that the revised provisions to the BOX LLC Agreement are intended to enhance BSE's ability to fulfill its self-regulatory obligations and assist in administering and complying with the requirements of the Act. Therefore, the Commission finds that these provisions are consistent with the Act.

C. BOXR

As noted above, after the BSE Acquisition, BOXR would continue to be wholly-owned by BSE and would become the indirect, wholly-owned subsidiary of NASDAQ OMX. BOXR is currently governed by a Delegation Plan,[200] the BOXR By-Laws, and the applicable BSE Rules, including the BSE Constitution (to be replaced by the BSE By-Laws), and would continue to be so governed after the BSE Acquisition and the transfer of BSE's interest in BOX to MX US.

In addition, BSE now proposes to adopt a written operating agreement for BOXR (''BOXR LLC Agreement'') in which BSE would be the sole member. BSE also proposes to amend the BOXR By-Laws to reflect the BSE Acquisition. As discussed above, BSE would continue to delegate certain self-regulatory responsibilities relating to the BOX Market to BOXR, although BSE would retain ultimate responsibility.[201]

1. BOXR LLC Agreement; Changes in Control of BOXR

BSE proposes to adopt the BOXR LLC Agreement.[202] The BOXR LLC Agreement would include provisions that reflect BOXR's status as a wholly-owned subsidiary of an SRO and that are designed to preserve the independence of the self-regulatory functions of BSE that have been delegated to BOXR.[203] Also, the BOXR LLC Agreement would preclude BOXR from making distributions to BSE using regulatory funds.[204]

In addition, BSE could not transfer or assign its ownership of BOXR, unless such transfer or assignment is filed with and approved by the Commission pursuant to Section 19 of the Act.[205] Moreover, because BOX Participants are BSE members, they are subject to Chapter XXXIX of the BSE Rules, which requires that no member or person associated with a member may own more than 20% of the outstanding voting securities of NASDAQ OMX.[206] Together, these ownership and voting restrictions are designed to minimize the potential that a person could improperly interfere with or attempt to restrict the ability of the Commission or BSE to effectively carry out their regulatory oversight responsibilities under the Act. The Commission believes that the proposed BOXR LLC Agreement is consistent with the Act.

2. Amendments to the BOXR By-Laws; BOXR Board; Fair Representation

The BOXR Board would continue to be composed of at least 50% BOXR Public Directors[207] and at least 20% (but no fewer than two directors) would continue to be officers or directors of a firm approved as a BOX Participant (''BOXR BOX Participant Directors'').[208] The BOXR BOX Participant Directors would be selected pursuant to BOXR's current procedures for the nomination and election of BOXR BOX Participant Directors by BOX Participants, as would be the BOX Participant Director

[194] *See* Section 16.6, 6th BOX LLC Agreement. BSE also proposes that the provision would not be interpreted to limit or impede the rights of the Commission or the Regulatory Authority to access and examine such confidential information or to limit or impede the ability of any officers, directors, employees, or agents of BOX to disclose such confidential information to the Commission or the Regulatory Authority. *Id.*

[195] *See* Section 19.1, 6th BOX LLC Agreement.

[196] *Id.* BOX would not be required to obtain the approval of the Regulatory Authority for any amendment to the revised BOX LLC Agreement pursuant to which the BOX Market would cease to be a facility of BSE, provided that such amendment would be filed with, or filed with and approved by, the Commission, as the case may be, before such amendment may be effective.

[197] As a BOX Member, MX US would be subject to this provision.

[198] *See* Section 19.6(b), 6th BOX LLC Agreement.

[199] *See* Section 19.6(c), 6th BOX LLC Agreement. BSE proposes to expand the provisions to which individuals must consent. In addition, MX and the Regulatory Authority would take such action as is necessary to insure that with respect to their BOX related activities, MX's officers, directors and employees consent to the communication of their ''personal information'' as defined under Canada's Act Respecting the Protection of Personal Information in the Private Sector, R.S.Q.c.P–39.1 (''Private Sector Privacy Act''), by MX to the Commission and the Regulatory Authority and agree to waive the protection of such ''personal information'' that is provided by the Private Sector Privacy Act.

[200] *See supra* note 126 and accompanying text. *See also* BOXR Order, *supra* note 124. No changes to the Delegation Plan are proposed.

[201] *See supra* notes 125–127 and accompanying text.

[202] *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR at 26159.

[203] *See* Section 7, BOXR LLC Agreement.

[204] *See* Section 15, BOXR LLC Agreement. Pursuant to Schedule A of the proposed BOXR LLC Agreement, BOXR regulatory funds means fees, fines, or penalties derived from the regulatory operations of BOXR, but would not include revenues derived from listing fees, market data revenues, transaction revenues, or any other aspect of the commercial operations of BOXR, even if a portion of such revenues are used to pay costs associated with the regulatory operations of BOXR.

[205] *See* Section 20, BOXR LLC Agreement.

[206] *See supra* note 99 and accompanying text.

[207] *See supra* notes 175–176 and accompanying text.

[208] *See* proposed Section 4, BOXR By-Laws.

candidate for the BSE Board.[209] The successful candidates for BOXR Participant Director positions would be submitted to BSE, as the sole member of BOXR, for election.[210] The successful candidate for the BOX Participant Director position on the BSE Board would be submitted to NASDAQ OMX, as the sole shareholder of BSE, for election.[211] In connection with this process, BSE proposes, in the BSE Governance Proposal, that the BSE By-Laws include a provision that requires BSE's Nominating Committee to give due consideration to the recommendation of the BOXR Nominating Committee in nominating the BOX Participant Director to the BSE Board.[212]

Although the BSE By-Laws require only due consideration of the recommendation made by the BSE Nominating Committee, BSE states in its proposed rule change that, in nominating the BOX Participant Director to the BSE Board, the BSE Nominating Committee would adopt the recommendation of the BOXR Nominating Committee, and NASDAQ OMX, as the sole stockholder of BSE, would elect such candidate.[213] To reconcile the BSE By-Laws and this representation, BSE states that immediately following the closing of the BSE Acquisition, BSE would propose to the BSE Board an amendment to the BSE By-Laws to make it clear that the candidate nominated by the BOXR Nominating Committee to serve as the BOX Participant Director on the BSE Board would also be nominated by the BSE Nominating Committee and elected by NASDAQ OMX, unless such nominee is not otherwise eligible for service pursuant to BSE By-Laws Section 4.3.[214] The Commission believes that the proposed petition process, coupled with the right to vote for their representatives, should help to ensure that BOX Participants have the opportunity to be involved in the selection of their representatives for the BOXR Board and the BSE Board. The Commission notes that this proposed process is consistent with the current process for electing BOX Participant Directors previously approved by the Commission.[215]

The Commission finds that the proposed changes are consistent with Sections 6(b)(3) of the Act,[216] which requires BSE to assure a fair representation of its members in the selection of its directors and administration of its affairs because the proposal is designed to ensure that BOX Participants continue to participate in the selection of their representatives to the BOXR and BSE Boards.

3. Disciplining of Affiliated Members

In the BSE Governance Proposal, BSE proposes to amend the BOXR By-Laws to provide that neither the BSE Board nor the BOXR Board would consider appeals of disciplinary actions involving BOX Participants that are affiliates of NASDAQ OMX.[217] Currently, any BOX Participant ''adjudged guilty in any disciplinary proceeding'' by the BOXR Hearing Committee [218] or any panel thereof may appeal such decision to the BOXR Board and subsequently to the BSE Board. Any initial decision that is rendered by the BOXR Hearing Committee regarding the affiliated BOX Participant would instead constitute final disciplinary action of BSE under Rule 19d–1(c)(1) under the Act.[219] This proposed change is consistent with the process for appeals by affiliated members of Nasdaq under Nasdaq's rules, which previously was approved by the Commission.[220]

The Commission believes that this proposed change is consistent with the Act, including Section 6(b)(7) thereunder,[221] which requires that the rules of an exchange must provide a fair procedure for disciplining members. Specifically, this proposal, which specifies that the BSE Board and the BOXR Board may not be involved in review of disciplinary actions involving affiliated BOX Participants, would mitigate a conflict of interest that could occur as a result of Nasdaq OMX's ownership of BSE.

D. BSX

1. NASDAQ OMX Ownership of BSX

In addition to the BSE Acquisition, NASDAQ OMX would acquire all of the outstanding limited liability company interests in BSX held by investors other than BSE.[222] As a result, NASDAQ OMX would own 46.79% of BSX directly and would own indirectly through BSE the remaining 53.21% of BSX. Following the BSE Acquisition, BSE would remain the SRO and would provide the regulatory framework for BSX,[223] and BSE expects to operate in the future a facility for the trading of cash equity securities through BSX. BSE would not resume trading of cash equity securities until it has filed a proposed rule change under Section 19(b) of the Act proposing amendments to BSE Rules,

[209] *See* current Section 14(e), BOXR By-Laws, and proposed Section 14(e), proposed BOXR By-Laws. *See also* BOXR Order, *supra* note 124, 69 FR 2768, at notes 21–26 and 52–57, and accompanying text, and discussion *supra* at note 60 accompanying text. The BOXR Nominating Committee would continue to be responsible for nominating the BOXR BOX Participant Director candidates for the two positions on the BOXR Board and the BOX Participant Director candidate for the one position on the BSE Board. *See supra* note 59 and accompanying text. In addition, BOX Participants would continue to be able to submit additional nominees for each of these positions and vote on and elect from the slate of nominees the candidates to be elected to those positions. *See* Section 14(e), BOXR By-Laws.

[210] *See* proposed Section 14(e)(iii), BOXR By-Laws.

Pursuant to proposed Section 14(e)(iii)(E) of the BOXR By-Laws, the two nominees for the BOXR Participant Director positions receiving the highest number of votes would be declared elected thereto, and the one nominee for the BOX Participant Director position on the BSE Board would be recommended by the BOXR Nominating Committee for election thereto.

Proposed Section 22 of the BOXR LLC Agreement, which otherwise generally provides that the provisions of the BOXR LLC Agreement would not be deemed to create any right in any person not a party to the BOXR LLC Agreement, would make clear that the limitations of Section 22 would not apply to BOX Participants to the extent provided in Section 14 of the BOXR By-Laws.

[211] *Id.*

[212] *See* proposed Section 4.14, BSE By-Laws.

[213] *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR at 26159, n.16, and accompanying text.

[214] In Amendment No. 1 to the BSE Governance Proposal, BSE states that, after such proposal to the BSE Board: ''[BSE] shall promptly file the amendment as a proposed rule change for approval by the Commission. This clarifying change could not be included in this filing because Article XX of [BSE's] current Constitution, which is being replaced by the proposed [BSE] By-Laws, provides that [BSE's] members must approve amendments to the [BSE] Constitution. The [BSE] members voted to approve the [BSE] By-Laws as submitted in this filing on December 4, 2007, prior to the submission of this filing to the Commission, and it would have been impracticable and unduly expensive to seek a second member vote for approval of this clarifying change. Following adoption of the new [BSE] By-Laws, the [BSE] Board will have authority to approve [BSE] By-Law amendments.'' *See* Amendment No. 1 to the BSE Governance Proposal, *supra* note 4.

[215] *See* BOXR Order, *supra* note 124, 69 FR at 2771.

[216] 15 U.S.C. 78f(b)(3).

[217] *See* proposed Section 14(f)(i), BOXR By-laws.

[218] *See* BOXR By-Laws, Section 14(f).The ''BOXR Hearing Committee'' is appointed by the Chairman of the BOXR Board and must include one BOX Participant, but may not include members of the BOXR Board or BSE Board. The BOXR Hearing Committee has exclusive jurisdiction to conduct disciplinary proceedings brought by BOXR against any BOX Participant for violation of the Act, the rules and regulations thereunder, the BSE By-Laws, BOX Rules, the BOXR LLC Agreement or By-Laws, or the interpretations and stated policies of either the BSE or BOXR Boards. *Id.* The BOX Committee would hear appeals from regulatory decisions of the BOXR Board. *See supra* note 167 and accompanying text.

[219] 17 CFR 240.19d–1(c)(1).

[220] *See* Securities Exchange Act Release No. 54170, *supra* note 113, 71 FR at 42151.

[221] 15 U.S.C. 78f(b)(7).

[222] BSX was formed in 2004 as a joint venture between BSE and several investors to operate an electronic trading facility, BeX, for the trading of cash equity securities. BeX ceased its operations in September 2007. *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR at 26166.

[223] *See* proposed Section 3.2, BSX Operating Agreement.

and the Commission has approved the new BSE Rules.[224]

The current BSX Operating Agreement requires that any transfer that results in the acquisition and holding by any person, alone or together with any affiliate of such person, of an aggregate percentage interest level that meets or crosses the threshold of 20% be subject to a rule filing pursuant to Section 19(b)(1) of the Act.[225] In accordance with this requirement, BSE proposes in the BSE Governance Proposal that the Commission approve the transfer of ownership interests in BSX to NASDAQ OMX.

The Commission notes that following the transfer of ownership interests in BSX to NASDAQ OMX, BSE and NASDAQ OMX would be the sole members of BSX. In accordance with proposed Section 18.1 of the BSX Operating Agreement, any amendment to the BSX Operating Agreement, including to permit the admission of additional or substitute members, would have to be submitted to the BSE Board for review, and, if any such amendment would be required under Section 19 of the Act and the rules promulgated thereunder, to be filed with, or filed with and approved by, the Commission before such amendment may be effective, then such amendment would not be effective until filed with, or filed with and approved by the Commission.[226] As the operator of a facility of BSE, BSX must continue to be operated in a manner consistent with the regulatory and oversight responsibilities of BSE and with the Act and rules and regulations thereunder. The Commission believes that, because BSE would remain the SRO and would provide the regulatory framework for BSX, the transfer of ownership interests in BSX to NASDAQ OMX would not impair the continued ability of BSE or the Commission to discharge their respective regulatory and oversight responsibilities. The Commission therefore finds that the transfer of ownership interests in BSX to NASDAQ OMX is consistent with the Act.

2. BSX Operating Agreement

In conjunction with the BSE Acquisition, BSE also proposes in the BSE Governance Proposal to amend the BSX Operating Agreement to reflect the sole ownership of BSX by BSE and NASDAQ OMX.

a. Transfer, Ownership and Voting Restrictions

The amended BSX Operating Agreement would continue to state that BSX must provide the Commission with written notice ten days prior to the closing date of any acquisition that results in a BSX Member's percentage ownership interest in BSX, alone or with any affiliate, meeting or crossing the 5%, 10%, or 15% thresholds.[227] In addition, the amended BSX Operating Agreement would continue to provide that any transfer of BSX units that results in the acquisition and holding by any person, alone or together with an affiliate, of an interest that meets or crosses the 20% threshold or any successive 5% threshold (*i.e.*, 25%, 30%, *etc.*) would trigger the requirement to file an amendment to the BSX Operating Agreement with the Commission under Section 19(b) of the Act.[228]

Further, the amended BSX Operating Agreement would continue to provide that any person that acquires a controlling interest (*i.e.*, an interest of 25% or greater) in a BSX Member that holds 20% or more of BSX units would be required to become a party to the BSX Operating Agreement and abide by its terms.[229] The addition of any such indirect controlling party would also require a filing with the Commission pursuant to Section 19(b) of the Act.[230]

In the BSE Governance Proposal, BSE proposes to amend the BSX Operating Agreement to remove provisions that allow BSX Members to exercise rights of first refusal in the event that one member proposes to transfer its ownership interests in BSX to another member or BSX proposes to issue additional units of ownership.[231] Because BSX would be 100% owned, directly and indirectly, by NASDAQ OMX, this provision is no longer relevant. In addition, BSE proposes to expand those provisions of the BSX Operating Agreement that currently prohibit BSX Participants and their affiliates from owning or voting more than 20% of BSX to include all BSE members and their affiliates. To make the BSX Operating Agreement consistent with the exception from BSE Rules to permit NES and NOS to become affiliates of BSE,[232] the proposed amendment to the BSX Operating Agreement would state that these ownership and voting restrictions do not limit NASDAQ OMX's or BSE's ownership interests in BSX.[233]

The Commission believes that the proposed changes to provisions in the BSX Operating Agreement on transfer, ownership, and voting restrictions would not affect the ability of BSE to carry out its self-regulatory responsibilities or the ability of the Commission to fulfill its responsibilities under the Act. In particular, the proposal would not change the current percentage thresholds in the transfer, ownership, and voting provisions. The Commission finds that the proposed revisions to the BSX Operating Agreement discussed above are consistent with the Act.

b. BSE's Authority Over BSX

Although NASDAQ OMX would own directly 46.79% of BSX, BSE would be entitled to designate all of the directors of the BSX board of directors (''BSX Board'').[234] In addition, in the BSE Governance Proposal, BSE proposes to delete a provision in the BSX Operating Agreement that currently requires a super-majority of BSX directors' votes, including the affirmative votes of all directors designated by BSE, before BSX could take certain significant actions, such as entering into a new line of business or replacing BSE as BSX's regulatory service provider.[235] Instead, BSE would have the authority to veto or mandate actions that relate to regulatory requirements.[236] Specifically, the proposal sets forth that BSE's affirmative vote would be required with respect to any action, transaction, or aspect of an action or transaction that

[224] *See* BSE Governance Proposal Notice, *supra* note 3, 73 FR at 26167.

[225] *See* current Section 18.1, BSX Operating Agreement.

[226] *See* proposed Section 8.2(e), BSX Operating Agreement.

[227] *See* proposed Section 8.2(d), BSX Operating Agreement.

[228] *See supra* note 225. In addition, the amended BSX Operating Agreement would provide that any transfer of BSX units that would reduce BSE's ownership in BSX below the 20% threshold would require a proposed rule change under Section 19(b) of the Act. Moreover, Commission approval would be required to permit any person, alone or together with any affiliate, to control 20% of the Total Votes. *See* current Section 8.4(e), BSX Operating Agreement, and proposed Section 8.2(e), BSX Operating Agreement. The Commission notes that proposed Section 18.1 of the BSX Operating Agreement requires the submission of any proposed amendment thereto to the BSE Board for review. If such amendment is required under Section 19 of the Act to be filed with, or filed with and approved by, the Commission, it could not take effect until filed with, or filed with and approved by the Commission.

[229] *See* proposed Section 8.2(f), BSX Operating Agreement.

[230] *Id.*

[231] *See* current Sections 8.2 and 8.3, BSX Operating Agreement.

[232] *See supra* notes 117–123 and accompanying text.

[233] *See* proposed Sections 8.3 and 8.4, BSX Operating Agreement.

[234] *See* proposed Section 4.1(b), BSX Operating Agreement. In addition, BSE proposes to reduce the number of BSX directors from six to five. *See* proposed Section 4.1(a), BSX Operating Agreement.

[235] *See* current Section 4.4, BSX Operating Agreement.

[236] *See* proposed Section 4.4, BSX Operating Agreement.

BSE, in its sole discretion, determines is necessary or appropriate for, or interferes with, the performance or fulfillment of BSE's regulatory functions, its responsibilities under the Act or as specifically required by the Commission.[237] In addition, BSE would have the sole and exclusive right to direct that any required, necessary, or appropriate act be undertaken without regard to the vote, act, or failure to vote or act by any other party in any capacity.[238]

Further, the amended BSX Operating Agreement would state that any amendment thereto must be submitted to the BSE Board for review and, if such amendment is required under Section 19(b) of the Act and the rules thereunder to be filed with, or filed with and approved by the Commission, then such amendment would not be effective until filed with, or filed with and approved by the Commission, as the case may be.[239]

The Commission believes that these proposals are designed to preserve BSE's regulatory authority over BSX, and any proposed facility for the trading of cash equity securities that BSX may operate, and are consistent with the Act because they would grant BSE the ability to direct BSX to perform any required, necessary, or appropriate act and would allow BSE to veto or mandate actions that relate to regulatory requirements. The Commission notes that BSE could not operate a facility for the trading of cash equity securities until it has filed under Section 19(b) of the Act, and the Commission has approved, the new BSE Rules. In particular, the Commission believes these changes are consistent with Section 6(b)(1) of the Act,[240] which requires, among other things, that the national securities exchange be so organized and have the capacity to carry out the purposes of the Act, and to comply and enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange.

c. Confidentiality Provisions

In the BSE Governance Proposal, BSE proposes to amend the BSX Operating Agreement to provide that all confidential information pertaining to the self-regulatory function of BSE or the business of BSE relating to the trading of cash equity securities (including disciplinary matters, trading data, trading practices and audit information) in the books and records of BSX would not be made available to any persons. The proposal would allow such information to be made available to officers, directors, employees and agents of BSX who have a reasonable need to know the contents thereof. However, such confidential information would be required to be retained in confidence by BSX and its officers, directors, employees and agents and not be used for any commercial purposes.[241] The Commission believes that the revised confidentiality provisions would not impair BSE's self-regulatory obligations with respect to BSX and finds that this provision is consistent with the Act.

d. Jurisdiction

The current BSX Operating Agreement provides that BSX and each BSX Member as well as the officers, directors, agents, and employees of BSX and each BSX Member must submit to the jurisdiction of the federal courts, the Commission, and BSE for the purposes of any suit, action, or proceeding pursuant to the U.S. federal securities laws or the rules or regulations thereunder, arising out of, or relating to BSX's activities.

In the BSE Governance Proposal, BSE proposes to amend Section 18.6(b) of the BSX Operating Agreement to: (1) clarify that the jurisdiction of the U.S. federal courts, the Commission, and BSE over BSX, its members, and their respective officers, directors, agents, and employees is exclusive; (2) require BSX and its members and their respective officers, directors, agents, and employees to agree not to assert lack of personal jurisdiction by the U.S. federal courts or BSE;[242] and (3) include a provision regarding the waiver of the defense or application of any foreign secrecy or blocking statutes by BSX and its members and their respective officers, directors, agents, and employees, with respect to BSX's activities or their participation therein.

The Commission believes that these changes, in conjunction with other provisions of the BSX Operating Agreement that would remain unchanged, would enhance BSE's ability to fulfill its self-regulatory obligations and assist in administering and complying with the requirements of the Act. Moreover, BSE is required to enforce compliance with these provisions because they are ''rules of the exchange'' within the meaning of Section 3(a)(27) of the Act.[243] A failure on the part of BSE to enforce its rules could result in a Commission enforcement action pursuant to Section 19(h)(1) of the Act.[244]

E. BSECC

As a result of the BSE Acquisition, BSECC, BSE's wholly-owned subsidiary and a registered clearing agency, would become a wholly-owned indirect subsidiary of NASDAQ OMX. As noted above, BSECC ceased processing trades in 2007. In connection with the transaction, BSECC proposes, in the BSECC Governance Proposal, to amend its Articles of Organization (''BSECC Articles of Organization''). BSECC also proposes to update the BSECC Articles of Organization and By-Laws (''BSECC By-Laws'') in certain other respects, including, according to BSE, to reflect modern corporate practice for Massachusetts corporations. In addition, BSECC has filed the NASDAQ OMX Certificate and By-Laws as proposed rules.[245]

In connection with the BSE Acquisition, BSECC proposes to amend the BSECC Articles of Organization such that the total number of shares of each class of stock that BSECC would be authorized to issue is 150 shares of common stock. This amendment would reflect a reduction in the total authorized share capital of BSECC from 1000 shares of common stock to the 150 shares of common stock currently held by BSE. Thus, following the amendment, all of the authorized shares of common stock of BSECC would be outstanding and would be owned by BSE.[246]

BSECC also proposes to amend the BSECC Articles of Organization to provide that BSE may not transfer or assign any shares of stock of BSECC unless such transfer or assignment has been filed with and approved by the Commission under Section 19 of the Act.[247] These proposed changes are designed to ensure that, absent Commission approval, BSECC would remain a wholly-owned subsidiary of BSE. Further, BSECC proposes to amend

[237] *Id.*

[238] *Id.*

[239] *See* proposed Section 18.1, BSX Operating Agreement.

[240] 15 U.S.C. 78f(b)(1).

[241] *See* proposed Section 16.7, BSX Operating Agreement. BSE also proposes that the provision would not be interpreted to limit or impede the ability of any officers, directors, employees or agents of the Company to disclose confidential information to the Commission or the BSE.

[242] Section 18.6(b) of the BSX Operating Agreement currently requires BSX and its members and their respective officers, directors, agents, and employees, to agree not to assert lack of personal jurisdiction by the Commission.

[243] 15 U.S.C. 78c(a)(27).

[244] 15 U.S.C. 78s(h)(1).

[245] *See supra* note 10 and accompanying text.

[246] *See* proposed BSECC Articles of Organization, Article III.

[247] *See* proposed BSECC Articles of Organization, Article V.

the BSECC By-Laws to expressly state that the BSECC By-Laws may be amended only upon approval by the Commission and in accordance with the rules of BSECC.[248]

BSECC also proposes several other changes to the BSECC Articles of Organization and BSECC By-Laws, which BSECC states are primarily for the purpose of updating those documents in accordance with modern corporate practice for Massachusetts corporations.[249] Specifically, BSECC proposes to adopt what it terms ''modern provisions'' stipulating the conditions under which BSECC may indemnify its officers and directors and the scope of that indemnification. Such provisions provide that directors of BSECC are not personally liable to it for breaches of fiduciary duty, except for breaches involving (1) A breach of the duty of loyalty, (2) acts or omissions not in good faith or that involve intentional misconduct or knowing violation of law, (3) distributions of assets that would render BSECC insolvent, or (4) any transaction from which the director derived an improper personal benefit.[250] BSECC also proposes to amend the BSECC By-Laws to clarify the time periods allowed or required for notice to stockholders of meetings, the permissible duration of stockholder proxies, and the setting of a record date, which BSECC states are consistent with Massachusetts law.[251] BSECC further proposes to remove a provision from its By-Laws allowing close of the transfer books of BSECC, which BSECC states is no longer consistent with Massachusetts law.[252]

In addition, BSECC states that its proposed changes would allow stockholders, as well as directors, to fill vacancies on the BSECC Board of Directors (''BSECC Board'') in accordance with Massachusetts law [253] and to clarify that directors of BSECC, if such directors also serve on the BSE Board, must tender resignations from the BSECC Board if they cease to be BSE Directors.[254] The proposed changes also would clarify the requirements for action by the BSECC Board and the stockholders to be taken without a meeting.[255]

The Commission finds that the proposed changes to the BSECC Articles of Organization and BSECC By-Laws are consistent with the requirements of the Act and the rules and regulations thereunder and particularly with the requirements of Section 17A(b)(3)(C) of the Act.[256] The Commission notes that the proposed rule change does not amend BSECC's rules or procedures with respect to the clearance and settlement of securities transactions or the safeguarding of securities and funds which are in BSECC's control or for which it is responsible. Section 17A(b)(3)(C) of the Act requires that a clearing agency's rules assure the fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs. BSECC would remain a wholly-owned subsidiary of BSE following the acquisition by NASDAQ OMX and the BSECC By-Laws relating to the selection, composition, powers, and duties of the BSECC Board, committees, and officers, except as discussed above, would remain unchanged. Accordingly, the Commission finds that BSECC's rules would continue to assure the fair representation of its shareholders and participants in the selection of BSECC's directors and the administration of BSECC's affairs as required by Section 17A(b)(3)(C).

Furthermore, as discussed above with respect to BSE, BSECC also has filed the Certificate and By-Laws of NASDAQ OMX as proposed rules.[257] As noted above, although NASDAQ OMX is not itself an SRO, its activities with respect to the operation of BSECC must be consistent with, and must not interfere with, the self-regulatory obligations of BSECC. NASDAQ OMX's By-Laws would make applicable to all of NASDAQ OMX's SRO subsidiaries, including BSECC (after the BSE Acquisition), certain provisions of NASDAQ OMX's Certificate and NASDAQ OMX's By-Laws that are designed to maintain the independence of each of its SRO subsidiaries' self-regulatory functions, enable each SRO subsidiary to operate in a manner that complies with the federal securities laws, and facilitate the ability of each SRO subsidiary and the Commission to fulfill their regulatory and oversight obligations under the Act.[258]

Additionally, the Commission notes that the NASDAQ OMX By-Laws would provide that the NASDAQ OMX Board, as well as its officers, employees, and agents, may not take any action that would interfere with the decisions of the board of directors of any SRO subsidiary relating to its regulatory functions or the market structures or the clearing systems which it regulates or that would interfere with the ability of any SRO subsidiary to carry out its responsibilities under the Act.[259] Also, the NASDAQ OMX By-Laws would specifically require the NASDAQ OMX Board to consider BSECC's regulatory obligations as a clearing agency when evaluating any issue,[260] including granting any exemption from the NASDAQ OMX voting limitations discussed above.[261] The Commission believes that the NASDAQ OMX By-Laws, as amended to accommodate the BSE Acquisition, are designed to facilitate BSECC's ability to fulfill its self-regulatory obligations and, accordingly, are consistent with Section 17A of the Act.

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[248] *See* proposed BSECC By-Laws Article VI.7. BSECC Rule XII requires notice to clearing members of amendments to the BSECC By-Laws.

[249] *See* BSECC Governance Proposal Notice, *supra* note 9, 73 FR at 27584.

[250] *See* proposed BSECC By-Laws Article VI.

[251] *See* proposed BSECC By-Laws Article I.4, Article I.6, and Article V.3.

[252] *See* BSECC By-Laws Article V.3. BSECC represents that this change would not limit the effectiveness of the change to the Articles of Organization requiring Commission approval of transfers of BSECC's stock. *See* BSECC Governance Proposal Notice, *supra* note 9, 73 FR 27583, n.5.

[253] *See* proposed BSECC By-Laws Article II.4.

[254] *See* proposed BSECC By-Laws Article II.7.

[255] BSECC also proposes changes to eliminate the offices of ''clerk'' and ''vice-chairman'' from BSECC and to delete references to those offices from the By-Laws and to establish that the officers of BSECC are all appointed by and subject to removal by the BSECC Board. *See* proposed BSECC By-Laws Article III.1 and III.4.

[256] 15 U.S.C. 78q–1(b)(3)(C).

[257] *See supra* note 38.

[258] *See* Amendment No. 1 to the BSECC Governance Proposal, *supra* note 10.

[259] *See* proposed Section 12.1(a), NASDAQ OMX By-Laws.

[260] The NASDAQ OMX Board would be required to consider, to the extent deemed relevant, when evaluating any issue, whether such would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the SRO subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. *See* proposed Section 12.7, NASDAQ OMX By-Laws.

[261] Specifically, the NASDAQ OMX Board would be required to determine that granting any such exemption would promote the prompt and accurate clearance and settlement of securities transactions (and to the extent applicable, derivative agreements, contracts and transactions), would assure the safeguarding of securities and funds in the custody or control of the SRO subsidiaries that are clearing agencies or securities and funds for which they are responsible, would foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and would remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions. *See* proposed Section 12.5, NASDAQ OMX By-Laws; and Article Fourth.C.6, NASDAQ OMX Certificate. *See also* notes 100–104 and accompanying text.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning: (1) Amendment No. 1 to File No. SR–BSE–2008–23 (the BSE Governance Proposal), including whether Amendment No. 1 is consistent with the Act; (2) Amendment No. 1 to File No. SR–BSECC–2008–01 (the BSECC Governance Proposal), including whether Amendment No. 1 is consistent with the Act; and (3) Amendment No. 1 to File No. SR–BSE–2008–25 (the BOX Transfer Proposal), including whether Amendment No. 1 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–BSE–2008–23, SR–BSECC–2008–01, or SR–BSE–2008–25 as applicable, on the subject line.

Paper Comments

• Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to Amendment No. 1 to File No. SR–BSE–2008–23, Amendment No. 1 to File No. SR–BSECC–2008–01, or Amendment No. 1 to File No. SR–BSE–2008–25, as applicable. 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 BSE or BSECC, as applicable. 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 Amendment No. 1 to File No. SR–BSE–2008–23, Amendment No. 1 to File No. SR–BSECC–2008–01, or Amendment No. 1 to File No. SR–BSE–2008–25, as applicable, and should be submitted on or before September 2, 2008.

IV. Accelerated Approval of the BSE Governance Proposal, as Modified by Amendment No. 1, the BSECC Governance Proposal, as Modified by Amendment No. 1, and the BOX Transfer Proposal, as Modified by Amendment No. 1

The Commission finds good cause for approving: (1) The BSE Governance Proposal, as modified by Amendment No. 1, (2) the BSECC Governance Proposal, as modified by Amendment No. 1, and (3) the BOX Transfer Proposal, as modified by Amendment No. 1, prior to the thirtieth day after the date of publication of notice of filing of such amendments in the **Federal Register**.[262]

In Amendment No. 1 to the BSE Governance Proposal and Amendment No. 1 to the BSECC Governance Proposal, BSE and BSECC each propose to adopt as rules the NASDAQ OMX Certificate and NASDAQ OMX By-Laws. The NASDAQ OMX Certificate, as filed by BSE and BSECC, was previously approved by the Commission as rules of Nasdaq.[263] The NASDAQ OMX By-Laws were similarly approved previously by the Commission.[264] As filed by BSE and BSECC, the NASDAQ OMX By-Laws include certain new terminology to reflect the acquisition of BSE and BSECC by NASDAQ OMX. These changes were filed by Nasdaq as a proposed rule change, were published for comment, and were approved by the Commission.[265] The changes were also filed by Phlx, and were approved by the Commission, in connection with the Phlx Acquisition.[266] The Commission received no comments on the proposed changes to the NASDAQ OMX By-Laws in either instance.[267]

As discussed more fully above in Sections II.A.1. and II.A.6., and in the NASDAQ OMX By-Law Proposal Notice, certain provisions of NASDAQ OMX's Certificate and By-Laws are designed to facilitate the ability of NASDAQ OMX's SRO subsidiaries, including BSE and BSECC, to maintain the independence of each of the SRO subsidiaries' self-regulatory function, enable each SRO subsidiary to operate in a manner that complies with the federal securities laws, and facilitate the ability of each SRO subsidiary and the Commission to fulfill their regulatory and oversight obligations under the Act.[268] As stated above, the Commission finds that such provisions are consistent with the Act.[269] Notably, the NASDAQ OMX Certificate and By-Laws are rules of Nasdaq that have been approved previously by the Commission, as noted above, and the changes to the NASDAQ OMX By-Laws were published for notice and comment, as noted above, and the Commission did not receive any comments thereon.

Additionally, in Amendment No. 1 to the BSE Governance Proposal, BSE proposes to amend Section 8.2(f) of the BSX Operating Agreement. Section 8.2(f) currently requires that any person who, alone or together with any affiliate of such person, has 25 percent or greater interest in a BSX Member who, alone or together with any affiliate of such BSX Member, holds 20 percent or greater interest in BSX become party to, and abide by all the provisions of, the BSX Operating Agreement. In Amendment No. 1, BSE proposes to clarify that for the Section 8.2(f) requirement to apply, a person, alone or together with any affiliate of such person, must have direct or indirect ownership of 25 percent or more of the total voting power of all equity securities of a BSX Member, other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities. Notwithstanding the foregoing, BSE proposes to clarify that a person with zero percent direct or indirect interest in a BSX Member would not be required to

[262] 15 U.S.C. 78s(b)(2). Pursuant to Section 19(b)(2) of the Act, the Commission may not approve any proposed rule change, or amendment thereto, prior to the thirtieth day after the date of publication of the notice thereof, unless the Commission finds good cause for so doing.

[263] *See* Nasdaq Exchange Approval Order, *supra* note 63, 73 FR at 3552–3553.

[264] *See* NASDAQ OMX By-Laws Proposal Notice, *supra* note 18, 73 FR 26182, and NASDAQ OMX By-Laws Approval Order, *supra* note 31, 73 FR 42850.

[265] *Id.*

[266] *See* Securities Exchange Act Release No. 58179, *supra* note 27.

[267] In addition, Amendment No. 1 to the BSE Governance Proposal and Amendment No. 1 to the BSECC Governance Proposal incorporate a change to the Nasdaq OMX By-Laws to clarify the definition of Non-Industry Director with respect to issuer representation on the Nasdaq OMX Board of Directors that recently was approved by the Commission. *See* Securities Exchange Act Release No. 58201 (July 21, 2008), 73 FR 43812 (July 28, 2008) (SR–NASDAQ–2008–043).

[268] *See supra* notes 38–47, 100–104 and accompanying text.

[269] *See id.*

become party to the BSX Operating Agreement pursuant to the revised Section 8.2(f).

The Commission finds these changes to the BSX Operating Agreement consistent with the Act. Section 8.2(f) of the BSX Operating Agreement is designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission and BSE to effectively carry out their regulatory oversight responsibilities under the Act. The clarifications proposed by BSE do not hinder the intent of Section 8.2(f), because the Commission believes that a person without voting power in the equity securities of a BSX Member, or a person with no direct or indirect interest in a BSX Member, could not interfere with or restrict the Commission's or the BSE's ability to carry out its regulatory responsibilities.

In Amendment No. 1 to the BOX Transfer Proposal, BSE proposes to amend Section 8.4(g) of the BOX LLC Agreement. Section 8.4(g) currently requires that any person who, alone or together with any affiliate of such person, has 25 percent or greater interest in a BOX Member who, alone or together with any affiliate of such BOX Member, holds 20 percent or greater interest in BOX become party to, and abide by all the provisions of, the BOX LLC Agreement. In Amendment No. 1, BSE proposes to clarify that for the Section 8.4(g) requirement to apply, a person, alone or together with any affiliate of such person, must have direct or indirect ownership of 25 percent or more of the total voting power of all equity securities of a BOX Member, other than voting rights solely with respect to matters affecting the rights, preferences, or privileges of a particular class of equity securities. Notwithstanding the foregoing, BSE proposes to clarify that a person with zero percent direct or indirect interest in a BOX Member would not be required to become party to the BOX LLC Agreement pursuant to the revised Section 8.4(g).

The Commission finds these changes to the BOX LLC Agreement consistent with the Act. Section 8.4(g) of the BOX LLC Agreement is designed to minimize the potential that a person could improperly interfere with or restrict the ability of the Commission and BSE to effectively carry out their regulatory oversight responsibilities under the Act. The clarifications proposed by BSE do not hinder the intent of Section 8.4(g) because the Commission believes that a person without voting power in the equity securities of a BOX Member, or a person with no direct or indirect interest in a BOX Member, could not interfere with or restrict the Commission's or the BSE's ability to carry out its regulatory responsibilities.

For the reasons described above, the Commission finds good cause for approving each of the following on an accelerated basis, pursuant to Section 19(b)(2) of the Act: (1) The BSE Governance Proposal, as modified by Amendment No. 1; (2) the BSECC Governance Proposal, as modified by Amendment No. 1; and (3) the BOX transfer Proposal, as modified by Amendment No. 1.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[270] that the BSE Interim Certificate Proposal (SR–BSE–2008–02), as modified by Amendment No. 1, be, and hereby is, approved; that the BSE Governance Proposal (SR–BSE–2008–23), as modified by Amendment No.1, be, and hereby is, approved on an accelerated basis; that the BOX Transfer Proposal (SR–BSE–2008–25), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis; and that the BSECC Governance Proposal (SR–BSECC–2008–01), as modified by Amendment No.1 be, and hereby is approved on an accelerated basis.

By the Commission.

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18577 Filed 8–11–08; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58321; File No. SR–CBOE–2008–78]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Market-Maker Transaction Fees

August 6, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1], notice is hereby given that on July 25, 2008, 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, II and III below, which Items have been prepared by CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

CBOE proposes to amend its Fees Schedule relating to market-maker transaction fees. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Under the Exchange's ''Liquidity Provider Sliding Scale'' program, the Exchange reduces Liquidity Provider (CBOE Market-Maker, DPM, e-DPM and LMM) per contract transaction fees based on the number of contracts a Liquidity Provider trades in a month. The sliding scale applies to Liquidity Provider transaction fees in all products.[2]

A Liquidity Provider's standard $.20 per contract transaction fee is reduced if the Liquidity Provider reaches the volume thresholds set forth in the sliding scale in a month. As a Liquidity Provider's monthly volume increases, its per contract transaction fee decreases. The first 75,000 contracts traded in a month (first tier) are assessed at $.20 per contract. The next 1,125,000 contracts traded (up to 1.2 million total contracts traded—second tier) are assessed at $.18 per contract. The next 1.8 million contracts traded (up to 3 million total contracts traded—third tier) are assessed at $.15 per contract

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[270] 15 U.S.C. 78s(b)(2).

[1] 15 U.S.C. 78s(b)(1).

[2] Contract volume resulting from dividend, merger and short stock interest strategies as defined in Footnote 13 of the Fees Schedule does not apply towards reaching the sliding scale volume thresholds.

and the next 1.8 million contracts traded (up to 4.8 million total contracts traded—fourth tier) are assessed at $.10 per contract. All contracts above 4.8 million contracts traded in a month (fifth tier) are assessed at $.03 per contract.[3]

The Exchange proposes to add a sixth tier in order to provide an additional fee reduction at higher volume levels. Specifically, the Exchange proposes to assess $.01 per contract for all contracts above 10 million contracts traded by a Liquidity Provider in a month. Accordingly, the fifth tier would be revised to reflect that all contracts above 4.8 million up to 10 million contracts traded in a month would be assessed $.03 per contract.

No other changes to the program are proposed. The Exchange plans to implement the proposed fee change on August 1, 2008.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Securities Exchange Act of 1934 (''Act'') [4], in general, and furthers the objectives of Section 6(b)(4) [5] of the Act in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among CBOE members. The proposed fee change would provide an additional fee reduction to Liquidity Providers at higher monthly volume levels.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[3] The Exchange aggregates the trading activity of separate Liquidity Provider firms for purposes of the sliding scale if there is at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A. A Liquidity Provider's monthly contract volume is determined at the firm affiliation level, e.g., if five Liquidity Provider individuals are affiliated with the same member firm as reflected by Exchange records for the entire month, all of the volume from those five individual Liquidity Providers count towards that firm's sliding scale transaction fees for that month. See CBOE Fees Schedule, Footnote 10.

[4] 15 U.S.C. 78f(b).

[5] 15 U.S.C. 78f(b)(4).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [6] and subparagraph (f)(2) of Rule 19b–4 thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2008–78 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CBOE–2008–78. 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–2008–78, and should be submitted on or before September 2, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18602 Filed 8–11–08; 8:45 am]

BILLING CODE 8010–01–P

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(2).

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58300; File No. SR–NSCC–2008–06]

Self-Regulatory Organizations; The National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Enhance the Equity Options Service To Include Bond Options

August 4, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on July 25, 2008, the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NSCC proposes to amend its rules in order to enhance the NSCC Equity Options Service by extending similar processing to bond options transactions. The enhanced service will be called the ''NSCC Equity Options and Bond Options Service.''[2]

[1] 15 U.S.C. 78s(b)(1).

[2] Changes are to the rule text that appears in the electronic manual of NSCC found at *http://www.nscc.com/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, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change amends Addendum M to NSCC's Rules and Procedures (''Addendum M''). Addendum M currently relates to a confirmation and matching service for over-the-counter (''OTC'') U.S. equity options transactions and their associated cash flows called the NSCC Equity Options Service. The proposed rule change enhances the NSCC Equity Options Service by extending similar processing to bond options transactions. The enhanced service will be called the ''NSCC Equity Options and Bond Options Service.''

The Commission approved NSCC's filing on Form 19b–4, File No. SR–NSCC–2005–04, which proposed adding, on a permanent basis, Addendum M to NSCC's Rules and Procedures to establish the NSCC Equity Options Service.[4] This filing proposes a rule change to amend Addendum M to enhance the NSCC Equity Options Service by extending processing to bond option transactions. Because the bond options service to be provided by NSCC would be largely identical to the existing NSCC Equity Options Service, this filing substantially restates the information contained in the previous filings regarding equity options transactions.

In response to the need for automation of the trade confirmation process in the derivatives industry, the corporate parent of NSCC, The Depository Trust & Clearing Corporation (''DTCC''), in 2003 created a subsidiary, DTCC Deriv/SERV LLC (''Deriv/SERV''). Deriv/SERV currently offers a confirmation and matching service for OTC credit default swaps transactions, interest rate swap transactions and equity derivative transactions and their associated cash flows. This service is widely used, including by all of the largest OTC credit default swaps dealers.

Deriv/SERV has developed a confirmation and matching service for OTC bond options transactions and their associated cash flows (the ''Deriv/SERV Bond Options Service''). The Deriv/SERV Bond Options Service provides for confirmation and matching either between two OTC bond options dealers or between an OTC bond options dealer and its buy-side customer. Where either the buyer or the seller of an equity option or a bond option is a U.S. person and the equity option or bond option is issued by a U.S. issuer (a ''U.S. Equity Option Transaction'' or ''U.S. Bond Option Transaction''), NSCC will provide the NSCC Equity Options and Bond Options Service to Deriv/SERV pursuant to the NSCC/DTCC Deriv/SERV Service Agreement (''Service Agreement'').[5] Deriv/SERV is a Data Services Only Member of NSCC.[6]

The Deriv/SERV Bond Options Service is operated pursuant to the operating procedures of Deriv/SERV (the ''Deriv/SERV Operating Procedures''). U.S. Bond Option Transactions are also subject to NSCC's Addendum M. Therefore, each user of the Deriv/SERV Bond Options Service enters into an agreement with Deriv/SERV obligating the user to abide by the terms of the Deriv/SERV Operating Procedures and obligating it to abide by Addendum M for any U.S. Bond Option Transactions. Pursuant to the Service Agreement, NSCC has the right to require Deriv/SERV to cause Deriv/SERV's users to abide by the terms of Addendum M. In addition, pursuant to the Service Agreement, NSCC and Deriv/SERV have agreed that should the Commission request that NSCC provide to the Commission any information relating to the NSCC Equity Options and Bond Options Service, Deriv/SERV will provide any such information in its possession to NSCC so that NSCC may provide such information to the Commission.

NSCC will neither be responsible for the content of the messages transmitted through the NSCC Equity Options and Bond Options Service nor be responsible for any errors, omissions, or delays that may occur relating to the NSCC Equity Options and Bond Options Service in the absence of gross negligence on NSCC's part. Both the Service Agreement and the Deriv/SERV Operating Procedures provide that NSCC has no liability in connection with the NSCC Equity Options and Bond Options Service in the absence of gross negligence on NSCC's part. Because the NSCC Equity Options and Bond Options Service does not involve money settlement, securities clearance, or netting through the facilities of NSCC, it is a nonguaranteed service of NSCC.[7]

Deriv/SERV will charge its users fees in connection with the Deriv/Serv Bond Options Service and pursuant to the Service Agreement will make payments to NSCC for the services that NSCC is providing. NSCC will file proposed rule changes under Section 19(b) of the Act for fees that NSCC charges to Deriv/SERV for the NSCC Equity Options and Bond Options Service and for any changes made by NSCC to the NSCC Equity Options and Bond Options Service.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder because the implementation of the proposal will provide for the prompt and accurate clearance and settlement of U.S. OTC equity option transactions processed through the NSCC Equity Options and Bond Options Service by facilitating the transmission

[3] The Commission has modified the text of the summaries prepared by the NSCC.

[4] The Commission approved NSCC's original filing on Form 19b–4, File No. SR–NSCC–2004–04 (the ''Original Filing'') on a temporary basis through May 31, 2005, pending evaluation of the service. A subsequent filing, File No. SR–NSCC–2005–04 (the ''Subsequent Filing''), provided information regarding findings related to the evaluation of the service, restated the Original Filing, as amended, and sought permanent approval of the service. The Subsequent Filing was approved May 26, 2005.

[5] The host computer and other automated facilities associated with the NSCC Equity Options and Bond Options Service are provided by DTC pursuant to service agreements between NSCC and DTCC and between DTCC and DTC.

[6] NSCC Rules and Procedures, Rule 31.

[7] NSCC offers certain ''guaranteed'' services through its CNS system, in which NSCC as a central counterparty provides settlement-related guarantees regarding certain trades cleared and netted at NSCC. NSCC also offers ''nonguaranteed'' services, such as NSCC's Mutual Fund and Insurance Processing Services, in which members do not receive the protections of the NSCC guarantee. Some of NSCC's nonguaranteed services entail settlement of funds through NSCC on a nonguaranteed basis (*e.g.*, NSCC's FundSERV(r) service); other nonguaranteed services involve the communication of information only without settlement of transactions or funds through the facilities of NSCC (*e.g.*, NSCC's Profile service in NSCC's Mutual Fund Services). The NSCC Equity Options and Bond Options Service is of this latter type; *i.e.*, a nonguaranteed service limited to the communication of information only, which does not involve settlement of securities transactions or funds through the facilities of NSCC. In its Matching Release, the Commission concluded that matching constitutes a clearing agency function, specifically the ''comparison of data respecting the terms of settlement of securities transactions,'' within the meaning of Section 3(a)(23)(A) of the Act. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943 (File No. S7–10–98).

of standardized information on a centralized communications platform. This will reduce processing errors, delays, and risks that are typically associated with manual processes.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(4)[9] thereunder in that it: (i) Does not adversely affect the safeguarding of securities or funds in the custody or control of the clearing agency or for which it is responsible and (ii) does not significantly affect the respective rights or obligations of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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–NSCC–2008–06 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR-NSCC–2008–06. 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 filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site, *http://www.nscc.com/legal/.* 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–NSCC–2008–06 and should be submitted on or before September 2, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[10]

Florence E. Harmon,

Acting Secretary.

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BILLING CODE 8010–01–P

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(4).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–58314; File No. SR–NSCC–2008–07]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of Proposed Rule Change To Enhance Processing of Exchange-Traded Funds

August 5, 2008.

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 22, 2008 the National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to: (i) Expand processing of shares in exchange-traded funds (''Index Receipts'') to allow for cash as a sole component of creations and redemptions and (ii) provide for an optional shortened processing cycle for creates and redeems of Index Receipts and their underlying components.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC 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. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC began processing Index Receipts with the launch of the first exchange-traded fund, the SPDR, in 1993. NSCC's Index Receipt processing

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission has modified the text of the summaries prepared by NSCC.

supports: (i) The creation of Index Receipt units whereby a member will deliver the underlying component shares to the Index Receipt agent and receive Index Receipts and (ii) the redemption of Index Receipt units whereby a member will deliver the Index Receipts and receive the underlying components.

1. Current Process

Currently, on the day before trade date (''T–1''), an Index Receipt agent transmits files to NSCC that contain information regarding the underlying composition of Index Receipts for creates and redeems occurring the next business day.[4] NSCC compiles the information that evening and provides members with a portfolio composition report listing the composition of Index Receipts eligible for processing. The report displays the proportionate amount of underlying stocks that compose each Index Receipt and contains a cash component, which is an estimation of accrued dividends and any necessary balancing amount.[5] The portfolio information contained in this report is used for creation and redemption processing the next day, which is the Trade Date. On Trade Date, by such time as established by NSCC, the Index Receipt agent, acting on behalf of each member placing an Index Receipt order, will report to NSCC the number of Index Receipts created and redeemed that day. Such a report constitutes locked-in transactions between the Index Receipt agent and the member. The Index Receipt agent also will report the final cash amount and a transaction amount that represents the Index Receipt agent's transaction fee. On the night of Trade Date, NSCC transmits an Index Receipt instruction detail report to members that had activity on Trade Date. The report serves as the contract for the creation and redemption activity and lists the number of component shares that the member, depending upon the underlying shares' CNS eligibility, will deliver to or receive from CNS on settlement date (''T+3'') or otherwise as an item as allotted through the Balance Order Accounting System. On the night of Trade Date, each Index Receipt instruction is separated into its underlying stock components, and these components are processed through CNS or the Balance Order Accounting Operation and are incorporated into the normal equity clearance and settlement process. Unsettled positions in Index Receipts and their component securities are currently risk managed as ordinary activity and guaranteed pursuant to the provisions of Addendum K of NSCC's rules.

2. Proposed Enhancements

NSCC currently supports the creation and redemption of Index Receipts with underlying components that are CNS eligible securities scheduled to settle on a T+3 basis. The Index Receipts and the components themselves are processed through CNS. Index Receipts that are not eligible for processing through NSCC are routinely processed outside of NSCC. For the past two years, demand for NSCC's create and redeem service has increased significantly per annum with activity for Index Receipts with non-U.S. equity components increasing the most. As more fully described below, the proposed enhancements will allow members to create Index Receipts that (i) have underlying securities other than domestic equity securities for cash as consideration and (ii) will allow an optional shortened settlement cycle for creates and redeems and their underlying components.

A. Expand the Index Receipt Process To Allow for Cash as Sole Component for Creations and Redemptions

Currently all component securities must be CNS eligible to qualify for NSCC's create and redeem process. Cash is used as a component only for accrued dividends and any balancing amount but not as a separate underlying component.

NSCC is proposing to expand its Index Receipt processing to allow for creates and redeems using cash as the sole underlying component. This enhancement would allow members and their agent banks to create and redeem Index Receipts whose underlying components are not currently eligible for processing at NSCC (for example, commodity Index Receipts). The Index Receipt agent would use the cash to purchase the components, the settlement of which would occur outside of NSCC.

B. T+1 and T+2 Settlement of Creations and Redemptions

NSCC currently supports the creation and redemption of Index Receipts with underlying components scheduled to settle on a T+3 basis. NSCC is proposing to expand its Index Receipt processing to allow a member to create and redeem Index Receipts on a shortened settlement cycle. NSCC also is proposing to revise its processing to address the timing of the NSCC trade guarantee as well as associated trade processing and Clearing Fund provisions for such shortened settlement Index Receipts.

Currently, shortened settlement for standard equity CNS trades (*e.g.*, next day settlement) are reported in the Consolidated Trade Summary and guaranteed on the night of T. NSCC then collects Clearing Fund payments at 10 a.m. on T+1. Because next day settling trades are effectively guaranteed in the CNS night cycle prior to margining, NSCC currently uses a process that takes that uncertainty into consideration by collecting a ''look-back'' premium in the Clearing Fund calculation.[6] Leveraging this existing practice for next-day settlement of creates and redeems would be cost-prohibitive based on the large number of ''in kind'' shares[7] that are exchanged in this process.

NSCC is therefore proposing to delay processing of next day settling creates and redeems and their underlying components until the CNS day cycle on T+1.[8] These transactions would be reported on the Second Supplemental Consolidated Trade Summary that is generally released mid-day. Delayed processing would allow NSCC ample time to collect Clearing Fund payments prior to guaranteeing the transactions and thus obviate the need for the look-back Clearing Fund premium but still allow the trades to settle on T+1.[9]

In addition, NSCC plans to implement a new fee for shortened-cycle creates and redeems as more fully described below.

Therefore, NSCC proposes to amend its Rules as follows to provide for settlement of index receipt transactions on T+1 or T+2 on an optional basis:

(i) Amendment of Addendum K Regarding Guarantee of Next Day Settling Index Receipts

NSCC proposes to amend Addendum K to provide that settlement of creates

[4] NSCC's current processing functions are set forth in Procedure II, Section H of NSCC's Rules.

[5] The balancing amount is designed to compensate for any difference between the net asset value of the Index Receipt and the value of the underlying index. Among other reasons, a difference in value could result from the fact that an Index Receipt cannot contain fractional shares of a security.

[6] In order to account for the risk of unknown positions, Risk Management performs a look-back calculation to estimate shortened settlement volumes and values. The shortened settlement component is added to a members' Clearing Fund requirement for 21 days after each shortened settlement occurs.

[7] Most Index Receipts are created and redeemed in units of 50,000. In other words, if a member were to create six units it would receive 300,000 shares of the Index Receipt securities.

[8] The CNS day-cycle is typically run at 11:30 a.m. Component securities that are not CNS-eligible would be processed through the Balance Order Accounting Operation.

[9] If margin is not timely collected on T+1, creates and redeems may not be processed.

and redeems, including the underlying components, on a T+1 basis (including T+2 settling as-of creates and redeems submitted on T+1) will be guaranteed on Settlement Date when NSCC determines to complete processing for those items in the day cycle (normally, 11:30 a.m.); provided, however, that the transaction is not removed from processing as described below.[10]

(ii) Amendment of Procedure II To Allow for Settlement on a Shorter Than T+3 Basis

NSCC proposes to amend Procedure II, Section H to provide that: (i) The Index Receipt agent may elect for settlement of the creates and redeems on a T+1 or T+2 basis, (ii) as-of Index Receipt creates and redeems will only be accepted if submitted by the cut-off time designated by NSCC with submission of next-day settling creates and redeems required by such cut-off time on T, (iii) NSCC reserves the right to remove Index Receipt transactions from processing in the event that the applicable member has not met a margin call on settlement date, and (iv) next day settling creates and redeems (including T+2 settling as-of creates and redeems submitted on T+1) will be posted to the Second Supplemental Consolidated Trade Summary and processed in the day cycle of the CNS Accounting Operation.

(iii) Amendment of Procedure XV (Clearing Fund Formula)

NSCC proposes to amend Procedure XV to provide that creates and redeems of Index Receipts, as well as the underlying components, will not be subject to the ''20-day look back provision,'' which provides for a charge based on the average of the member's three highest aggregate calculated charges for daily ''Specified (shortened cycle) Activity'' measured over the most recent 20 settlement days.

(iv) Amendment of Addendum A (Fee Structure)

The current fee for regular-way (T+3) settlement of creates and redeems is $30 per create and redeem. To offset additional costs associated with shortened settlement processing, NSCC plans to implement a new fee of $50.00 per create and redeem with a shortened settlement cycle.

3. Implementation Timeframe

NSCC proposes to implement the changes set forth in this filing in the third quarter of 2008. Members will be advised of the implementation date through issuance of NSCC Important Notices.

NSCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[11] and the rules and regulations thereunder because accelerated settlement of creates and redeems of Index Receipts facilitates the prompt and accurate clearance and settlement of securities transactions.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will have any impact or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments relating to the proposed rule change have not been solicited or received. NSCC will notify the Commission of any written comments received by NSCC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five 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 ninety 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–NSCC–2008–07 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2008–07. 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 Section, 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 filings also will be available for inspection and copying at the principal office of NSCC and on NSCC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2008/nscc/2008–07.pdf*. 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–NSCC–2008–07 and should be submitted on or before September 2, 2008.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[12]

Florence E. Harmon,

Acting Secretary.

[FR Doc. E8–18549 Filed 8–11–08; 8:45 am]

BILLING CODE 8010–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11364 and #11365]

Mississippi Disaster #MS–00023

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

[10] In addition, the transaction must be submitted for recording by an Index Receipt agent by such cutoff time as designated by the NSCC (pursuant to Procedure II).

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(12).

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Mississippi dated 08/06/2008.

Incident: Severe Storms and Flash Flooding.

Incident Period: 07/29/2008.

Effective Date: 08/06/2008.

Physical Loan Application Deadline Date: 10/05/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/06/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Forrest

Contiguous Counties: Mississippi

Covington, Jones, Lamar, Pearl River, Perry, Stone

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11364 6 and for economic injury is 11365 0.

The State which received an EIDL Declaration # is Mississippi.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 6, 2008.

Jovita Carranza,

Acting Administrator.

[FR Doc. E8–18565 Filed 8–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11351 and #11352]

California Disaster #CA–00092

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of California dated 08/04/2008.

Incident: Severe Thunderstorms causing Flash Flooding and Landslides.

Incident Period: 07/12/2008 through 07/20/2008.

DATES: *Effective date:* 08/04/2008.

Physical Loan Application Deadline Date: 10/03/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/04/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Inyo.

Contiguous Counties:

California, Fresno, Kern, Mono, San Bernardino, Tulare.

Nevada, Clark, Esmeralda, Nye.

The Interest Rates are:

	Percent
Homeowners With Credit Available Elsewhere	5.375
Homeowners Without Credit Available Elsewhere	2.687
Businesses With Credit Available Elsewhere	8.000
Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere	5.250
Businesses and Non-Profit Organizations Without Credit Available Elsewhere	4.000

The number assigned to this disaster for physical damage is 11351 9 and for economic injury is 11352 0.

The States which received an EIDL Declaration # are California and Nevada.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: August 4, 2008.

Jovita Carranza,

Acting Administrator.

[FR Doc. E8–18559 Filed 8–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11355]

Idaho Disaster # ID–00008.

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for Public Assistance Only for the State of Idaho (FEMA–1781–DR), dated 07/31/2008.

Incident: Flooding.

Incident Period: 05/15/2008 through 06/09/2008.

Effective Date: 07/31/2008.

Physical Loan Application Deadline Date: 09/29/2008.

Economic Injury (EIDL) Loan Application Deadline Date: 05/01/2009.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the President's major disaster declaration on 07/31/2008, Private Non-Profit organizations that provide essential services of governmental nature may file disaster loan applications at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Kootenai, Shoshone.

Contiguous Counties (Economic Injury Loans Only):

Idaho: Benewah, Bonner, Clearwater.

Montana: Mineral, Sanders.

Washington: Spokane.

The Interest Rates are:

	Percent
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	5.250

	Percent
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage and for economic injury is 11355.

(Catalog of Federal Domestic Assistance Number 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–18567 Filed 8–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11328]

Kansas Disaster Number KS–00027

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Kansas (FEMA–1776–DR), dated 07/09/2008.

Incident: Severe Storms, Flooding, and Tornadoes.

Incident Period: 05/22/2008 through 06/16/2008.

Effective Date: 08/05/2008.

Physical Loan Application Deadline Date: 09/08/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Kansas, dated 07/09/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties:

Elk, Haskell, Reno, Wilson.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–18566 Filed 8–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11310]

Minnesota Disaster Number MN–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 4.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1772–DR), dated 06/25/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/06/2008 through 06/12/2008.

DATES: *Effective Date:* 08/05/2008.

Physical Loan Application Deadline Date: 08/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road Fort, Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of MINNESOTA, dated 06/25/2008, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Cook.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herber L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–18558 Filed 8–11–08; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11310]

Minnesota Disaster Number MN–00015

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Minnesota (FEMA–1772–DR), dated 06/25/2008.

Incident: Severe Storms and Flooding.

Incident Period: 06/06/2008 through 06/12/2008.

Effective Date: 08/05/2008.

Physical Loan Application Deadline Date: 08/25/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: M. Mitravich, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Minnesota, dated 06/25/2008, is hereby amended to re-establish the incident period for this disaster as beginning 06/06/2008 and continuing through 06/12/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8–18569 Filed 8–11–08; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 6306]

Re-Chartering of the Advisory Committee on International Communications and Information Policy (ACICIP)

SUMMARY: The Advisory Committee on International Communications and Information Policy (ACICIP) has been re-chartered for an additional two years.

The Department of State announces the re-chartering of the Advisory Committee on International Communications and Information Policy (ACICIP), a continuing committee under the authority of 22 U.S.C. 2656 and the Federal Advisory Committee Act, 5 U.S.C., App. II, Secs. 1–5 (''FACA''). ACICIP members are private sector communications and information technology specialists from U.S. telecommunications companies, trade associations, policy institutions, and academia, who advise the Department on issues affecting international communications and information policy.

The Committee is subject to the Federal Advisory Committee Act, which requires advisory committees to renew their charters every two years.

Dated: August 4, 2008.

Emily Yee,

Designated Federal Officer, Department of State.

[FR Doc. E8–18600 Filed 8–11–08; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28055]

Demonstration Project on NAFTA Trucking Provisions

AGENCY: Federal Motor Carrier Safety Administration (FMCSA).

ACTION: Notice; request for public comment.

SUMMARY: FMCSA announces and requests public comment on data and information concerning the Pre-Authority Safety Audits (PASAs) for motor carriers that have applied to participate in the Agency's project to demonstrate the ability of Mexico-domiciled motor carriers to operate safely in the United States beyond the commercial zones on the U.S.-Mexico border. This action is required by the ''U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007.''

DATES: Comments must be received on or before August 27, 2008.

ADDRESSES: You may submit comments identified by FDMS Docket ID Number FMCSA–2007–28055 by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Alternatively, you can file comments using the following methods:

- Mail: Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590.
- Hand Delivery or Courier: West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- Fax: 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Request for Comments heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19476).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov.* Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Mr. Milt Schmidt, Division Chief, North American Borders Division, Telephone (202) 366–4049; e-mail *milt.schmidt@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

On May 25, 2007, the President signed into law the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act, 2007 (the Act), (Pub. L. 110–28). Section 6901 of the Act requires that certain actions be taken by the Department of Transportation (the Department) as a condition of obligating or expending appropriated funds to grant authority to Mexico-domiciled motor carriers to operate beyond United States municipalities and commercial zones on the United States-Mexico border (border commercial zones).

Section 6901(b)(2)(B)(i) of the Act requires FMCSA to publish comprehensive data and information on the PASAs conducted before and after the date of enactment of the Act of motor carriers domiciled in Mexico that are granted authority to operate beyond the border commercial zones. As of July 16, 2008, 27 carriers have been granted authority to operate beyond the border commercial zones as part of this cross-border demonstration project. However, FMCSA has chosen to publish for public comment data and information relating to all PASAs conducted as of July 16, 2008. On March 24, 2008, FMCSA published in the **Federal Register** PASA data for all motor carriers that had applied to participate in the demonstration project, based on information available as of February 7, 2008 (73 FR 15557). FMCSA announces that the following Mexico-domiciled motor carriers in Table 1 have successfully completed their PASAs and notice of this fact was published in the FMCSA Register after the publication of the March 24 notice:

TABLE 1

Row number in Tables 2 through 4 of the appendix to today's notice	Name of carrier	USDOT No.
22	GOMEZ GARCIA JOSE LUIS	710473
24	GRUPO TRANSPORMEX SA DE CV	711208
63	LUIS EDMUNDO GRIJALVA GAMEZ	1598518
65	INTERLOGISTICS DE MEXICO S DE RL DE CV	1659365

FMCSA includes as an appendix to this **Federal Register** notice, data and information on the PASAs for which the motor carrier successfully completed the process before the enactment of the Act, and any completed since then. See Tables 2, 3, and 4 in the appendix. The appendix also includes information about carriers that failed the PASA in Table 5. Although failure to successfully complete the PASA precludes their participation in the cross-border demonstration project and the Act only requires publication of data for carriers receiving operating authority, FMCSA is publishing this information to show that 4 motor carriers in addition to the 28 motor carriers identified in the March 24 notice failed to meet U.S. safety standards. A narrative description of each column heading contained within the appendix's Tables 2, 3, and 4, ''Successful Pre-Authority Safety Audit (PASA) Information as of July 16, 2008'' as well as in Table 5 ''Failed Pre-Authority Safety Audit (PASA) Information as of July 16, 2008,'' is provided below:

A. *Row Number in the Appendix:* The line in the table on which all the PASA

information concerning the motor carrier is presented.

B. *Name of Carrier:* The legal name of the Mexico-domiciled motor carrier that applied for authority to operate in the United States (U.S.) beyond the border commercial zones and was considered for participation in the cross-border demonstration project.

C. *U.S. DOT Number:* The identification number assigned to the Mexico-domiciled motor carrier and required to be displayed on each side of the power unit. If granted provisional operating authority, the Mexico-domiciled motor carrier will be required to add the suffix ''X'' to the ending of its assigned U.S. DOT Number.

D. *PASA Scheduled:* The date the PASA was scheduled to be initiated.

E. *PASA Completed:* The date the PASA was completed.

F. *PASA Results:* The results upon completion of the PASA. The PASA receives a quality assurance review before approval. The quality assurance process involves a dual review by the FMCSA Division Office Supervisor of the Auditor assigned to conduct the PASA and the FMCSA Service Center New Entrant Specialist designated for the specific FMCSA Division Office. The dual review ensures the successfully completed PASA was conducted in accordance with FMCSA policy, procedures and guidance. Upon approval, the PASA results are uploaded into the FMCSA Motor Carrier Management Information System (MCMIS). The PASA information and results are then recorded in the Mexico-domiciled motor carrier's safety performance record in MCMIS.

G. *FMCSA Register:* The date the FMCSA published notice of a successfully completed PASA in the FMCSA Register. The FMCSA Register notice advises interested parties that the application has been preliminarily granted and that protests to the application must be filed within 10 days of the publication date. Protests are filed with FMCSA Headquarters in Washington, DC. The notice in the FMCSA Register lists the following information:

a. Current registration number (e.g., MX–123456);

b. Date the notice was published in the FMCSA Register;

c. The applicant's name and address; and

d. Representative or contact information for the applicant.

H. *U.S. Drivers:* The total number of drivers the motor carrier intends to use in the United States.

I. *U.S. Vehicles:* The total number of power units the motor carrier intends to operate in the United States.

J. *Passed Verification 5 Elements (Yes/No):* A Mexico-domiciled motor carrier will not be granted provisional operating authority if FMCSA cannot verify all of the following five mandatory elements. FMCSA must:

a. Verify a controlled substances and alcohol testing program consistent with 49 CFR part 40.

b. Verify a system of compliance with hours-of-service rules of 49 CFR part 395, including recordkeeping and retention;

c. Verify proof of financial responsibility;

d. Verify records of periodic vehicle inspections; and

e. Verify the qualifications of each driver the carrier intends to use under such authority, as required by 49 CFR parts 383 and 391, including confirming the validity of each driver's Licencia Federal de Conductor.

K. *If No, Which Element Failed:* If FMCSA could not verify one or more of the five mandatory elements outlined in 49 CFR part 365, Appendix A, Section III, this column will specify which mandatory element(s) could not be verified.

Please note that for items L through P below, during the PASA, after verifying the five mandatory elements discussed in item J above, FMCSA will gather information by reviewing a motor carrier's compliance with ''acute and critical'' regulations of the Federal Motor Carrier Safety Regulations (FMCSRs) and Hazardous Materials Regulations (HMRs). Acute regulations are those where noncompliance is so severe as to require immediate corrective actions by a motor carrier regardless of the overall basic safety management controls of the motor carrier. Critical regulations are those where noncompliance relates to management and/or operational controls. These regulations are indicative of breakdowns in a carrier's management controls. A list of acute and critical regulations is included in 49 CFR part 385, Appendix B, Section VII.

Parts of the FMCSRs and HMRs having similar characteristics are combined together into six regulatory areas called ''factors.'' The regulatory factors are intended to evaluate the adequacy of a carrier's management controls.

Factor 5 relates to the transportation of hazardous materials and was omitted below, as Mexico-domiciled motor carriers that transport hazardous materials are not permitted to participate in the cross-border demonstration project.

L. *Passed Phase 1, Factor 1:* A ''yes'' in this column indicates the carrier has successfully met Factor 1 (listed in part 365, Subpart E, Appendix A, Section IV(f)). Factor 1 includes the General Requirements outlined in parts 387 (Minimum Levels of Financial Responsibility for Motor Carriers) and 390 (Federal Motor Carrier Safety Regulations—General).

M. *Passed Phase 1, Factor 2:* A ''yes'' in this column indicates the carrier has successfully met Factor 2, which includes the Driver Requirements outlined in parts 382 (Controlled Substances and Alcohol Use and Testing), 383 (Commercial Driver's License Standards; Requirements and Penalties) and 391 (Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors).

N. *Passed Phase 1, Factor 3:* A ''yes'' in this column indicates the carrier has successfully met Factor 3, which includes the Operational Requirements outlined in parts 392 (Driving of Commercial Motor Vehicles) and 395 (Hours of Service of Drivers).

O. *Passed Phase 1, Factor 4:* A ''yes'' in this column indicates the carrier has successfully met Factor 4, which includes the Vehicle Requirements outlined in parts 393 (parts and Accessories Necessary for Safe Operation) and 396 (Inspection, Repair and Maintenance) and vehicle inspection and out-of-service data for the last 12 months.

P. *Passed Phase 1, Factor 6:* A ''yes'' in this column indicates the carrier has successfully met Factor 6, which includes Accident History. This factor is the recordable accident rate during the past 12 months. A recordable ''accident'' is defined in 49 CFR 390.5, and means an accident involving a commercial motor vehicle operating on a public road in interstate or intrastate commerce which results in: a fatality; a bodily injury to a person who, as a result of the injury, immediately received medical treatment away from the scene of the accident; or one or more motor vehicles incurring disabling damage as a result of the accident requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

Q. *Number U.S. Vehicles Inspected:* The total number of vehicles (power units and trailers) the motor carrier intends to operate in the United States that received a vehicle inspection during the PASA. During a PASA, FMCSA inspected all vehicles that did not display a current Commercial Vehicle Safety Alliance (CVSA)

inspection decal. This number reflects the vehicles that were inspected, irrespective of whether the vehicle received a CVSA inspection decal as a result of a passed inspection.

R. *Number U.S. Vehicles Issued CVSA Decal:* The total number of inspected vehicles (power units and trailers) the motor carrier intends to operate in the United States that received a CVSA inspection decal as a result of an inspection during the PASA.

S. *Number U.S. Vehicles With Current CVSA Decal:* The total number of vehicles (power units and trailers) the motor carrier intends to operate in the United States that displayed a current CVSA inspection decal at the time of the PASA.

T. *Controlled Substances Collection:* Refers to the applicability and/or country of origin of the controlled substance and alcohol collection facility that will be used by a motor carrier who has successfully completed the PASA.

a. ''US'' means the controlled substance and alcohol collection facility is based in the United States.

b. ''MX'' means the controlled substance and alcohol collection facility is based in Mexico.

c. ''Non-CDL'' means that during the PASA, FMCSA verified that the motor carrier is not utilizing commercial motor vehicles subject to the commercial driver's license requirements as defined in 49 CFR 383.5 (Definition of Commercial Motor Vehicle). Any motor carrier that does not operate commercial motor vehicles as defined in § 383.5 is not subject to DOT controlled substance and alcohol testing requirements.

U. *Name of Controlled Substances and Alcohol Collection Facility:* Shows the name and location of the U.S. controlled substances and alcohol collection facility that will be used by a Mexico-domiciled motor carrier who has successfully completed the PASA.

Request for Comments

In accordance with the Act, FMCSA requests public comment from all interested persons on the PASA information presented in the appendix to this notice. All comments received before the close of business on the comment closing date indicated at the beginning of this notice will be considered and will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable. In addition to late comments, the FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Issued on: August 6, 2008.

John H. Hill,

Administrator.

BILLING CODE 4910–EX–P

Appendix

Table 2 - Successful Pre-Authority Safety Audit (PASA) Information as of July16, 2008 (see also Tables 3 and 4)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column D - PASA Scheduled	Column E - PASA Completed	Column F - PASA Result	Column G - FMCSA Register	Column H - Drivers Identified Who Motor Carrier Intends to Operate in the United States	Column I - Vehicles Identified That Motor Carrier Intends to Operate in the United States
1	JUAN MARTIN RAMIREZ AMEZ	264875	3/19/2007	3/29/2007	Passed	4/20/2007	15	16
2	FERNANDO PAEZ TREVINO	555188	2/22/2007	2/22/2007	Passed	3/2/2007	2	2
3	ARTEMIO GUERRERO ZAVALA	555995	9/5/2007	9/5/2007	Passed	10/16/2007	3	1
4	DAVID KLASSEN PETERS	556741	3/14/2007	3/14/2007	Passed	5/7/2007	1	2
5	LUIS EUSEBIO SALGADO ESQUER	557042	3/6/2007	3/6/2007	Passed	4/5/2007	6	5
6	GUADALUPE OCON & RUFUGIO ROMO SAUCEDO	557217	7/17/2007	7/17/2007	Passed	10/17/2007	1	1
7	JORGE EDUARDO VALENZUELA MORENO	557969	3/28/2007	3/28/2007	Passed	4/18/2007	1	1
8	LUCIANO PADILLA MARTINEZ	557972	4/3/2007	4/4/2007	Passed	4/20/2007	3	3
9	FRANCISCA BURGOS VIZCARRA	558189	3/12/2007	3/15/2007	Passed	4/19/2007	12	10
10	RICARDO CESAR MARTINEZ MONTEMAYOR	559560	2/22/2007	2/22/2007	Passed	3/10/2007	4	1
11***	ORLANDO NEVID LOPEZ HERNANDEZ	559947	3/16/2007	3/16/2007	Passed	4/20/2007	1	1
12	JOSE DAVID RUVALCABA ADAME	563815	6/13/2007	6/13/2007	Passed	10/4/2007	1	1
13**	TRINITY INDUSTRIES DE MÉXICO, S. DE R.L. DE C.V.	610385	9/10/2007	9/13/2007	Passed	9/28/2007	14	16
14	ALFREDO SOLORIO TOLENTINO	635221	3/13/2007	3/13/2007	Passed	4/18/2007	6	6
15	GCC TRANSPORTE, S.A. DE C.V.	650155	7/19/2007	7/20/2007	Passed	8/10/2007	13	13
16	TRANSPORTES RAFA DE BAJA CALIFORNIA, S.A. DE C.V.	650383	3/26/2007	3/29/2007	Passed	9/5/2007	3	2
17	RAUL SOLORIO ORTIZ	650954	5/22/2007	5/30/2007	Passed	7/5/2007	4	2
18	MANUEL ENCINAS TERAN	654499	10/22/2007	10/22/2007	Passed	1/25/2008	1	1
19	MOISES ALVAREZ PEREZ	677516	8/21/2007	8/21/2007	Passed	10/16/2007	1	1
20	FLETES GARIBAY S.A. DE C.V.	677669	3/14/2007	3/16/2007	Passed	4/18/2007	3	4
21	ABELARDO TRAHIN	682402	8/20/2007	8/22/2007	Passed	11/23/2007	3	3
22*	GOMEZ GARCIA JOSE LUIS	710473	2/26/2008	2/29/2008	Passed	**3/20/2008**	1	1
23	HIGIENICOS Y DESECHABLES DEL BAJIO, S.A. DE C.V.	710491	4/17/2007	4/19/2007	Passed	5/7/2007	3	3
24*	GRUPO TRANSPORMEX SA DE CV	711208	4/29/2008	4/30/2008	Passed	5/16/2008	3	3
25	TRANSPORTADORA TERRESTRE SA DE CV	711276	10/24/2007	10/25/2007	Passed	11/21/2007	6	10
26	AUTOTRANSPORTES DE DISTRIBUCION Y CONSOLIDACION SA DE CV	711282	10/22/2007	10/25/2007	Passed	11/21/2007	4	4
27	SERVICIOS DE TRANSPORTACION JAGUAR S.A.	721671	3/15/2007	3/15/2007	Passed	5/7/2007	18	42
28	VERONICA GONZALEZ & GILBERTO GONZALEZ NUNO	736405	8/30/2007	8/30/2007	Passed	10/16/2007	4	2
29	RODOLFO RAMIREZ HEREDIA AND RAUL IVAN RAMIREZ	762089	9/18/2007	9/27/2007	Passed	12/3/2007	12	13
30	HOMERO BELTRAN AND ALFONSO DEL REAL MONTOYA	777182	3/12/2007	3/14/2007	Passed	4/17/2007	3	4
31	NOE BASILIO MONTIEL	786826	9/13/2007	9/14/2007	Passed	10/16/2007	5	2
32	QNW DE BAJA SA DE CV	791091	8/28/2007	8/28/2007	Passed	10/4/2007	1	1
33	MATEO CARDENAS ARROYO AND GUSTAVO VEGA	812869	4/17/2007	4/17/2007	Passed	5/7/2007	13	12
34	FRANCISCO ULLOA MONTANO	817872	4/2/2007	4/10/2007	Passed	4/25/2007	7	7
35	TRANSPORTES SOTO E HIJOS S A DE C V	824454	10/22/2007	10/25/2007	Passed	11/8/2007	10	27
36	HECTOR OBETH PIMENTEL GUERRERO	845669	5/1/2007	5/4/2007	Passed	6/20/2007	5	1
37	GRUPO BEHR DE BAJA CALIFORNIA SA DE CV	861744	11/6/2007	11/7/2007	Passed	12/20/2007	2	4

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the March 24,2008 Federal Register Notice.

** - Trinity Industries de Mexico, S. de R.L. de C.V. withdrew from the Cross-Border Demonstration Project effective February 1, 2008.

*** -Orlando Nevid Lopez Hernandez withdrew from the Cross-Border Demonstration Project effective June 18, 2008.

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column D - PASA Scheduled	Column E - PASA Completed	Column F - PASA Result	Column G - FMCSA Register	Column H - Drivers Identified Who Motor Carrier Intends to Operate in the United States	Column I - Vehicles Identified Who Motor Carrier Intends to Operate in the United States
38	JUAN MANUEL MALDONADO TOPETE	879793	4/3/2007	4/4/2007	Passed	5/29/2007	3	3
39	RICARDO BRAVO MAR AND JACK CLAYTON CASNER	880852	4/17/2007	4/18/2007	Passed	5/4/2007	5	5
40	MARTIN KLASSEN KLASSEN	883602	8/21/2007	8/21/2007	Passed	12/12/2007	2	2
41	EDS INTERNACIONAL SA DE CV	924559	8/20/2007	9/4/2007	Passed	9/25/2007	2	1
42	OSCAR HILARIO MARTINEZ	947058	7/17/2007	7/19/2007	Passed	8/15/2007	2	2
43	ROBERTO MONTEMAYOR CRUZ	951134	3/27/2007	3/28/2007	Passed	6/4/2007	2	2
44	MAQUINARIA AGRICOLA DE NOROESTE SA DE CV	974841	10/22/2007	10/24/2007	Passed	11/21/2007	1	1
45	FIDEPAL S DE RL DE IP Y CV	975522	8/28/2007	8/29/2007	Passed	10/16/2007	1	1
46	WORLD TRAFFIC DE MEXICO SA DE CV	1041549	1/10/2008	1/10/2008	Passed	2/7/2008	4	1
47	SERVICIOS REFRIGERADOS INTERNACIONALES SA DE CV	1052546	3/22/2007	3/22/2007	Passed	5/7/2007	5	5
48	MEXICANA DE TRASLADOS CALDERON SA DE CV	1054803	3/20/2007	3/21/2007	Passed	5/7/2007	1	2
49	MARIA DEL CARMEN LOPEZ ARMENTA	1055053	4/3/2007	4/4/2007	Passed	4/20/2007	1	1
50	TRANSPORTES MONTEBLANCO SA DE CV	1059694	3/13/2007	3/13/2007	Passed	5/7/2007	2	1
51	EDMUNDO JESUS GUAJARDO BURSIAN	1068315	3/28/2007	3/28/2007	Passed	5/7/2007	1	1
52	RICARDO JAIDREL RODRIGUEZ BOGARIN & DANIEL CARRILLO RODRIGUEZ	1068792	4/4/2007	4/5/2007	Passed	5/1/2007	4	4
53	JOSE ANAYA ROMERO	1080131	4/25/2007	4/25/2007	Passed	5/29/2007	1	1
54	MARIA DEL SOCORRO VALERIO LIZCANO	1082863	3/6/2007	3/6/2007	Passed	5/7/2007	1	1
55	TRANSPORTES DE CARGA SANTOYO SA DE CV	1106825	4/18/2007	4/20/2007	Passed	5/8/2007	3	3
56	AVOMEX INTERNACIONAL SA DE CV	1142107	8/28/2007	8/30/2007	Passed	11/9/2007	6	6
57	MARIA DE LOS ANGELES RAMIREZ	1162107	9/10/2007	9/10/2007	Passed	12/11/2007	2	9
58	AGUIRRE RAMOS JORGE LUIS	1286830	7/10/2007	7/10/2007	Passed	5/8/2007	1	1
59	MARCO VINICIO PINEDA VILLEGAS	1292413	4/24/2007	4/24/2007	Passed	5/29/2007	1	1
60	DISTRIBUIDORA AZTECA DEL NORTE SA DE CV	1296357	9/11/2007	9/13/2007	Passed	10/16/2007	2	2
61	HECTOR MANUEL ARTEAGA PLASCENCIA	1334185	10/2/2007	10/2/2007	Passed	10/25/2007	1	1
62	MARIA ISABEL MENDIVIL VELARDE	1548345	10/24/2007	10/24/2007	Passed	11/8/2007	2	9
63*	LUIS EDMUNDO GRIJALVA GAMEZ	1598518	4/3/2008	4/3/2008	Passed	4/24/2008	2	2
64	TRANSPORTES SELG SA DE CV	1658656	9/25/2007	9/27/2007	Passed	10/16/2007	5	8
65*	INTERLOGISTICS DE MEXICO S DE RL DE CV	1659365	3/4/2008	3/4/2008	Passed	5/20/2008	2	3
66	TRANSLOGISTICA SA DE CV	1677817	10/24/2007	10/25/2007	Passed	11/21/2007	1	2
67	OSCAR ARTURO GRAGEDA DUARTE	1693389	12/5/2007	12/6/2007	Passed	12/20/2007	4	4
Number of Drivers and Vehicles Which Mexico-Domiciled Motor Carriers Intend to Operate in the United States That Have Passed a Pre-Authority Safety Audit							265	313
* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the March 24,2008 Federal Register Notice.								
** - Trinity Industries de Mexico, S. de R.L. de C.V. withdrew from the Cross-Border Demonstration Project effective February 1, 2008.								
*** -Orlando Nevid Lopez Hernandez withdrew from the Cross-Border Demonstration Project effective June 18, 2008.								

Table 3 - Successful Pre-Authority Safety Audit (PASA) Information as of July 16, 2008 (see also Tables 2 and 4)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column J - Passed Verification 5 Elements (Yes/No)	Column K - If No, Which Element Failied	Column L - Passed Phase 2 Factor 1	Column M - Passed Phase I Factor 2	Column N - Passed Phase I Factor 3	Column O - Passed Phase I Factor 4	Column P - Passed Phase I Factor 6
1	JUAN MARTIN RAMIREZ AMEZ	264875	YES		YES	YES	YES	YES	YES
2	FERNANDO PAEZ TREVINO	555188	YES		YES	YES	YES	YES	YES
3	ARTEMIO GUERRERO ZAVALA	555995	YES		YES	YES	YES	YES	YES
4	DAVID KLASSEN PETERS	556741	YES		YES	YES	YES	YES	YES
5	LUIS EUSEBIO SALGADO ESQUER	557042	YES		YES	YES	YES	YES	YES
6	GUADALUPE OCON & RUFUGIO ROMO SAUCEDO	557217	YES		YES	YES	YES	YES	YES
7	JORGE EDUARDO VALENZUELA MORENO	557969	YES		YES	YES	YES	YES	YES
8	LUCIANO PADILLA MARTINEZ	557972	YES		YES	YES	YES	YES	YES
9	FRANCISCA BURGOS VIZCARRA	558189	YES		YES	YES	YES	YES	YES
10	RICARDO CESAR MARTINEZ MONTEMAYOR	559560	YES		YES	YES	YES	YES	YES
11***	ORLANDO NEVID LOPEZ HERNANDEZ	559947	YES		YES	YES	YES	YES	YES
12	JOSE DAVID RUVALCABA ADAME	563815	YES		YES	YES	YES	YES	YES
13**	TRINITY INDUSTRIES DE MÉXICO, S. DE R.L. DE C.V.	610385	YES		YES	YES	YES	YES	YES
14	ALFREDO SOLORIO TOLENTINO	635221	YES		YES	YES	YES	YES	YES
15	GCC TRANSPORTE, S.A. DE C.V.	650155	YES		YES	YES	YES	YES	YES
16	TRANSPORTES RAFA DE BAJA CALIFORNIA, S.A. DE C.V.	650383	YES		YES	YES	YES	YES	YES
17	RAUL SOLORIO ORTIZ	650954	YES		YES	YES	YES	YES	YES
18	MANUEL ENCINAS TERAN	654499	YES		YES	YES	YES	YES	YES
19	MOISES ALVAREZ PEREZ	677516	YES		YES	YES	YES	YES	YES
20	FLETES GARIBAY S.A. DE C.V.	677669	YES		YES	YES	YES	YES	YES
21	ABELARDO TRAHIN	682402	YES		YES	YES	YES	YES	YES
22*	GOMEZ GARCIA JOSE LUIS	710473	YES		YES	YES	YES	YES	YES
23	HIGIENICOS Y DESECHABLES DEL BAJIO, S.A. DE C.V.	710491	YES		YES	YES	YES	YES	YES
24*	GRUPO TRANSPORMEX SA DE CV	711208	YES		YES	YES	YES	YES	YES
25	TRANSPORTADORA TERRESTRE SA DE CV	711276	YES		YES	YES	YES	YES	YES
26	AUTOTRANSPORTES DE DISTRIBUCION Y CONSOLIDACION SA DE CV	711282	YES		YES	YES	YES	YES	YES
27	SERVICIOS DE TRANSPORTACION JAGUAR S.A.	721671	YES		YES	YES	YES	YES	YES
28	VERONICA GONZALEZ & GILBERTO GONZALEZ NUNO	736405	YES		YES	YES	YES	YES	YES
29	RODOLFO RAMIREZ HEREDIA AND RAUL IVAN RAMIREZ	762089	YES		YES	YES	YES	YES	YES
30	HOMERO BELTRAN AND ALFONSO DEL REAL MONTOYA	777182	YES		YES	YES	YES	YES	YES
31	NOE BASILIO MONTIEL	786826	YES		YES	YES	YES	YES	YES
32	QNW DE BAJA SA DE CV	791091	YES		YES	YES	YES	YES	YES

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the March 24,2008 Federal Register Notice.

** - Trinity Industries de Mexico, S. de R.L. de C.V. withdrew from the Cross-Border Demonstration Project effective February 1, 2008.

*** -Orlando Nevid Lopez Hernandez withdrew from the Cross-Border Demonstration Project effective June 18, 2008.

Table 3 - Successful Pre-Authority Safety Audit (PASA) Information as of July 16, 2008 (see also Tables 2 and 4)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column J - Passed Verification 5 Elements (Yes/No)	Column K - If No, Which Element Failied	Column L - Passed Phase 2 Factor 1	Column M - Passed Phase I Factor 2	Column N - Passed Phase I Factor 3	Column O - Passed Phase I Factor 4	Column P - Passed Phase I Factor 6
33	MATEO CARDENAS ARROYO AND GUSTAVO VEGA	812869	YES		YES	YES	YES	YES	YES
34	FRANCISCO ULLOA MONTANO	817872	YES		YES	NO	YES	YES	YES
35	TRANSPORTES SOTO E HIJOS S A DE C V	824454	YES		YES	YES	YES	YES	YES
36	HECTOR OBETH PIMENTEL GUERRERO	845669	YES		YES	YES	YES	YES	YES
37	GRUPO BEHR DE BAJA CALIFORNIA SA DE CV	861744	YES		YES	YES	YES	YES	YES
38	JUAN MANUEL MALDONADO TOPETE	879793	YES		YES	YES	YES	YES	YES
39	RICARDO BRAVO MAR AND JACK CLAYTON CASNER	880852	YES		YES	YES	YES	YES	YES
40	MARTIN KLASSEN KLASSEN	883602	YES		YES	YES	YES	YES	YES
41	EDS INTERNACIONAL SA DE CV	924559	YES		YES	YES	YES	YES	YES
42	OSCAR HILARIO MARTINEZ	947058	YES		YES	YES	YES	YES	YES
43	ROBERTO MONTEMAYOR CRUZ	951134	YES		YES	YES	YES	YES	YES
44	MAQUINARIA AGRICOLA DE NOROESTE SA DE CV	974841	YES		YES	YES	YES	YES	YES
45	FIDEPAL S DE RL DE IP Y CV	975522	YES		YES	YES	YES	YES	YES
46	WORLD TRAFFIC DE MEXICO SA DE CV	1041549	YES		YES	YES	YES	YES	YES
47	SERVICIOS REFRIGERADOS INTERNACIONALES SA DE CV	1052546	YES		YES	YES	YES	YES	YES
48	MEXICANA DE TRASLADOS CALDERON SA DE CV	1054803	YES		YES	YES	YES	YES	YES
49	MARIA DEL CARMEN LOPEZ ARMENTA	1055053	YES		YES	YES	YES	YES	YES
50	TRANSPORTES MONTEBLANCO SA DE CV	1059694	YES		YES	YES	YES	YES	YES
51	EDMUNDO JESUS GUAJARDO BURSIAN	1068315	YES		YES	YES	YES	YES	YES
52	RICARDO JAIDREL RODRIGUEZ BOGARIN & DANIEL CARRILLO RODRIGUEZ	1068792	YES		YES	YES	YES	YES	YES
53	JOSE ANAYA ROMERO	1080131	YES		YES	YES	YES	YES	YES
54	MARIA DEL SOCORRO VALERIO LIZCANO	1082863	YES		YES	YES	YES	YES	YES
55	TRANSPORTES DE CARGA SANTOYO SA DE CV	1106825	YES		YES	YES	YES	YES	YES
56	AVOMEX INTERNACIONAL SA DE CV	1142107	YES		YES	YES	YES	YES	YES
57	MARIA DE LOS ANGELES RAMIREZ	1162107	YES		YES	YES	YES	YES	YES
58	AGUIRRE RAMOS JORGE LUIS	1286830	YES		YES	YES	YES	YES	YES
59	MARCO VINICIO PINEDA VILLEGAS	1292413	YES		YES	YES	YES	YES	YES
60	DISTRIBUIDORA AZTECA DEL NORTE SA DE CV	1296357	YES		YES	YES	YES	YES	YES
61	HECTOR MANUEL ARTEAGA PLASCENCIA	1334185	YES		YES	YES	YES	YES	YES
62	MARIA ISABEL MENDIVIL VELARDE	1548345	YES		YES	YES	YES	YES	YES
63*	LUIS EDMUNDO GRIJALVA GAMEZ	1598518	YES		YES	YES	YES	YES	YES
64	TRANSPORTES SELG SA DE CV	1658656	YES		YES	YES	YES	YES	YES
65*	INTERLOGISTICS DE MEXICO S DE RL DE CV	1659365	YES		YES	YES	YES	YES	YES
66	TRANSLOGISTICA SA DE CV	1677817	YES		YES	YES	YES	YES	YES
67	OSCAR ARTURO GRAGEDA DUARTE	1693389	YES		YES	YES	YES	YES	YES

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the March 24,2008 Federal Register Notice.

** - Trinity Industries de Mexico, S. de R.L. de C.V. withdrew from the Cross-Border Demonstration Project effective February 1, 2008.

*** -Orlando Nevid Lopez Hernandez withdrew from the Cross-Border Demonstration Project effective June 18, 2008.

Table 4 - Successful Pre-Authority Safety Audit (PASA) Information as of July 16, 2008 (see also Tables 2 and 3)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column Q - Number US Vehicles Inspected That Carrier Intends to Operate in the US	Column R - Number US Vehicles Issued CVSA Decal That Carrier Intends to Operate in the US	Column S - Number US Vehicles with current CVSA Decal That Carrier Intends to Operate in the US	Column T - Controlled Substances Collection	Column U - Name of Controlled Substances and Alcohol Collection Facility
1	JUAN MARTIN RAMIREZ AMEZ	264875	2	13	0	US	Behavior Research, San Diego, CA
2	FERNANDO PAEZ TREVINO	555188	4	4	0	US	In-House Random Selections-LabCorp, Houston, TX
3	ARTEMIO GUERRERO ZAVALA	555995	1	1	0	NON CDL ****	Not Applicable
4	DAVID KLASSEN PETERS	556741	2	2	0	US	Access Drug Testing Inc, El Paso, TX
5	LUIS EUSEBIO SALGADO ESQUER	557042	1	1	4	US	Behavior Research, San Diego, CA
6	GUADALUPE OCON & RUFUGIO ROMO SAUCEDO	557217	0	0	1	US	Ruiz & Associates, Imperial, CA
7	JORGE EDUARDO VALENZUELA MORENO	557969	2	2	0	US	Ruiz & Associates, Imperial, CA
8	LUCIANO PADILLA MARTINEZ	557972	0	0	6	US	Ruiz & Associates, Imperial, CA
9	FRANCISCA BURGOS VIZCARRA	558189	2	0	8	US	USIS/UIS, Calexico, CA
10	RICARDO CESAR MARTINEZ MONTEMAYOR	559560	2	1	0	US	The Center of Industrial Rehabilitation Services, Mission TX
11***	ORLANDO NEVID LOPEZ HERNANDEZ	559947	2	1	0	US	Ruiz & Associates, Imperial, CA
12	JOSE DAVID RUVALCABA ADAME	563815	0	0	0	US	Ruiz & Associates, San Diego, CA
13**	TRINITY INDUSTRIES DE MÉXICO, S. DE R.L. DE C.V.	610385	25	25	0	US	CAD Services, Eagle Pass, TX
14	ALFREDO SOLORIO TOLENTINO	635221	0	0	6	US	Valley Testing, El Centro, CA
15	GCC TRANSPORTE, S.A DE C.V.	650155	17	11	20	US	Ritech- El Paso, TX
16	TRANSPORTES RAFA DE BAJA CALIFORNIA, S A DE C V	650383	9	7	3	US	Ruiz & Associates, Imperial, CA
17	RAUL SOLORIO ORTIZ	650954	2	1	3	US	Ruiz & Associates, San Diego, CA
18	MANUEL ENCINAS TERAN	654499				NON CDL ****	Not Applicable
19	MOISES ALVAREZ PEREZ	677516	0	0	1	US	Ruiz & Associates, El Centro, CA
20	FLETES GARIBAY S.A. DE C.V.	677669	1	1	8	US	Ruiz & Associates, Imperial, CA
21	ABELARDO TRAHIN	682402	7	7	3	US	Behavior Research, San Diego, CA
22*	GOMEZ GARCIA JOSE LUIS	710473	0	0	1	US	RMC Testing Solutions, San Diego, CA
23	HIGIENICOS Y DESECHABLES DEL BAJIO, S.A. DE C V.	710491	3	0	0	US	Ruiz & Associates, Imperial, CA
24*	GRUPO TRANSPORMEX SA DE CV	711208	5	5	0	US	Well Care Medical Services located at 2501 E Yandell, Harlingen,TX 79903
25	TRANSPORTADORA TERRESTRE SA DE CV	711276	10	10	0	MX	Quest De Mexico, Mexico DF
26	AUTOTRANSPORTES DE DISTRIBUCION Y CONSOLIDACION SA DE CV	711282	9	9	0	MX	Quest De Mexico, Mexico DF
27	SERVICIOS DE TRANSPORTACION JAGUAR S.A.	721671	36	36	0	US	Laredo Urgent Care, Laredo, TX
28	VERONICA GONZALEZ & GILBERTO GONZALEZ NUNO	736405	0	0	2	NON CDL ****	Not Applicable
29	RODOLFO RAMIREZ HEREDIA AND RAUL IVAN RAMIREZ	762089	24	4	4	US	Behavior Research, San Diego, CA
30	HOMERO BELTRAN AND ALFONSO DEL REAL MONTOYA	777182	4	3	1	US	Ruiz & Associates, Imperial, CA
31	NOE BASILIO MONTIEL	786826	1	1	1	NON CDL ****	Not Applicable
32	QNW DE BAJA SA DE CV	791091	0	0	1	NON CDL ****	Not Applicable

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the March 24,2008, Federal Register Notice.

** - Trinity Industries de Mexico, S. de R.L. de C V. withdrew from the Cross-Border Demonstration Project effective February 1, 2008.

*** -Orlando Nevid Lopez Hernandez withdrew from the Cross-Border Demonstration Project effective June 18, 2008.

**** - NON CDL - This acronym means the Mexico-domicled drivers are not subject to controlled substances and alcohol testing requirements as required by 49 U.S.C. 31306. Such drivers are not subject to testing because the vehicles the Mexico-domiciled motor carrier intends to operate in the United States are not of a size or operating in such a manner requiring the operator to hold a commercial driver's license (CDL) as required by 49 U.S.C. 31301 et seq The statute, 49 U.S.C. 31306, treats U S -, Canada-, and Mexico-domiciled motor carriers and drivers exactly the same way with respect to controlled substances and alchol testing requirements for light-and medium-duty truck and truck-tractor vehicles, if the drivers only operate vehicles not requiring a CDL to operate the vehicles.

Table 4 - Successful Pre-Authority Safety Audit (PASA) Information as of July16, 2008 (see also Tables 2 and 3)

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column Q - Number US Vehicles Inspected Which Carrier Intends to Operate In the US	Column R - Number US Vehicles issued CVSA Decal Which Carrier Intends to Operate in the US	Column S - Number US Vehicles with current CVSA Decal Which Carrier Intends to Operate in the US	Column T - Controlled Substances Collection	Column U - Name of Controlled Substances and Alcohol Collection Facility
33	MATEO CARDENAS ARROYO AND GUSTAVO VEGA	812869	0	0	9	US	Ruiz & Associates, Imperial, CA
34	FRANCISCO ULLOA MONTANO	817872	3	2	0	US	Ruiz & Associates, Imperial, CA
35	TRANSPORTES SOTO E HIJOS S A DE C V	824454	27	27	0	MX	Quest Diagnostics Mexico SA DE CV, Blvd Gomez Morin # 7765, Juarez, CL (656)668-0630
36	HECTOR OBETH PIMENTEL GUERRERO	845669	0	0	0	US	Valley Testing, El Centro, CA
37	GRUPO BEHR DE BAJA CALIFORNIA SA DE CV	861744	0	0	5	US	Ruiz & Associates, San Diego, CA
38	JUAN MANUEL MALDONADO TOPETE	879793	0	0	5	US	Ruiz & Associates, Imperial, CA
39	RICARDO BRAVO MAR AND JACK CLAYTON CASNER	880852	4	4	6	US	Ruiz & Associates, Imperial, CA
40	MARTIN KLASSEN KLASSEN	883602	5	5	0	US	Ritech- El Paso, TX
41	EDS INTERNACIONAL SA DE CV	924559	1	1	0	NON CDL ****	Not Applicable
42	OSCAR HILARIO MARTINEZ	947058	1	1	1	US	CAD Services, Eagle Pass, TX
43	ROBERTO MONTEMAYOR CRUZ	951134	4	4	0	US	A&C Drug & Alcohol Screening, Pharr, TX
44	MAQUINARIA AGRICOLA DE NOROESTE SA DE CV	974841	3	3	0	US	Concentra Medical Center, El Paso TX
45	FIDEPAL S DE RL DE IP Y CV	975522	1	1	0	US	Safetynet Motor Carrier Services, Brownsville, TX
46	WORLD TRAFFIC DE MEXICO SA DE CV	1041549	1	1	0	US	Ruiz & Associates, El Centro, CA
47	SERVICIOS REFRIGERADOS INTERNACIONALES SA DE CV	1052546	5	5	3	US	Ruiz & Associates, Imperial, CA
48	MEXICANA DE TRASLADOS CALDERON SA DE CV	1054803	2	1	0	US	Analytical Group, Inc., Brownsville, TX
49	MARIA DEL CARMEN LOPEZ ARMENTA	1055053	1	0	0	US	Ruiz & Associates, Imperial, CA
50	TRANSPORTES MONTEBLANCO SA DE CV	1059694	2	2	0	US	Laredo Examiners Inc , Laredo, TX
51	EDMUNDO JESUS GUAJARDO BURSIAN	1068315	1	1	0	US	CAD Services, Eagle Pass, TX
52	RICARDO JAIDREL RODRIGUEZ BOGARIN & DANIEL CARRILLO RODRIGUEZ	1068792	7	4	0	US	Behavior Research, San Diego, CA
53	JOSE ANAYA ROMERO	1080131	0	0	0	NON CDL ****	Not Applicable
54	MARIA DEL SOCORRO VALERIO LIZCANO	1082863	1	1	0	NON CDL ****	Not Applicable
55	TRANSPORTES DE CARGA SANTOYO SA DE CV	1106825	0	0	5	US	Ruiz & Associates, Imperial, CA
56	AVOMEX INTERNACIONAL SA DE CV	1142107	12	9	3	US	CAD Services, Eagle Pass, TX
57	MARIA DE LOS ANGELES RAMIREZ	1162107	12	12	0	US	Confidential Drug Testing, El Paso, TX
58	AGUIRRE RAMOS JORGE LUIS	1286830	2	2	0	US	Ruiz & Associates, San Diego, CA
59	MARCO VINICIO PINEDA VILLEGAS	1292413	0	0	2	US	Ruiz & Associates, Imperial, CA
60	DISTRIBUIDORA AZTECA DEL NORTE SA DE CV	1296357	4	4	0	US	Confidential Drug Testing, El Paso, TX
61	HECTOR MANUEL ARTEAGA PLASCENCIA	1334185	1	1	1	US	Ruiz & Associates, San Diego, CA
62	MARIA ISABEL MENDIVIL VELARDE	1548345	8	8	1	US	J2 Labs, Tucson, AZ
63*	LUIS EDMUNDO GRIJALVA GAMEZ	1598518	2	0	0	US	J2 Laboratories of Tucson, Tucson, AZ
64	TRANSPORTES SELG SA DE CV	1658656	14	7	0	US	CMI, Pharr TX
65*	INTERLOGISTICS DE MEXICO S DE RL DE CV	1659365	9	9	0	US	On-Site Drug and Occupational Testing, Laredo, TX
66	TRANSLOGISTICA SA DE CV	1677817	4	4	0	MX	Quest De Mexico, Mexico DF
67	OSCAR ARTURO GRAGEDA DUARTE	1693389	8	8	0	US	Frank Chavez Health Center, El Paso, TX

* - This motor carrier is an additional successful applicant which has passed the Pre-Authority Safety Audit after the March 24, 2008, Federal Register Notice.

** - Trinity Industries de Mexico, S. de R.L. de C V withdrew from the Cross-Border Demonstration Project effective February 1, 2008.

*** -Orlando Nevid Lopez Hernandez withdrew from the Cross-Border Demonstration Project effective June 18, 2008.

**** - NON CDL - This acronym means the Mexico-domiciled drivers are not subject to controlled substances and alcohol testing requirements as required by 49 U.S.C. 31306. Such drivers are not subject to testing because the vehicles the Mexico-domiciled motor carrier intends to operate in the United States are not of a size or operating in such a manner requiring the operator to hold a commercial driver's license (CDL) as required by 49 U.S.C. 31301 et seq. The statute, 49 U.S.C. 31306, treats U.S.-, Canada-, and Mexico-domiciled motor carriers and drivers exactly the same way with respect to controlled substances and alchol testing requirements for light-and medium-duty truck and truck-tractor vehicles, if the drivers only operate vehicles not requiring a CDL to operate the vehicles.

Table 5 - Failed Pre-Authority Safety Audit (PASA) Information as of July 16, 2008

Column A - Row	Column B - Name of Carrier	Column C - US DOT Number	Column D - PASA Scheduled	Column F - PASA Result	Column J - Passed Verification 5 Elements (Yes/No)	Column K - If No, Which Element Failied
1*	AUTO TRANSPORTES SAHORA DE B.C.	556258	3/4/2008	Failed	NO	Footnote 3
2	TRANSPORTES SALO SA DE CV	556406	9/10/2007	Failed	NO	Footnote 3
3	ISAIAS VENEGAS CABRAL	556751	3/27/2007	Failed	NO	Footnote 3
4	JAVIER TORRES & JUAN GOMEZ ALVAREZ	626469	10/3/2007	Failed	NO	Footnote 1
5	ANGEL GUERRERO FLORES	665858	8/13/2007	Failed	NO	Footnotes 2 and 5
6	JESUS PIMENTEL JIMENEZ	667250	4/23/2007	Failed	NO	Footnotes 1, 2, 4 and 5
7	ARMANDO ULLOA VENEGAS	677291	8/27/2007	Failed	NO	Footnote 5
8	MADERAS NAVACHISTE SA DE CV	683397	6/13/2007	Failed	NO	Footnote 5
9	CESAR HIGUERA VILLAVICENCIO	802447	9/11/2007	Failed	NO	Footnote 3
10	SISTEMAS DE RIEGO DEL NORTE SA DE CV	822291	3/27/2007	Failed	NO	Footnote 3
11	ATAUDES DE LA FRONTERA SA DE CV	845972	9/11/2007	Failed	NO	Footnote 5
12*	SAN QUININ APPAREL S DE RL DE CV	876769	3/25/2008	Failed	NO	Footnote 2
13*	SALVADOR ESPEJO GARCIA AND ALEJANDRO ARENAS	883366	4/15/2008	Failed	NO	Footnote 1,2,4, and 5
14	RODOLFO GONZALEZ MARTINEZ	905680	7/11/2007	Failed	NO	Footnote 5
15	ALMA AURORA VILLARREAL HUERTA	924237	7/18/2007	Failed	NO	Footnotes 1, 2, 3, 4 and 5
16	SEMILLAS COSECHA DE ORO SA DE CV	1039175	8/28/2007	Failed	NO	Footnotes 3, 4 and 5
17	JACOB DYCK FRIESSEN	1040520	8/28/2007	Failed	NO	Footnote 3
18	MADERAS Y MATERIALES, JR S. A. DE C.V.	1054019	7/26/2007	Failed	NO	Footnote 3
19	JUAN GARZA REYNA	1060682	8/7/2007	Failed	NO	Footnote 5
20	CARLOS FERNANDEZ VILLARREAL	1065224	7/18/2007	Failed	NO	Footnotes 1, 2, 3, 4 and 5
21	CARPINTERIA HERMANOS CORRAL S DE RL MI	1067592	8/23/2007	Failed	NO	Footnotes 1, 2, 3, 4 and 5
22	BENJAMIN DE LA TORRE QUIRARTE	1069031	3/28/2007	Failed	NO	Footnotes 1 and 3
23	COMERCIALIZACION Y SERVICIO DE NOGALES SA DE CV	1083756	6/14/2007	Failed	NO	Footnote 5
24	JOSE EDUARDO VELASCO ROBLES	1094184	8/9/2007	Failed	NO	Footnote 3
25	DANIEL ACOSTA	1101328	7/11/2007	Failed	NO	Footnotes 4 and 5
26	JESUS ERNESTO FIGUEROA CARRANZA	1114825	8/13/2007	Failed	NO	Footnote 2
27	FAB DE CHOCOLATES LA POPULAR SA DE CV	1147667	8/7/2007	Failed	NO	Footnotes 1, 2 and 4
28	LA OTRA DEL OJINAGA SA DE CV	1159371	3/11/2007	Failed	NO	Footnote 3
29	MORALES GONZALEZ JOSE JESUS	1227541	4/16/2007	Failed	NO	Footnotes 2 and 4
30	JUVENTINO SANTILLAN DE LEON	1289339	6/25/2007	Failed	NO	Footnotes 1, 2, 3 and 4
31	TEKPOL SA DE CV	1368600	9/12/2007	Failed	NO	Footnote 5
32*	CORPORATIVO DE TRANSPORTE INTERNACIONAL SA DE CV	1599421	5/20/2008	Failed	NO	Footnote 3

Legend for Column K — If Motor Carrier Failed Pre-Authority Safety Audit, Which Element Failed:

Footnote 1 — Maintenance files and Annual Inspection of Motor Vehicles
Footnote 2 — Driver Qualification
Footnote 3 — Controlled Substances and Alcohol Testing
Footnote 4 — Hours-of-Service of Drivers
Footnote 5 — Financial Responsibility (Insurance or Surety Bond)

* - This motor carrier is an additional applicant which failed the Pre-Authority Safety Audit after the March 24, 2008, Federal Register Notice.

[FR Doc. E8–18604 Filed 8–11–08; 8:45 am]
BILLING CODE 4910–EX–C

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket ID. FMCSA–2008–0231]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of applications for exemptions; request for comments.

SUMMARY: FMCSA announces receipt of applications from 23 individuals for exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations. If granted, the exemptions would enable these individuals to qualify as drivers of commercial motor vehicles (CMVs) in interstate commerce without meeting the Federal vision standard.

DATES: Comments must be received on or before September 11, 2008.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2008–0231 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the on-line instructions for submitting comments.
- *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:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- Fax: 1–202–493–2251.

Each submission must include the Agency name and the docket ID for this Notice. Note that DOT posts all comments received without change to *http://www.regulations.gov*, including any personal information included in a comment. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments, go to *http://www.regulations.gov* at any time or Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The FDMS is available 24 hours each day, 365 days each year. If you want acknowledgment that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments on-line.

Privacy Act: Anyone may search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or of the person 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 19476). This information is also available at *http://Docketsinfo.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Dr. Mary D. Gunnels, Director, Medical Programs, (202) 366–4001, *fmcsamedical@dot.gov*, FMCSA, Department of Transportation, 1200 New Jersey Avenue, SE., Room W64–224, Washington, DC 20590–0001. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31136(e) and 31315, FMCSA may grant an exemption for a 2-year period if it finds ''such exemption would likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.'' FMCSA can renew exemptions at the end of each 2-year period. The 23 individuals listed in this notice each have requested an exemption from the vision requirement in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce. Accordingly, the Agency will evaluate the qualifications of each applicant to determine whether granting the exemption will achieve the required level of safety mandated by statute.

Qualifications of Applicants

William C. Ball

Mr. Ball, age 39, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right is eye is 20/200 and in the left, 20/20. Following an examination in 2008 his ophthalmologist noted, ''I certify in my medical opinion that Mr. Ball has sufficient vision to perform the driving task required to operate a commercial vehicle.'' Mr. Ball reported that he has driven straight trucks for 4½ years, accumulating 146,250 miles. He holds a Class A Commercial Driver's License (CDL) from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Terrence L. Benning

Mr. Benning, 53, has aphakia in his left eye due to a traumatic injury he sustained as a child. The best corrected visual acuity in his right eye is 20/25 and in the left, hand-motion vision. Following an examination in 2008, his ophthalmologist noted, ''Based on the fact that he has recently been functioning well driving a commercial vehicle, it is my medical opinion that he does have sufficient vision to operate a commercial vehicle.'' Mr. Benning reported that he has driven straight trucks for 10 years, accumulating 250,000 miles, and tractor-trailer combinations for 25 years, accumulating 2.9 million miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Rickie L. Boone

Mr. Boone, 48, has loss of vision in his right eye due to a detached retina which occurred in 2001. The visual acuity in his right eye is light perception and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''In my medical opinion, Mr. Boone is able to perform the driving tasks required to operate a commercial vehicle.'' Mr. Boone reported that he has driven straight trucks for 28 years, accumulating 1.1 million miles, and tractor-trailer combinations for 28 years, accumulating 1.1 million miles.

He holds a Class A CDL from North Carolina. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Robert S. Bowen

Mr. Bowen, 49, has had a prosthetic left eye due to a history of melanoma since 1994. The best corrected visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''It is my opinion that Mr. Bowen is visually qualified to perform the tasks necessary to operate a commercial vehicle.'' Mr. Bowen reported that he has driven tractor-trailer combinations for 31 years, accumulating 2.5 million miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Dennis R. Buszkiewicz

Mr. Buszkiewicz, 55, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2008, his ophthalmologist noted, ''I certify that Dennis R. Buszkiewicz has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Buszkiewicz reported that he has driven straight trucks for 35 years, accumulating 1 million miles. He holds a Class B CDL from Illinois. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry T. Byrley

Mr. Byrley, 62, has had a macular scar in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2008, his ophthalmologist noted, ''The patient has a long standing loss of vision in the left eye. This should pose no problem in him driving a commercial vehicle.'' Mr. Byrley reported that he has driven straight trucks for 5 years, accumulating 150,000 miles, and tractor-trailer combinations for 11 years, accumulating 935,000 miles. He holds a Class A CDL from Ohio. His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Robert J. Clarke

Mr. Clarke, 51, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2008, his optometrist noted, ''It is my personal opinion that Mr. Clarke has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Clarke reported that he has driven straight trucks for 20 years, accumulating 728,000 miles. He holds a Class B CDL from New York. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Eldon D. Cochran

Mr. Cochran, 71, has had amblyopia in his left eye since birth. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/100. Following an examination in 2008, his optometrist noted, ''I believe Mr. Cochran has sufficient vision to operate a commercial vehicle.'' Mr. Cochran reported that he has driven straight trucks for 10 years, accumulating 208,000 miles, and tractor-trailer combinations for 26 years, accumulating 2 million miles. He holds a Class D operator's license from Alabama.

His driving record for the last 3 years shows one crash, for which he was not cited, and no convictions for moving violations in a CMV.

Alfred A. Constantino

Mr. Constantino, 59, has had amblyopia in his right eye since 1995. The best corrected visual acuity in his right eye is 20/60 and in the left, 20/25. Following an examination in 2008, his optometrist noted, ''In my medical opinion Alfred Constantino has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Constantino reported that he has driven straight trucks for 40 years, accumulating 400,000 miles, and tractor-trailer combinations for 4 years, accumulating 10,000 miles. He holds a Class 10 operator's license from Rhode Island; this allows him to drive which allows him to operate any motor vehicle except a motorcycle and a vehicle that weighs more than 26,000 pounds, carries 16 or more passengers or transports placarded amounts of hazardous materials. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James R. Corley

Mr. Corley, 65, has a prosthetic right eye due to a traumatic injury sustained as a child. The best corrected visual acuity in his left eye is 20/20. Following an examination in 2008, his ophthalmologist noted, ''It is my opinion that if persons with one are eye are legal to operate a commercial vehicle, then Mr. Corley has sufficient visual ability to do so.'' Mr. Corley reported that he has driven straight trucks for 19 years, accumulating 152,000 miles. He holds a Class B CDL from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Larry D. Curry

Mr. Curry, 57, has a complete loss of vision in his left eye due to a traumatic injury sustained as a child. The visual acuity in his right eye is 20/20. Following an examination in 2008, his optometrist noted, ''It is my opinion that Mr. Curry does have sufficient vision to safely operate a commercial vehicle.'' Mr. Curry reported that he has driven tractor-trailer combinations for 9 years, accumulating 900,000 miles. He holds a Class A CDL from Georgia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Brian F. Denning

Mr. Denning, 47, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/200 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''It is my belief that Brian has sufficient vision to safely drive a commercial vehicle.'' Mr. Denning reported that he has driven straight trucks for 23 years, accumulating 920,000 miles. He holds a Class A CDL from California. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Michael W. Dillard

Mr. Dillard, 35, has hyperopia and astigmatism in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2008, his optometrist noted, ''Mr. Dillard has sufficient visual acuity and fields to operate a tractor-trailer.'' Mr. Dillard reported that he has driven straight trucks for 10 years, accumulating 555,000 miles, and tractor-trailer combinations for 4 years, accumulating 222,000 miles. He holds a Class A CDL from West Virginia. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Kelly M. Greene

Mr. Greene, 46, has had a corneal scar and amblyopia in his left eye since childhood. The visual acuity in his right eye is 20/20 and in the left, 20/200. Following an examination in 2008, his ophthalmologist noted, ''Patient has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Greene reported that he has driven straight trucks for 15 years, accumulating 1.7 million miles. He holds a Class A CDL from Florida. His driving record for the last 3 years shows no crashes and two convictions for moving violations in a CMV; following another vehicle too closely, and speeding in a CMV. He exceeded the speed limit by 6 mph.

Sammy K. Hines

Mr. Hines, 60, has had amblyopia in his right eye since childhood. The best corrected visual acuity in his right eye is 20/400 and in the left, 20/20. Following an examination in 2008, his optometrist noted, ''Based on the examination results, Mr. Hines has sufficient vision in both eyes to perform the driving tasks required to operate a

commercial vehicle.'' Mr. Hines reported that he has driven straight trucks for 18 years, accumulating 216,000 miles, and tractor-trailer combinations for 18 years, accumulating 216,000 miles. He holds a Class A CDL from Texas. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

John H. Holmberg

Mr. Holmberg, 63, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/70. Following an examination in 2008 his optometrist noted, ''I would concur with these results and agree that Mr. Holmberg has adequate vision to operate a commercial vehicle.'' Mr. Holmberg reported that he has driven straight trucks for 20 years, accumulating 50,000 miles. He holds a Class A CDL from Wisconsin. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Gary R. Lomen

Mr. Lomen, 49, has had amblyopia in his left eye since childhood. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/50. Following an examination in 2008, his optometrist noted, ''In my opinion, Mr. Lomen can operate a commercial vehicle safely with his current vision, based on years of success with his visual condition.'' Mr. Lomen reported that he has driven straight trucks for 16 years, accumulating 542,400 miles. He holds an operator's license from Washington. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Leonardo Lopez, Jr.

Mr. Lopez, 36, has complete loss of vision in his right eye due to chronic retinal detachment. The best corrected visual acuity in his left eye is 20/30. Following an examination in 2007 his ophthalmologist noted, ''I believe that Mr. Lopez has sufficient vision to perform driving tasks required to operate a commercial vehicle.'' Mr. Lopez reported that he has driven straight trucks for 9 years, accumulating 126,000 miles. He holds a Class D operator's license from New Jersey. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Jeffrey F. Meier

Mr. Meier, 50, has had a macular scar in his left eye due to toxoplasmosis since birth. The best corrected visual acuity in his right eye is 20/25 and in the left, 20/150. Following an examination in 2008 his ophthalmologist noted, ''My opinion is that he has sufficient vision to operate a commercial vehicle.'' Mr. Meier reported that he has driven straight trucks for 30 years, accumulating 675,000 miles. He holds a Class D operator's license from Iowa. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James G. Mitchell

Mr. Mitchell, 41, has a prosthetic left eye due to a traumatic injury that occurred in 1993. The visual acuity in his left eye is 20/20. Following an examination in 2007 his optometrist noted, ''I feel Mr. Mitchell is visually able to operate a motor vehicle in all lighting conditions with a driver's side mirror.'' Mr. Mitchell reported that he has driven tractor-trailer combinations for 16 years, accumulating 2.2 million miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

Billy R. Pierce

Mr. Pierce, 59, has a decreased right eye due to a severe infection that occurred in 2004. The best corrected visual acuity in his right eye is 20/20 and in the left, 20/400. Following an examination in 2008, his optometrist noted, ''It is my opinion, that Mr. Pierce has the ability and visual ability to operate a commercial vehicle.'' Mr. Pierce reported that he has driven straight trucks for 43 years, accumulating 1.3 million miles, and tractor-trailer combinations for 29 years, accumulating 435,000 miles. He holds a Class D operator's license from Alabama. His driving record for the last 3 years shows no crashes and no convictions for moving violations in a CMV.

James A. Rapp

Mr. Rapp, 46, has had loss of vision in his left eye due to childhood glaucoma. The visual acuity in his right eye is 20/20 and in the left, count-finger vision. Following an examination in 2008, his ophthalmologist noted, ''In my opinion, he has sufficient vision to perform the driving tasks required to operate a commercial vehicle.'' Mr. Rapp reported that he has driven straight trucks for 18 years, accumulating 374,400 miles. He holds a Class D operator's license from Ohio. His driving record for the last 3 years shows one crash, which he was cited for, and no other convictions for moving violations in a CMV.

Thomas P. Shank

Mr. Shank, 41, has had exotropia in his right eye since birth. The best corrected visual acuity in his right eye is count-finger vision and in the left, 20/16. Following an examination in 2008, his optometrist noted, ''In my medical opinion, Mr. Shank has sufficient vision to perform the driving tasks required to operate a commercial vehicle at any time of day or night.'' Mr. Shank reported that he has driven straight trucks for 5 years, accumulating 250,000 miles, and tractor-trailer combinations for 19 years, accumulating 1.7 million miles. He holds a Class A CDL from New York. His driving record for the last 3 years shows no crashes and two convictions for moving violations in a CMV; unsafe lane changes, and speeding in a CMV. He exceeded the speed limit by 9 mph.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315, FMCSA requests public comment from all interested persons on the exemption petitions described in this notice. The Agency will consider all comments received before the close of business September 11, 2008. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice. The Agency will file comments received after the comment closing date in the public docket, and will consider them to the extent practicable. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should monitor the public docket for new material.

Issued on: August 7, 2008,

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E8–18613 Filed 8–11–08; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

[Docket No: FTA–2008–0009]

National Transit Database: Policy on Reporting of Coordinated Human Services Transportation Data

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of Proposed New Policy on Reporting of Coordinated Human Services Transportation Data to the National Transit Database.

SUMMARY: This notice provides interested parties with the opportunity to comment on changes to the Federal Transit Administration's (FTA) National Transit Database (NTD) policy on the reporting of coordinated human services transportation data. For many years, it has been FTA's policy to require transit agencies reporting demand response service to the NTD to exclude service data for certain sponsored trips from their reports. These trips were typically arranged and paid for by a third party for a specific group of clients (such as participants in programs like Medicaid, Head Start, sheltered workshops, or assisted living centers), and were often not open to the general public at large. Data for these trips were thus excluded from the calculation of the apportionment of Urbanized Area Formula Grants. In light of FTA's policies and guidance on Coordinated Human Services Transportation, FTA is proposing to clarify this policy for the 2008 NTD Report Year to specify that transit agencies are to report data for all of their demand response service as public transportation, except for those services that are defined as charter service under FTA's recently revised charter rule (49 CFR Part 604, 73 FR 2326, January 14, 2008). FTA also proposes to require transit agencies in urbanized areas to separately report their ''regular unlinked passenger trips'' and their ''sponsored demand response unlinked passenger trips'' for demand response service. FTA invites the public to comment on this proposed policy change.

DATES: Comments must be received on or before September 11, 2008. FTA will consider comments filed after this date to the extent practicable.

ADDRESSES: You may submit comments [identified by DOT Docket ID Number FTA–2008–0009] at the Federal eRulemaking Portal at: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 202–493–2251.

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 or Courier: U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: When submitting comments, you must use docket number FTA–2008–0009. This will ensure that your comment is placed in the correct docket. If you submit comments by mail, you should submit two copies and include the above docket number.

Note that all comments received will be posted, without change, to

Note that all comments received will be posted, without change, to *http://www.regulations.gov* including any personal identifying information.

FOR FURTHER INFORMATION CONTACT: For program issues, John D. Giorgis, Office of Budget and Policy, (202) 366–5430 (telephone); (202) 366–7989 (fax); or *john.giorgis@dot.gov* (e-mail). For legal issues, Richard Wong, Office of the Chief Counsel, (202) 366–0675 (telephone); (202) 366–3809 (fax); or *richard.wong@dot.gov* (e-mail).

SUPPLEMENTARY INFORMATION:

I. Background

The National Transit Database (NTD) is the Federal Transit Administration's (FTA's) primary database for statistics on the transit industry. Congress established the NTD to ''help meet the needs of * * * the public for information on which to base public transportation service planning. * * *'' (49 U.S.C. 5335). Currently, over 650 transit providers in urbanized areas report to the NTD through an Internet-based reporting system. Each year, performance data from these submissions are used to apportion over $5 billion of FTA funds under the Urbanized Area Formula Grants and the Fixed Guideway Modernization Grants Programs. These data are also used in the annual National Transit Summaries and Trends report, the biennial Conditions and Performance Report to Congress, and in meeting FTA's obligations under the Government Performance and Results Act.

II. Proposed Policy Change

For many years, it has been FTA's policy to require transit providers reporting demand response service to the NTD to exclude certain trips that were sponsored by a third party from their reports. A ''trip sponsor'' refers to a third party that reimbursed the transit provider in whole or in part for the trip, and in many cases, handled all or part of the trip arrangements. These trips were typically arranged and paid for by some third party for a specific group of clients (such as participants in programs like Medicaid, Head Start, sheltered workshops, or assisted living centers), and were often not open to the general public at large. Data for these trips were thus excluded from the calculation of the apportionment of Urbanized Area Formula Grants.

FTA proposes to clarify this policy in light of FTA's policy and guidance on Coordinated Human Services Transportation, and in light of PTA's recently revised charter rule (49 CFR Part 604, 73 FR 2326, January 14, 2008). FTA proposes in this notice that transit providers reporting to the NTD for the 2008 NTD Report Year, should report all of their demand response services to individuals as public transportation services, regardless of whether the trip was sponsored in whole or in part by a third party. Trips that meet the definition of charter service at 49 CFR 604.3(c) must be reported on a quarterly basis on the charter registration Web site, as required by the charter rule, and data for these trips should not be reported as revenue service to the NTD.

A key component of FTA's charter rule is the concept of ''exclusivity.'' Charter service is defined, in part, as ''transportation provided * * *, at the request of a third party for the exclusive use of a bus or van at a negotiated price,'' with the caveat that ''charter service * * * does not include demand response service to individuals.'' Transit providers reporting to the NTD may distinguish their demand response services, particularly their sponsored demand response service, from charter service a number of ways: (1) Charter service is exclusive, whereas demand response service is *shared-ride.* If the transit provider may mix passengers from a trip sponsor with other demand response passengers on the same trip, then the trip is on shared-ride service, and service data for that trip should be reported to the NTD as public transportation. (2) Charter service is *service to a group*, whereas demand response service is *service to individuals.* Service to individuals can be identified by a vehicle trip that includes multiple origins, multiple destinations, or both, even when the clients have exclusive use of the vehicle. Some demand response sponsored trips carried out as part of a Coordinated Human Services Transportation Plan, such as trips for Head Start, assisted living centers, or sheltered workshops, may be provided on an exclusive basis, but are provided to service multiple origins to a single destination, a single origin to multiple destinations, or even multiple origins to multiple destinations. Transit providers should report service data for these trips to the NTD as public transportation. (3) Charter service is *for a specific event or*

function, whereas demand response service is *regular and continuing.* Some demand response sponsored trips carried out as part of a Coordinated Human Services Transportation Plan may be exclusive, and may be for a group from a single origin to a single destination, but may occur on a frequently reoccurring basis, such as daily, weekly, biweekly, or monthly. Transit providers should report service data for these trips to the NTD as public transportation. Demand response service that is exclusive, from a single origin to a single destination, and that reoccurs on a less-frequent basis that once per month should be considered to be charter service. Transit providers should report these services to the charter registration Web site.

Transit providers reporting to the NTD must specifically exclude from their reports on revenue service any service that meets the definition of ''charter service'' under the charter rule, and thus, must be reported to the charter registration Web site. This exclusion includes charter service legally provided to a Qualified Human Services Organization (QHSO), as provided for by the charter rule.

To implement this policy, FTA proposes to require transit providers reporting to the NTD to report their regular unlinked passenger trips and their sponsored unlinked passenger trips separately for demand response service. Reporters would not have to make this distinction for any other modes of service. Regular unlinked passenger trips would refer to those demand response trips that are arranged and paid for by individuals, even when those individuals pay the fare with user-side subsidies, such as coupons or passes provided a QHSO. Regular unlinked passenger trips would include all demand response trips provided pursuant to the requirements of the Americans with Disabilities Act of 1990. Sponsored unlinked passenger trips would include all trips where the transit provider is directly reimbursed in whole or in part by some third party that has helped arrange for the trips. This distinction would make reporting of these services for urbanized area transit agencies consistent with the reporting of these services for transit agencies in rural areas. Since this proposal is being announced late in the 2008 Report Year, FTA will grant a waiver from reporting separately regular and sponsored unlinked passenger trips for the 2008 Report Year to any NTD Reporter that requests such a waiver.

Issued in Washington, DC, this 1st day of August 2008.

James S. Simpson,

Administrator.

[FR Doc. E8–18388 Filed 8–11–08; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

60-Day Notice and Request for Comments

AGENCY: Surface Transportation Board, DOT.

ACTION: 60-day notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* (PRA), the Surface Transportation Board (Board) gives notice of its intent to request from the Office of Management and Budget (OMB) approval without change of the seven existing collections described below.

Comments are requested concerning each collection as to (1) Whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and/or summarized in the Board's request for OMB approval.

DATES: Written comments are due on October 14, 2008.

ADDRESSES: Direct all comments to Marilyn Levitt, Surface Transportation Board, Suite 1260, 395 E Street, SW., Washington, DC 20423–0001, or to *levittm@stb.dot.gov.* Comments should be identified as ''Paperwork Reduction Act Comments, and should refer to the title and control number of the specific collection(s) commented upon.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Scott Decker at (202) 245–0330 or *deckers@stb.dot.gov.* [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

Subjects: In this notice the Board is requesting comments on the following information collections:

Collection Number 1

Title: Class I Railroad Annual Report

OMB Control Number: 2140–0009.

Form Number: R1.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: As long as 800 hours, based on information provided by the railroad industry during the 1990's. This estimate includes time spent reviewing instructions; searching existing data sources; gathering and maintaining the data needed; completing and reviewing the collection of information; and converting the data from the carrier's individual accounting system to the Board's Uniform System of Accounts (USOA), which ensures that the information will be presented in a consistent format across all reporting railroads, see 49 U.S.C. 11141–43, 11161–64, 49 CFR 1200–1201. It is likely that the estimated time to produce this report is overstated, given the advances made in computerized data collection and processing systems.

Frequency of Response: Annual.

Total Annual Hour Burden: Up to 5,600 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: Annual reports are required to be filed by Class I railroads under 49 U.S.C. 11145. The reports show operating expenses and operating statistics of the carriers. Operating expenses include costs for right-of-way and structures, equipment, train and yard operations, and general and administrative expenses. Operating statistics include such items as car-miles, revenue-ton-miles, and gross ton-miles. The reports are used by the Board, other Federal agencies, and industry groups to monitor and assess railroad industry growth, financial stability, traffic, and operations, and to identify industry changes that may affect national transportation policy. Information from this report is also entered into the Board's Uniform Rail Costing System (URCS), which is a cost measurement methodology. URCS, which was developed by the Board pursuant to 49 U.S.C. 11161, is used as a tool in rail rate proceedings, in accordance with 49 U.S.C. 10707(d), to calculate the variable costs associated with providing a particular service. The Board also uses this information to more effectively carry out other of its regulatory responsibilities, including: Acting on railroad requests for authority

to engage in Board-regulated financial transactions such as mergers, acquisitions of control, and consolidations, see 49 U.S.C. 11323–11324; analyzing the information that the Board obtains through the annual railroad industry waybill sample, see 49 CFR 1244; measuring off-branch costs in railroad abandonment proceedings, in accordance with 49 CFR 1152.32(n); developing the ''rail cost adjustment factors,'' in accordance with 49 U.S.C. 10708; and conducting investigations and rulemakings.

Information from certain schedules contained in these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* Information in these reports is not available from any other source.

Collection Number 2

Title: Quarterly Report of Revenues, Expenses, and Income—Railroads (Form RE&I).

OMB Control Number: 2140–0013.

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 6 hours.

Frequency of Response: Quarterly.

Total Annual Hour Burden: 168 hours annually.

Total Annual ''Non Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection is a report of railroad operating revenues, operating expenses and income items; it is a profit and loss statement, disclosing net railway operating income on a quarterly and year-to-date basis for the current and prior years. See 49 CFR 1243.1. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other Federal agencies, and industry groups to monitor and assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Some of the information from these reports is compiled by the Board in our quarterly Selected Earnings Data Report, which is published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 3

Title: Quarterly Condensed Balance Sheet—Railroads (Form CBS).

OMB Control Number: 2140–0014.

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 6 hours.

Frequency of Response: Quarterly.

Total Annual Hour Burden: 168 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows the balance, quarterly and cumulative for the current and prior year, of the carrier's assets and liabilities, gross capital expenditures, and revenue tons carried. See 49 CFR 1243.2. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through specific regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other Federal agencies, and industry groups to assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Revenue ton-miles, which are reported in these reports, are compiled and published by the Board in its quarterly Selected Earnings Data Report, which is published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 4

OMB Control Number: 2140–0004.

Title: Report of Railroad Employees, Service and Compensation (Wage Forms A and B).

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: As long as 30 hours per quarterly report and 40 hours per annual summation, based on information provided by the railroad industry during the 1990's. Again, it is likely that the time required to collect this information is overstated given the advances made in computerized data collection and processing systems.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: Up to 1120 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows the number of employees, service hours, and compensation, by employee group (*e.g.*, executive, professional, maintenance-of-way and equipment, and transportation), of the reporting railroads. See 49 CFR part 1245. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate proposed regulated transactions that may impact rail employees, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics, and Association of American Railroads, use the information contained in the reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 5

Title: Monthly Report of Number of Employees of Class I Railroads (Wage Form C).

OMB Control Number: 2140–0007.

Form Number: STB Form 350.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 1.25 hours.

Frequency of Response: Monthly.

Total Annual Hour Burden: 105 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows, for each reporting carrier, the average number of employees at mid-month in the six job-classification groups that encompass all railroad employees. See 49 CFR part 1246. The

information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate the impact on rail employees of proposed regulated transactions, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics, and Association of American Railroads, use the information contained in these reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov.* The information contained in these reports is not available from any other source.

Collection Number 6

Title: Annual Report of Cars Loaded and Cars Terminated.

OMB Control Number: 2140–0011.

Form Number: Form STB–54.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 4 hours.

Frequency of Response: Annual.

Total Annual Hour Burden: 28 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection reports the number of cars loaded and cars terminated on the reporting carrier's line. See 49 CFR part 1247. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection Number 1. There is no other source for the information contained in this report.

Collection Number 7

OMB Control Number: 2140–000.

Title: Quarterly Report of Freight Commodity Statistics (Form QCS).

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Fewer than 10.

Estimated Time per Response: 217 hours.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: 6,076 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection, which is based on information contained in carload waybills used by railroads in the ordinary course of business, reports car loadings and total revenues by commodity code for each commodity that moved on the railroad during the reporting period. See 49 CFR part 1248. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection Number 1. There is no other source for the information contained in this report.

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under section 3506(c)(2)(A) of the PRA, Federal agencies are required, prior to submitting a collection to OMB for approval, to provide a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Anne K. Quinlan,

Secretary.

[FR Doc. E8–18531 Filed 8–11–08; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of two information collections that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital (TIC) Form BC, Report of U.S. Dollar Claims of Depository Institutions, Brokers, and Dealers on Foreigners; and Treasury International Capital (TIC) Form BL–1, Report of U.S. Dollar Liabilities of Depository Institutions, Brokers, and Dealers to Foreigners.

DATES: Written comments should be received on or before October 14, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*comments2tic@do.treas.gov*), FAX (202–622–2009) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html.* Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION: *Titles:* Treasury International Capital Form BC, Report of U.S. Dollar Claims of Depository Institutions, Brokers, and Dealers on Foreigners; and Treasury Capital Form BL–1, Report of U.S. Dollar Liabilities of Depository Institutions, Brokers, and Dealers to Foreigners.

OMB Control Numbers: 1505–0017 and 1505–0019.

Abstracts: Forms BC and BL–1 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) for the purpose of providing timely information on international portfolio capital movements. Form BC is a monthly report that covers own U.S. dollar claims of banks, other depository institutions, brokers and dealers vis-a-vis foreign residents. Form BL–1 is a monthly report that covers own U.S. dollar liabilities of banks, other depository institutions, brokers and dealers vis-a-vis foreign residents. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for formulating U.S. international financial and monetary policies.

Current Actions: None. We expect to make some clarifications in the instructions.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Form BC (1505–0017).

Estimated Number of Respondents: 283.

Estimated Average Time per Respondent: Ten hours per respondent per filing. This average time varies from 18 hours for the approximately 30 major

reporters to 9 hours for the other reporters.

Estimated Total Annual Burden Hours: 33,800 hours, based on 12 reporting periods per year.

Form BL–1 (1505–0019).

Estimated Number of Respondents: 349.

Estimated Average Time per Respondent: Seven and one-tenth (7.1) hours per respondent per filing. This average time varies from 13 hours for the approximately 30 major reporters to 6.5 hours for the other reporters.

Estimated Total Annual Burden Hours: 29,560 hours, based on 12 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Forms BC and BL–1 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. E8–18537 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of an information collection that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital (TIC) Form BL–2, Report by Depository Institutions, Brokers and Dealers of Customers' U.S. Dollar Liabilities to Foreigners.

DATES: Written comments should be received on or before October 14, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*comments2tic@do.treas.gov*), FAX (202–622–2009) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Titles: Treasury International Capital Form BL–2, Report by Depository Institutions, Brokers and Dealers of Customers' U.S. Dollar Liabilities to Foreigners.

OMB Control Number: 1505–0018.

Abstract: Form BL–2 is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) and is designed to collect timely information on international portfolio capital movements. Form BL–2 is a monthly report (with a semiannual supplement) filed by banks, other depository institutions, brokers and dealers that covers their U.S. customers' dollar liabilities vis-à-vis foreign residents. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for formulating U.S. international financial and monetary policies.

Current Actions: None. We expect to make some clarifications in the instructions.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations. Form BL–2 (1505–0018).

Estimated Number of Respondents: 94.

Estimated Average Time per Respondent: Seven and nine-tenths (7.9) hours per respondent per filing. This average time varies from 12 hours for the approximately 30 major reporters to 6 hours for the other reporters.

Estimated Total Annual Burden Hours: 8,930 hours, based on twelve reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form BL–2 is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. E8–18538 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of an information collection that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form BQ–1, Report by Depository Institutions, Brokers and Dealers of Customers' U.S. Dollar Claims on Foreigners.

DATES: Written comments should be received on or before October 14, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*comments2tic@do.treas.gov*), FAX (202–622–2009) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form BQ–1. Report by Depository Institutions, Brokers and Dealers of Customers' U.S. Dollar Claims on Foreigners.

OMB Control Number: 1505–0016.

Abstract: Form BQ–1 is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) and is designed to collect timely information on international portfolio capital movements. This quarterly report filed by depository institutions, brokers and dealers covers their U.S. customers' dollar claims *vis-a-vis* foreign residents. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for formulating U.S. international financial and monetary policies.

Current Actions: None. We expect to make some clarifications in the instructions.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations. Form BQ–1 (1505–0016).

Estimated Number of Respondents: 68.

Estimated Average Time per Respondent: Three and two/tenths (3.2) hours per respondent per filing. This average time varies from 4.5 hours for the approximately 30 major reporters to 2.3 hours for the other reporters.

Estimated Total Annual Burden Hours: 882 hours, based on four reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form BQ–1 is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. E8–18539 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of an information collection that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Form BQ–2, Part 1: Report of Foreign Currency Liabilities to, and Claims on, Foreigners of Depository Institutions, Brokers, Dealers, and Their Domestic Customers; Part 2: Report of Customers' Foreign Currency Liabilities to Foreigners.

DATES: Written comments should be received on or before October 14, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*comments2tic@do.treas.gov*), FAX (202–622–2009) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Titles: Treasury International Capital Form BQ–2, Part 1: Report of Foreign Currency Liabilities to, and Claims on, Foreigners of Depository Institutions, Brokers, Dealers, and Their Domestic Customers; Part 2: Report of Customers' Foreign Currency Liabilities to Foreigners.

OMB Control Number: 1505–0020.

Abstract: Form BQ–2 is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) and is designed to collect timely information on international portfolio capital movements. Form BQ–2 is a quarterly report that covers the liabilities to and claims on foreigners of banks, other depository institutions, brokers and dealers, and their customers' claims and liabilities with foreigners, where all claims and liabilities are denominated in foreign currencies. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for formulating U.S. international financial and monetary policies.

Current Actions: None. We expect to make some clarifications in the instructions.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations. Form BQ–2 (1505–0020).

Estimated Number of Respondents: 135.

Estimated Average Time per Respondent: Six and seven/tenths (6.7) hours per respondent per filing. This average time varies from 11 hours for the approximately 30 major reporters to 5.5 hours for the other reporters.

Estimated Total Annual Burden Hours: 3,630 hours, based on four reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form BQ–2 is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation,

maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. E8–18540 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of an information collection that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital (TIC) Form BQ–3, Report of Maturities of Selected Liabilities of Depository Institutions, Brokers and Dealers to Foreigners.

DATES: Written comments should be received on or before October 14, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*comments2tic@do.treas.gov*), FAX (202–622–2009) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Forms Web page, *http://www.treas.gov/tic/forms.html*. Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Titles: Treasury International Capital Form BQ–3, Report of Maturities of Selected Liabilities of Depository Institutions, Brokers and Dealers to Foreigners.

OMB Control Number: 1505–0189.

Abstract: Form BQ–3 is part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; E.O. 10033; 31 CFR 128) and is designed to collect timely information on international portfolio capital movements. Form BQ–3 is a quarterly report designed to capture, by instrument and on an aggregate basis, remaining maturities of all U.S. dollar and foreign currency liabilities (excluding securities) of U.S. resident banks, other depository institutions, brokers and dealers *vis-a-vis* foreign residents. This information is necessary for meeting international data reporting standards and for formulating U.S. international financial and monetary policies.

Current Actions: None. We expect to make some clarifications in the instructions.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations. Form BQ–3 (1505–0189).

Estimated Number of Respondents: 98.

Estimated Average Time per Respondent: Four (4) hours per respondent per filing.

Estimated Total Annual Burden Hours: 1,570 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Form BQ–3 is necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. E8–18541 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collections; Comment Requests

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on revisions of an information collection that are proposed for approval by the Office of Management and Budget. The Office of International Affairs within the Department of the Treasury is soliciting comments concerning Treasury International Capital Forms CQ–1 and CQ–2, Financial and Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

DATES: Written comments should be received on or before October 14, 2008 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, International Portfolio Investment Data Systems, Department of the Treasury, Room 5422, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. In view of possible delays in mail delivery, please also notify Mr. Wolkow by e-mail (*comments2tic@do.treas.gov*), FAX (202–622–2009) or telephone (202–622–1276).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed forms and instructions are available on the Treasury's TIC Web page for forms, *http://www.treas.gov/tic/forms.html.* Requests for additional information should be directed to Mr. Wolkow.

SUPPLEMENTARY INFORMATION:

Title: Treasury International Capital Form CQ–1, Financial Liabilities to, and Claims on, Unaffiliated Foreigners; and Treasury International Capital Form CQ–2, Commercial Liabilities to, and Claims on, Unaffiliated Foreigners.

OMB Number: 1505–0024

Abstract: Forms CQ–1 and CQ–2 are part of the Treasury International Capital (TIC) reporting system, which is required by law (22 U.S.C. 286f; 22 U.S.C. 3103; EO 10033; 31 CFR 128), and is designed to collect timely information on international portfolio capital movements. Forms CQ–1 and CQ–2 are quarterly reports filed by nonbanking and non-securities broker and dealer enterprises in the U.S. to report their international portfolio transactions with unaffiliated foreigners. This information is necessary for compiling the U.S. balance of payments accounts and the U.S. international investment position, and for use in formulating U.S. international financial and monetary policies.

Current Actions: None. We expect to make some clarifications in the instructions.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations. Forms CQ–1 and CQ–2 (1505–0024).

Estimated Number of Respondents: 210.

Estimated Average Time per Respondent: Six and one/half (6.5) hours per respondent per filing.

Estimated Total Annual Burden Hours: 5,410 hours, based on 4 reporting periods per year.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: (a) Whether Forms CQ–1 and CQ–2 are necessary for the proper performance of the functions of the Office, including whether the information will have practical uses; (b) the accuracy of the above estimate of the burdens; (c) ways to enhance the quality, usefulness and clarity of the information to be collected; (d) ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and (e) estimates of capital or start-up costs of operation, maintenance and purchase of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. E8–18542 Filed 8–11–08; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Capital Distribution

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before October 14, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. and by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Capital Distribution.

OMB Number: 1550–0059.

Form Numbers: 1583.

Regulation Requirement: 12 CFR part 563.

Description: The OTS reviews the information to determine whether the request of savings associations is in accordance with existing statutory and regulatory criteria. In addition, the information provides the OTS with a mechanism for monitoring capital distributions since these distributions can reduce an association's capital and perhaps places it at risk.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 495.

Estimated Number of Responses: 495.

Estimated Frequency of Response: Other; as required.

Estimated Total Burden: 546 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: August 6, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–18543 Filed 8–11–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Application Processing Fees

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before October 14, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile

transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. and by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Application Processing Fees.

OMB Number: 1550–0053.

Form Numbers: N/A.

Regulation Requirement: 12 CFR part 502.

Description: Pursuant to Section 9 of the Home Owners' Loan Act, 12 U.S.C. 1467, the Director of the OTS is authorized to charge assessments to recover the costs of examining savings associations and their affiliates, to charge fees to recover the costs of processing applications and other filings, and to charge fees to cover OTS's direct and indirect expenses in regulating savings associations and their affiliates.

An institution must submit a fee with certain applications, including Securities and Exchange Act of 1934 filings, notices, and requests (hereafter collectively referred to as ''applications''), before such applications will be accepted for processing by OTS. 12 CFR part 502.5. The institution is required to state how it calculates the appropriate fee, in accordance with OTS's schedule. 12 CFR part 502.70. The most recent fee schedule was published in Thrift Bulletin TB 48–21 dated May 28, 2004.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 1,477.

Estimated Number of Responses: 1,477.

Estimated Frequency of Response: Other; as required.

Estimated Total Burden: 53 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: August 6, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–18544 Filed 8–11–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Management Official Interlocks

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before October 14, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW. and by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings, (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Management Official Interlocks.

OMB Number: 1550–0051.

Form Numbers: N/A.

Regulation Requirement: 12 CFR part 563f.

Description: The purpose of the Depository Institution Management Interlocks Act is to foster competition

by generally prohibiting a management official from serving two unaffiliated depository organizations in situations where the management interlock would likely have an anticompetitive effect. 12 U.S.C. 3201–3208. This applies to service as a management official of an institution, savings and loan association, and affiliates of either.

OTS regulations set forth several interlocking relationships that are prohibited. 12 CFR part 563f. Generally, a management official of a depository institution or depository holding company may not serve as a management official of an unaffiliated depository institution or depository holding company if the entities in question (or a depository institution affiliate thereof) have offices in the same community or metropolitan statistical area or are of a certain asset size.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 829.

Estimated Number of Responses: 829.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 4,235 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: August 5, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–18545 Filed 8–11–08; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Application for Issuance of Subordinated Debt Securities/Notice of Issuance of Subordinated Debt or Mandatorily Redeemable Preferred Stock

AGENCY: Office of Thrift Supervision (OTS), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3507. The Office of Thrift Supervision within the Department of the Treasury will submit the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. Today, OTS is soliciting public comments on its proposal to extend this information collection.

DATES: Submit written comments on or before October 14, 2008.

ADDRESSES: Send comments, referring to the collection by title of the proposal or by OMB approval number, to Information Collection Comments, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552; send a facsimile transmission to (202) 906–6518; or send an e-mail to *infocollection.comments@ots.treas.gov*. OTS will post comments and the related index on the OTS Internet Site at *http://www.ots.treas.gov*. In addition, interested persons may inspect comments at the Public Reading Room, 1700 G Street, NW., by appointment. To make an appointment, call (202) 906–5922, send an e-mail to *public.info@ots.treas.gov*, or send a facsimile transmission to (202) 906–7755.

FOR FURTHER INFORMATION CONTACT: You can request additional information about this proposed information collection from Patricia D. Goings (202) 906–5668, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: OTS may not conduct or sponsor an information collection, and respondents are not required to respond to an information collection, unless the information collection displays a currently valid OMB control number. As part of the approval process, we invite comments on the following information collection.

Comments should address one or more of the following points:

a. Whether the proposed collection of information is necessary for the proper performance of the functions of OTS;

b. The accuracy of OTS's estimate of the burden of the proposed information collection;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of the information collection on respondents, including through the use of information technology.

We will summarize the comments that we receive and include them in the OTS request for OMB approval. All comments will become a matter of public record. In this notice, OTS is soliciting comments concerning the following information collection.

Title of Proposal: Application for Issuance of Subordinated Debt Securities/Notice of Issuance of Subordinated Debt or Mandatorily Redeemable Preferred Stock.

OMB Number: 1550–0030.

Form Numbers: 1344 and 1561.

Regulation Requirement: 12 CFR part 563.81.

Description: The information collection provides the OTS with necessary details to determine if the proposed issuance of securities will benefit the savings association or create unreasonable risks. If the information required were not collected, the OTS would not be able to properly evaluate whether the request to issue securities conforms to the applicable statutory and regulatory requirements.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 7.

Estimated Number of Responses: 7.

Estimated Frequency of Response: On occasion.

Estimated Total Burden: 7 hours.

Clearance Officer: Ira L. Mills, (202) 906–6531, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Dated: August 5, 2008.

Deborah Dakin,

Senior Deputy Chief Counsel, Regulations and Legislation Division.

[FR Doc. E8–18546 Filed 8–11–08; 8:45 am]

BILLING CODE 6720–01–P

Federal Register

Tuesday,
August 12, 2008

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Devils River Minnow; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0018; 92210–1117–0000–B4]

RIN 1018–AV25

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Devils River Minnow

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate critical habitat for the Devils River minnow (*Dionda diaboli*) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 26.5 stream kilometers (km) (16.5 stream miles (mi)) are within the boundaries of the critical habitat designation. The critical habitat is located in streams in Val Verde and Kinney Counties, Texas.

DATES: This final rule becomes effective on September 11, 2008.

ADDRESSES: This final rule and the final economic analysis are available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/southwest/es/AustinTexas/*. Supporting documentation we used in preparing this final rule will be available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Austin Ecological Services Field Office, 10711 Burnet Road, Suite 200, Austin, TX 78758; telephone 512–490–0057; facsimile 512–490–0974.

FOR FURTHER INFORMATION CONTACT: Adam Zerrenner, Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES** section). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 7 days a week and 24 hours a day.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the designation of critical habitat in this final rule. For more information on the Devils River minnow, refer to the proposed critical habitat rule published in the **Federal Register** on July 31, 2007 (72 FR 41679), the final listing rule published in the **Federal Register** on October 20, 1999 (64 FR 56596), or the 2005 Devils River Minnow Recovery Plan available online at *www.fws.gov/endangered/*. More detailed information on Devils River minnow biology and ecology that is directly relevant to the designation of critical habitat is discussed under the Primary Constituent Elements section below.

Previous Federal Actions

The Devils River minnow was listed as threatened on October 20, 1999 (64 FR 56596). Critical habitat was not designated for this species at the time of listing (64 FR 56606). On October 5, 2005, the Forest Guardians, Center for Biological Diversity, and Save Our Springs Alliance filed suit against the Service for failure to designate critical habitat for this species (*Forest Guardians et al.* v. *Hall* 2005). On June 28, 2006, a settlement was reached that requires the Service to re-evaluate our original prudency determination. The settlement stipulated that, if prudent, a proposed rule would be submitted to the **Federal Register** for publication on or before July 31, 2007, and a final rule by July 31, 2008. On July 31, 2007, we published a proposed rule to designate critical habitat for the Devils River minnow (72 FR 41679). We solicited data and comments from the public on the proposed rule. The comment period opened on July 31, 2007, and closed on October 1, 2007. On February 7, 2008, we published a notice announcing the availability of the draft economic analysis, a public hearing, and the reopening of the public comment period (73 FR 7237). A public hearing was held in Del Rio on February 27, 2008. This comment period closed on March 10, 2008. For more information on previous Federal actions concerning the Devils River minnow, refer to the final listing rule published in the **Federal Register** on October 20, 1999 (64 FR 56596).

Summary of Comments and Recommendations

We requested comments from the public on the proposed designation of critical habitat for the Devils River minnow during two comment periods. The first comment period associated with the publication of the proposed rule (72 FR 41679) opened on July 31, 2007, and closed on October 1, 2007. We also requested comments on the proposed critical habitat designation and associated draft economic analysis during a comment period that opened February 7, 2008, and closed on March 10, 2008 (73 FR 7237). We held a public hearing in Del Rio on February 27, 2008; about 65 individuals were present. We contacted appropriate Federal, State, and local agencies; scientific organizations; and other interested parties and invited them to comment on the proposed rule and/or draft economic analysis during these two comment periods.

During the first comment period, we received five comments directly addressing the proposed critical habitat designation. During the second comment period, we received 19 written comments (one was received between the first and second comment periods) and 10 verbal comments made at the public hearing addressing the proposed critical habitat designation or the draft economic analysis. We received no comments from the State of Texas or other Federal agencies beyond those provided by individuals as part of the peer review process. All substantive information provided during both public comment periods has been either incorporated directly into this final determination or addressed below.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from seven knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. During the first comment period, we received a response from all seven peer reviewers from which we requested comments.

We reviewed all comments received from the public and the peer reviewers for substantive issues and new information regarding the designation of critical habitat for Devils River minnow, and we address them in the following summary.

Peer Reviewer Comments

(1) *Comment:* The rule should summarize the efforts to locate additional Devils River minnow habitats in other nearby streams and discuss the potential that additional habitats exist.

Our Response: This information is available in the Range discussion in the ''Criteria Used To Identify Critical Habitat'' section below. There have been efforts to locate the Devils River minnow outside of its known range, although those efforts have been limited by opportunity and access to some private lands. The rule states that while there could be additional stream segments within the known range that may be found to be occupied during future surveys, the best available information at this time supports only five stream segments (Devils River, San Felipe Creek, Sycamore Creek, Pinto Creek, and Las Moras Creek) known to be or to have been occupied by Devils River minnow in the United States.

(2) *Comment:* The primary constituent elements (PCEs) should more explicitly and strongly address the need for spring-fed baseflow, perhaps under PCE 5 or as its own PCE. It may be appropriate to include the language noting a percentage of normal (*i.e.*, average) monthly baseflow that should be sustained as a Devils River minnow PCE.

Our Response: Our approach in describing the PCEs is to identify the physical and biological features that are essential to the conservation of the species and which may require special management considerations or protections. In this case the PCEs are the range of water depths and velocities needed by the species. Maintenance of spring flows is described in this final rule as the special management needed to provide the PCEs described, rather than a PCE itself. The Service does not have sufficient information to identify an estimate of specific spring flow, or percentages of flow, as required habitat conditions for the Devils River minnow.

(3) *Comment:* The proposed rule notes that if groundwater aquifers are pumped beyond their ability to sustain levels supporting spring flows these streams will no longer provide habitat for the Devils River minnow. This is true unless water was pumped into the streams from wells.

Our Response: PCE 2 is intentionally worded to include ''permanent, natural flows from groundwater spring and seeps.'' We believe the maintenance of natural stream flows is the best opportunity to ensure adequate habitat for the conservation of the Devils River minnow. Water provided to streams through artificial means, such as groundwater pumping, could eventually fail due to mechanical or human error and, therefore, is not a good substitute for natural stream flows. In addition, pumping water to supply streams is likely counterintuitive to the need to maintain groundwater levels high enough to sustain natural spring flows from groundwater aquifers. Stream flows are essential for the conservation of the species, and assuring a high probability of survival depends on natural flow conditions.

(4) *Comment:* The range of stream velocities described in the PCE (1a) for Devils River minnow (0.3 to 1.3 feet/second (9 to 40 cm/second)) may not be high enough to reflect conditions that are typically measured in Las Moras Creek (greater than 3 feet/second), although baseflow velocities can be in the 1 foot/second range.

Our Response: The water velocities identified as a part of the PCEs were determined based on observational studies where Devils River minnows have been collected. There are often much higher velocities in the streams; however, the best available information indicates that the velocity range identified in the PCEs reflects the understanding that the species is most often found in slow to moderate water velocities.

(5) *Comment:* The PCE (2) for water quality can be challenged in that not enough data have been measured regarding temperature, dissolved oxygen, conductivity, and salinity to set those levels. It is possible that areas with physical and chemical conditions other than those listed could support the Devils River minnow.

Our Response: We recognize that the PCE for water quality parameters is based on limited observational data. However, we used the best available information to determine appropriate water quality elements. To the extent practicable, PCEs are intended to be quantifiable and measurable. We purposefully include a broad range of conditions to recognize that data are not sufficient to identify a more narrow range of parameters. The ranges provided represent the best available information.

(6) *Comment:* There are potential consequences to the species from increased sedimentation and turbidity, via urban development in the watershed and the presence of abundant armored catfish (*Hypostomus* sp.) (disturbing substrate during feeding and excavation of shelter). These concerns should be extracted from a list of pollutants, which included suspended sediments, and identified individually. You should include a discussion of water clarity under the PCE for water depth and velocity.

Our Response: We agree that turbidity from increased suspended solids and sedimentation of stream bottoms are important habitat concerns for Devils River minnow. We have revised the final rule (see ''Water Quality'' section below) to specifically mention this concern. We did not see a need to modify the language in the PCEs as we believe that listing suspended sediments as a pollutant is sufficient to capture these concerns.

(7) *Comment:* While the aquifers that support the critical habitat streams are of high quality and free of pollution, the same can't be said for the water quality of the creeks. Livestock and ranching activities occur throughout this area except along San Felipe Creek. Harrel (1978) notes that in the Devils River, larger deep ponds often contain silt composed of detritus and sheep and goat manure washed in by rains.

Our Response: There have been water quality concerns expressed for San Felipe Creek due to the urbanization of the watershed. There also may have been previous effects from ranching activities on water quality in the creeks, particularly in the past when sheep and goat grazing was a more common land use. However, we found no data to support that water quality is significantly impacted by current ranching activities (Service 2005, p. 1.7–4).

(8) *Comment:* The final rule should state that maintaining water temperatures within acceptable ranges necessitates maintaining adequate aquifer protection and spring flows to streams.

Our Response: We concur. The final rule was revised to reflect this comment in the ''Water Quality'' section below. We believe that management of groundwater aquifers is important to maintaining spring flows and is interrelated to maintaining water quality conditions, particularly water temperature in streams.

(9) *Comment:* The data presented do not support an unequivocal statement that vegetation must be present for Devils River minnow to be successful. The Devils River minnow appears to survive in other areas without vegetation.

Our Response: We recognize that Devils River minnow have been collected in areas of streams without significant vegetation. However, the majority of published information on the habitat use of the species (summarized in the ''Space for Individual and Population Growth, Normal Behavior, and Cover'' section below) leads us to believe that the best scientific data available are sufficient to warrant inclusion of aquatic vegetation as a PCE to provide important cover for the species. We have clarified our discussion in that section to reflect the fact that Devils River minnow have also been collected in areas without aquatic vegetation.

(10) *Comment:* How can the special management needs identified in the proposed rule and the recovery plan be implemented without access through private property to all stream segments and their supporting watershed?

Our Response: Most of the streams where the Devils River minnow occurs flow through private lands. The designation of critical habitat (or the species' status as federally threatened) does not provide a right for anyone to access private property without landowner permission. However, through cooperative relationships, the Service and Texas Parks and Wildlife

Department (TPWD) have had consistent support from private landowners to provide access to various streams to further conservation of the Devils River minnow. We intend to continue to work with private landowners to seek their voluntary cooperation using incentive-based programs, such as Partners for Fish and Wildlife, for conserving this species and other listed species in Texas.

(11) *Comment:* Discussions regarding nonnative species should include nonnative plants, such as hydrilla (*Hydrilla verticillata*), water hyacinth (*Eichhornia* spp.), giant river cane (*Arundinaria gigantea*), and salt cedar (*Tamarix* spp.), because they can impact hydrology and food sources for Devils River minnow.

Our Response: The extent of potential impacts of nonnative plants to fish such as the Devils River minnow is not well documented. However, we recognize the concern that nonnative plants could affect Devils River minnow populations, and we have revised the final rule to reflect these concerns. We did not include salt cedar as a concern because we are not aware that it is present, or likely to become established, in the range of Devils River minnow. It is well established in nearby drainages on the Pecos River and Rio Grande and has had ample opportunity to become established in the Devils River and drainages farther east. We assume that conditions (soil differences and limited floodplains) are not conducive to salt cedar establishment.

(12) *Comment:* Another concern related to nonnative species is the possible predation on Devils River minnow by armored catfish. Information was provided indicating the armored catfish in aquarium environments will prey on other fish.

Our Response: We have included this information in the final rule in the ''Habitat Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species'' section.

(13) *Comment:* Petroleum exploration and development should be either added as one additional management consideration for the Devils River population or be specifically recognized in the discussion of pollution. While there have fortunately been no known impacts to date, inappropriate site development and drilling practices associated with current exploration activities have the potential to seriously impact water quality of the Devils River and, hence, to degrade this critical habitat.

Our Response: We agree and the final rule has been updated to include this information in the ''Special Management'' section.

(14) *Comment:* Six of the seven peer reviewers commented on our specific question of whether or not Las Moras Creek and Sycamore Creek are essential to the conservation of the species and should be included in the critical habitat designation. Three reviewers expressed specific support for including Las Moras and Sycamore creeks in the critical habitat designation for the following reasons: (1) To maintain suitable habitat within its range because if left undesignated, the PCEs currently present will fall out of range and potential use for the recovery of the species will be lost; (2) to protect genetic diversity within the range of the species; (3) including them may be important for future recovery efforts, based on metapopulation theory that unoccupied patches are not less important than occupied ones; (4) not including them as ecologically significant stream segments would be possibly detrimental to the species over time; and (5) if the creeks are determined not to provide essential habitat elements, they could be removed from the designation later or the habitat could be improved by future management.

The other three reviewers did not call for the inclusion of Las Moras and Sycamore creeks in the designation. However, two reviewers stressed that recovery of the Devils River minnow would include restoring the species to these streams to maintain genetic diversity and population redundancy and encouraged us to continue to work on these efforts. One reviewer stated that Sycamore and Las Moras creeks do not have the necessary continuous flows required to maintain a population of the Devils River minnow and would support their inclusion if there were management options in place to maintain sufficient residual habitat during droughts.

Our Response: In reviewing the comments received on this issue and the Recovery Plan for the Devils River minnow, we determined that Sycamore and Las Moras creeks are essential to the conservation of the Devils River minnow. Restoring populations in Sycamore and Las Moras creeks are important recovery goals for the species. For additional discussion of this topic, including relevant information from the Recovery Plan, see the ''Criteria Used To Identify Critical Habitat'' section below.

However, upon further review, we determined that the benefits of excluding these two creeks outweigh the benefits of including them as critical habitat. Therefore, we have excluded Sycamore Creek and Las Moras Creek under section 4(b)(2) of the Act. For the full analysis, see the ''Exclusions Under Section 4(b)(2) of the Act'' section below.

(15) *Comment:* The rule should recognize that, while not included in the lateral extent of the critical habitat, the condition of the riparian buffer beyond the normal wetted channel is important to the maintenance of water quality and low levels of fine sedimentation.

Our Response: We agree that healthy riparian areas of native vegetation are important to maintaining the PCEs. For example, impacts to riparian areas that reduce native vegetation may lead to increased runoff of pollutants into the stream, thus degrading water quality and indirectly affecting the designated critical habitat. This is further discussed in the ''Application of the Adverse Modification Standard'' section. Unlike some other stream fishes, the Devils River minnow is not known to be dependent on high flow events or use flooded habitats in overbank areas for reproduction or rearing of young. Therefore, the floodplain is not known to contain the features essential for the conservation of the Devils River minnow and is not included in this final critical habitat designation. See the discussion in ''Criteria Used To Identify Critical Habitat, f. Lateral Extent'' section.

(16) *Comment:* No studies cited in the proposed rule have shown that the Devils River minnow is tied to spring-mouth habitat. In fact, several studies point out that the species does not use such habitat but prefers more downstream areas of the streams away from the immediate outfall areas. This appears to be true in all three stream sections chosen for critical habitat. The data do not support the inclusion of the spring heads in critical habitat.

Our Response: We disagree. While Devils River minnow can be common in areas just a few meters downstream of spring heads, the best available information suggests the PCEs and the fish are also found at the beginning of the streams in spring heads. Numerous collections have listed the springs themselves as locations for collecting Devils River minnow (see literature reviewed in Service 2005, p 1.4.1–1.4.5).

Comments From the Public

(17) *Comment:* The statement that the Devils River minnow does not occupy Sycamore Creek is unsubstantiated. Opportunities to sample for the species are very limited.

Our Response: We did not intend to make a conclusive determination that

the Devils River minnow does not occur in Sycamore Creek. For the purpose of critical habitat designation, we considered a stream segment to be occupied at the time of listing if Devils River minnow has been found to be present by species experts within the last 10 years, or where the stream segment is directly connected to a segment with documented occupancy within the last 10 years (see section ''Criteria Used to Identify Critical Habitat'' section below). The fish has not been collected in Sycamore Creek since 1989. We agree that collections are limited and more extensive sampling in the future may produce additional occurrence information in this watershed.

(18) *Comment:* Stream flow records from the U.S. Geological Survey and International Boundary and Water Commission gauging station show that Pinto Creek has had ''no flow'' 59 percent of the time as measured monthly between 1965 and 1996. Pinto Creek is an intermittent stream and does not supply the permanent, natural flows that are a pillar of the critical habitat definition.

Our Response: We recognize that portions of Pinto Creek can be intermittent. The location of the stream gauge was moved to a far upstream location in 1981 (Ashworth and Stein 2005, p. 18). Although portions of the stream will exhibit no flow during some times of the year, spring flows will continue providing aquatic habitat for the Devils River minnow at various locations downstream. Ashworth and Stein (2005, p. 19) found that the Pinto Creek is a gaining stream through much of the upper reaches, that is, it increases in volume downstream. A stream gauge at a stationary location does not reflect the longitudinal variation in stream flow. We observed this in the summer of 2006 when Service biologists visited Pinto Creek and found some reaches of the creek dry and other locations supported by spring flows. Fish were concentrated in these spring-fed stretches.

To account for this variation, PCE 5 of this critical habitat designation includes areas within stream courses that may be periodically dewatered for short time periods, during seasonal droughts. These areas were found to be important as connective corridors. The Devils River minnow occurs in relatively short stream segments and, therefore, needs to be able to move unimpeded to access different areas within the stream to complete life history functions and find resources, such as food and cover.

(19) *Comment:* The presence of the nonnative smallmouth bass (*Micropterus dolomieu*) is the only significant change in the Devils River and has caused many changes in the structure of the fish community. The Devils River should not be designated as critical habitat because the only factor affecting fish populations is being propagated and enhanced by Texas Parks and Wildlife Department (TPWD).

Our Response: We do not know the full extent of specific impacts of the smallmouth bass on the Devils River minnow, but initial research results since the listing have not revealed that smallmouth bass are an obvious source of predation on Devils River minnow. TPWD manages the smallmouth bass fishery in the Devils River but no longer stocks the fish in the Devils River or Amistad Reservoir. It is unknown if a change in the management of this fishery would benefit the Devils River minnow.

(20) *Comment:* Nonnative species, such as the smallmouth bass and armored catfish, deserve to be protected even though they are not native. They should be allowed to thrive for the benefit of the American people, consistent with the Service's mission statement.

Our Response: In the preamble to the Act, Congress recognized that endangered and threatened species of wildlife and plants ''are of esthetic, ecological, educational, historical, recreational, and scientific value to the Nation and its people.'' When humans introduce species outside of their natural range, they often have unintended and deleterious effects on native species. Nonnative species are one of the primary threats to many native species, sometimes contributing to their status as threatened or endangered. In these instances, we place a higher value on the conservation of the native species and often try to control the nonnative species to further the recovery of the listed species. We believe this is consistent with the intent of the Act.

(21) *Comment:* Groundwater conservation districts override the ''Rule of Capture'' in groundwater law in Texas. Designating critical habitat is a way for the Federal government to gain control over water managed by State or local authorities.

Our Response: We recognize that groundwater districts are intended to allow local management of groundwater in place of the rule of capture. Designating critical habitat is not intended to supersede surface or groundwater management by private, local, or State parties. If a Federal agency proposes an action that they determine may affect the Devils River minnow or its habitat (such as a change in stream flow rates), they are required under section 7 of the Act to consult with the Service. Since we are designating final critical habitat in areas presently occupied by the fish, this requirement to consult would exist even if we were not designating critical habitat.

(22) *Comment:* The proposed rule's concern for future groundwater withdrawals is not based on well-researched and documented science on the connection, if any, between groundwater withdrawals in Pinto Valley and high quality water for the species in Pinto Creek. WaterTexas intends to convert groundwater in Kinney County historically used for agriculture to municipal use without increasing the overall amount of water pumped. Therefore, the statement in the proposed critical habitat rule that there are plans to significantly increase the amount of groundwater pumped is inaccurate in regard to plans by WaterTexas.

Our Response: We did not attempt to connect any particular groundwater pumping areas, such as Pinto Valley, to the potential for impact of spring flows in Pinto Creek. Our concerns are consistent with experts in the field, such as the statements from studies by Ashworth and Stein (2005, p. 34): ''Base flows of the rivers and streams that flow through Kinney and Val Verde Counties is [sic] principally generated from the numerous springs that occur in the headwaters of these surface drainages. Sustaining flow in these important rivers and streams is highly dependent on maintaining an appropriate water level in the aquifer systems that feed the supporting springs. Spring discharge rates can be negatively impacted by nearby wells if the pumping withdrawals lower the water table in the aquifer that contributes to the spring. If the water-level elevation drops below the elevation of the land surface at the point of spring discharge the spring will cease to flow.''

The statement in this final critical habitat designation characterizes the expected overall trends for groundwater pumping in Kinney County (PWPG 2006, pp. 3–13, 4–54) and is not intended to be specific to any particular groundwater development project.

(23) *Comment:* The purpose of the Kinney County Groundwater Conservation District (KCGCD) Management Plan is to provide guidance to the KCGCD on how to manage the groundwater on a sustainable basis and yet beneficially use the groundwater without exploiting

or adversely affecting the natural flow of the intermittent streams.

Our Response: The KCGCD has recently drafted a revised management plan including an estimate of future groundwater permits. Although the plan was not approved until after the close of the public comment period and therefore not considered in its entirety in this final rule, we recognize that the KCGCD intends to manage groundwater on a sustainable basis without adversely affecting natural stream flows. We understand that KCGCD is still collecting scientific information on the possible effects to stream flows of various permitting levels for the aquifers in Kinney County. We look forward to the results of the KCGCD's implementation of their management plan and we intend to work cooperatively with the District to also collect information on the relationship of stream flows and aquatic habitat for the Devils River minnow, as called for in the recovery plan (Service 2005, p. 2.4–4).

(24) *Comment:* Current land-use activities authorized by the KCGCD in the form of groundwater permitting will allow such an unwarranted and unprecedented depletion of the groundwater resource that Pinto Creek, the sole remaining critical habitat for the Devils River minnow in Kinney County, will dry up—if not completely, then certainly to the point of no longer being suitable for the minnow. Any activity that would further threaten spring flows in Pinto Creek must not be allowed if the loss of the minnow in that creek is to be avoided.

Our Response: We recognize this concern and we encourage the KCGCD to carefully consider the impacts on Pinto Creek of future groundwater use permitting. However, it is important to recognize that designation of Pinto Creek, or the other areas, as critical habitat for the Devils River minnow has no regulatory effect on non-Federal actions, such as permitting by a local groundwater district.

(25) *Comment:* The KCGCD plans to permit total groundwater withdrawals that exceed the amount of groundwater available according to estimates by the Texas Water Development Board. The KCGCD does not consider impacts to the Devils River minnow, and the KCGCD may have already sanctioned withdrawals of sufficient amounts of groundwater to result in direct harm to the proposed critical habitat in Pinto Creek.

Our Response: We understand there are important scientific uncertainties about the amount of groundwater available for sustained uses in Kinney County. We recognize that future increases in groundwater pumping could impact habitats of the Devils River minnow, and we encourage the KCGCD to consider habitat of the Devils River minnow and to provide stream flow monitoring efforts to ensure permitted pumping does not result in loss of stream habitat for Devils River minnow. However, unless there is a Federal nexus with groundwater pumping activities and a determination that a specific Federal action may affect the Devils River minnow, the critical habitat designation will not affect groundwater pumping.

(26) *Comment:* A limit on impervious cover within the watersheds of the designated streams should be included in the section on Special Management Considerations and Protections. Impervious cover amounts in excess of 10 to 15 percent within a watershed are known to increase storm runoff, which in turn causes the erosion of stream beds and the degradation of water quality as surface pollutants contaminate and warm the water in a stream.

Our Response: We concur that limiting impervious cover in urban areas is one method to reduce future pollutant inputs to streams from contributing watersheds. The final critical habitat designation does not intend to provide this level of specificity for needed special management actions. There may be other management that could result in providing adequate water quality for the Devils River minnow in San Felipe Creek. This level of land planning is best done by a local governmental authority, such as a city or county.

(27) *Comment:* The proposed rule includes brush-clearing in a list of activities that would significantly increase sediment deposition within the stream channel. This statement, taken out of context, is erroneous. Research has shown that brush control can lead to positive environmental benefits, including increased groundwater recharge.

Our Response: The proposed rule indicated brush control and other land-use activities could affect Devils River minnow habitat. We have updated the final rule to more accurately reflect our understanding that the actual effects of specific activities, such as brush clearing, must be evaluated on a project-specific basis. The impacts of any specific activity will depend on the location of the activity, and the extent to, and manner in, which the activity is carried out.

We have also updated the final economic analysis to include a Statewide section 7 consultation in 2004 that was completed with the Natural Resources Conservation Service (NRCS) for brush control actions funded under the 2002 Farm Bill. In that consultation, we found that, under most circumstances, brush control within the range of the Devils River minnow results in beneficial effects by increasing groundwater recharge and spring flows, as emphasized by this comment.

(28) *Comment:* Land-use practices in the Devils River Unit have changed little over the past 50 years and are predominantly agrarian (agricultural) for livestock ranching and wildlife hunting. Stream flow and quality are not currently influenced by other outside factors, such as those from municipal, commercial, or industrial entities, but are only subject to natural variations. The Nature Conservancy and the State of Texas own large parcels of land along the river. Barring any unforeseen events, it does not appear that land use in the region will change significantly.

Our Response: We agree that land use has changed little in the Devils River watershed in recent years, and current ranching and wildlife hunting are not considered a threat to the Devils River minnow or a concern for its habitat. However, we are concerned that the stream habitat will be affected in the future by other outside factors. The primary long-term potential threat of groundwater withdrawal is not necessarily related to land use. Other land-use considerations include the potential impacts to water quality from petroleum exploration and development.

(29) *Comment:* One commenter stated that the Devils River minnow is thriving, particularly in the Devils River, under the current voluntary cooperation of private landowners, TPWD, and the Service. The species does not now satisfy the definition for an endangered or even threatened species under the Endangered Species Act (16 U.S.C. 1531 *et seq.*). Another commenter thought our action to designate critical habitat would lead to further action to declare it an endangered species.

Our Response: We recognize the positive relationships that exist between our agency, TPWD, and private landowners in working together for the conservation of the Devils River minnow. We concur that various monitoring efforts in the Devils River have continued to find the population persisting, apparently in strong numbers. However, there is no available information that suggests the species is ''thriving'' across its range. The Act requires designation of critical habitat

for species listed as either threatened or endangered, if we determine critical habitat to be prudent and determinable.

As part of a process separate from designating critical habitat, the Service is now conducting a 5-year review on the status of the Devils River minnow rangewide to assess whether it is classified correctly as a threatened species. We requested information to assist with this review in a **Federal Register** notice on April 23, 2007 (72 FR 20134). We have not yet completed this review, and we are always open to receiving new information on the status of this and all listed species.

(30) *Comment:* The voluntary conservation agreement signed by the Service and TPWD in 1998 is working, and the Devils River Association renews our commitment to help with this agreement. Voluntary efforts on the Devils River have increased Devils River minnow habitat. The Service should continue this healthy voluntary cooperation. Designating critical habitat would terribly and irreparably damage the trust that we have gained over the last few years.

Our Response: We appreciate and strongly support the voluntary cooperation that has been provided in the past by landowners along the Devils River. The conservation of this species depends on the cooperative efforts of private landowners and others. Although the 1998 conservation agreement has not been renewed or maintained as a formal conservation effort following the initial 5-year commitment, it has served as a foundation for cooperative efforts that, in part, resulted in the designation of the Devils River minnow as threatened rather than endangered. After conducting an analysis under section 4(b)(2) of the Act, we concluded that the benefits of excluding the Devils River Unit from the final designation (including maintaining non-Federal partnerships) outweigh the benefits of inclusion (see ''Exclusions under Section 4(b)(2)'' section).

(31) *Comment:* Private landowners and ranchers along the Devils River serve to maintain wide open spaces and ecosystem processes. Restrictions on private landowners from critical habitat designation could affect landowners' livelihoods and result in land fragmentation and a cascading effect along the Devils River. This could result in the selling of smaller land parcels and cause the end of one of the most pristine ecosystems in the State.

Our Response: We agree that maintaining large ranches intact is likely a beneficial situation for the Devils River minnow habitat. However, we do not foresee private landowner restrictions resulting from the final designation of critical habitat and do not believe that these concerns are likely to be realized. These widely held perceptions by landowners in the Devils River Unit, however, could result in anti-conservation incentives because furthering Devils River minnow conservation is seen as a risk to future economic opportunities or loss of private property rights. See our response to Comment 30 above.

(32) *Comment:* The restrictions on landowners in the Devils River area will unduly burden landowners. Critical habitat will also impact whether or not you can use machinery for pushing cedar, constructing roads, clearing brush, grazing livestock excessively, and using off-road vehicles.

Our Response: These activities are identified in the proposed and final rules as actions that could affect critical habitat, if they were carried out, funded, or permitted by a Federal agency and if they resulted in specific effects to the critical habitat area. The final critical habitat designation itself does not restrict landowners along the Devils River or elsewhere from carrying out these activities. See our response to Comment 27 for additional discussion of brush clearing.

(33) *Comment:* Will critical habitat designation affect: (1) The right of the City of Del Rio to take water from San Felipe Springs or other groundwater sources; (2) the right of private landowners to take and use groundwater on their lands; (3) City, County, or State construction projects involving building or maintaining streets, highways, and other public facilities; (4) repair and maintenance activities on State Highway 163 in Val Verde County or the county road from State Highway 163 to F.M. 1024; (5) the rights of landowners to use and operate their lands for otherwise lawful purposes? What activities on non-Federal, public, or private lands will be affected by critical habitat designation? What impact will critical habitat designation have on Laughlin Air Force Base?

Response: Critical habitat only affects activities where Federal agencies are involved and consultation under section 7 of the Act is necessary. Critical habitat designation has no impact on private actions on private lands. Critical habitat does not create a requirement for specific land protection by non-Federal parties. The Devils River minnow occurs in streams primarily on non-Federal lands with little to no Federal agency involvement. Therefore, final critical habitat designation is not expected to change most ongoing or planned activities.

The legal protections of critical habitat only apply during interagency consultation by Federal agencies under section 7 of the Act. Activities that are funded, permitted, or carried out by a Federal agency (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act) on private or public lands that may affect a listed species or critical habitat undergo additional review for consideration of the listed species. Through an interagency consultation process, the Service advises Federal agencies whether the proposed actions would likely jeopardize the continued existence of the species or adversely modify its critical habitat. Results of these additional reviews rarely interfere with the ability of private or public entities to carry out otherwise lawful activities such as those described in this comment.

We have only designated critical habitat in areas where the species occurs. In these areas, Federal agencies already have a responsibility for interagency consultation for actions that may affect the species. A review of the consultation history as part of the economic analysis (documented in Appendix A of the economic analysis) concluded that there have been very few consultations since the species was listed in 1999. To date, there has been no interagency consultation with Laughlin Air Force Base regarding the Devils River minnow.

(34) *Comment:* I am concerned that by designating the San Felipe Creek as critical habitat, the people will suffer and not be able to use the creek as the City of Del Rio would like. The Devils River minnow should not dictate how the City of Del Rio uses San Felipe Creek, but you should work to eradicate river cane and the armored catfish to help the population of the fish grow.

Our Response: People in Del Rio will continue to be able to use San Felipe Creek even though it has been designated as critical habitat. The conservation of the Devils River minnow has not limited the use of San Felipe Creek, and use is not likely to change with critical habitat. We will continue our ongoing cooperative efforts with the City of Del Rio to work on controlling exotic river cane and armored catfish, and on other conservation efforts.

(35) *Comment:* There is suspicion that the Devils River minnow population in Pinto Creek was artificially introduced by private landowners and others at the headwaters of Pinto Creek.

Our Response: We have no information to indicate that the Devils River minnow in Pinto Creek is not a natural population. The reason for the recent discovery of Devils River minnow in Pinto Creek is because there was no prior sampling in upstream areas where the species occurs (Garrett *et al.* 2004, p. 439). In addition, recent genetic studies of the Devils River minnow have found that the population in Pinto Creek is significantly different from the population in the Devils River (Conway *et al.* 2007, p. 9), suggesting that it is a natural population.

(36) *Comment:* Many listed species in Texas and nationally do not have critical habitat designated. The Service has already had a final ruling that stated it would not be prudent to designate critical habitat for the Devils River minnow because it would not benefit the species (final listing rule in 1999, 64 FR 56606). As stated in the Service's July 26, 2005, letter to the Forest Guardians, critical habitat is not needed for the Devils River minnow.

Our Response: We agree that designation of critical habitat is not likely to provide many benefits for the Devils River minnow since the designated area is likely to have few Federal actions that affect the species. However, the Act requires that we designate critical habitat following a specific methodology. The lawsuit brought by Forest Guardians (now WildEarth Guardians) and others necessitated that we reconsider the designation of critical habitat, resulting in this final rule. The reasoning that we used in 1999 to determine that the designation of critical habitat was not prudent was subsequently determined in other court cases not to be a valid justification.

(37) *Comment:* All areas included in the proposed rule should be designated as critical habitat. The adequacy of existing or future conservation plans is not sufficient to warrant any exclusions of critical habitat.

Our Response: We are excluding the Devils River Unit and Sycamore and Las Moras creeks from the critical habitat designation for Devils River minnow. After conducting analyses under section 4(b)(2) of the Act, we concluded that the benefits of excluding the Devils River Unit and Sycamore and Las Moras creeks from the final designation (including maintaining non-Federal partnerships) outweigh the benefits of inclusion (see ''Exclusions under Section 4(b)(2)'' section).

(38) *Comment:* Las Moras Creek is not the place to reintroduce Devils River minnow. Flooding in the city of Brackettville often causes pollution in the creek. The KCGCD does not have the scientific evidence to assure that Las Moras Creek will not go dry if groundwater is transported to San Antonio.

Our Response: We are not proposing to reintroduce Devils River minnow to Las Moras Creek with this final critical habitat rule. Instead we are designating critical habitat for the species in portions of Pinto Creek and San Felipe Creek. We have determined not to designate Las Moras Creek as critical habitat. The concerns raised in this comment will need to be addressed in future cooperative plans to restore the Devils River minnow to Las Moras Creek.

Comments Related to the Economic Analysis

(39) *Comment:* The draft economic analysis (DEA) maintains that section 7 consultations under the jeopardy standard and the adverse modification standard are not likely to have significantly different outcomes. This is not accurate, as the jeopardy standard does not protect unoccupied habitat. Moreover, destruction of occupied habitat may not meet the jeopardy standard if the Service determines that the destruction of a single population will not cause the species to go extinct or thwart its recovery. Alternatively, within critical habitat, the destruction of a single population or a portion thereof would certainly violate the Act's prohibition of adverse modification.

Our Response: It is true that it would be inappropriate to conclude that consultations under the jeopardy and adverse modification standards would not differ for unoccupied critical habitat; however, we have not included unoccupied areas in this final critical habitat designation (see ''Criteria Used to Identify Critical Habitat'' section below). Additionally, we recognize that the jeopardy and adverse modification standards are not equivalent and that it is possible in a general sense that a project may be determined to adversely modify critical habitat while also not resulting in jeopardy. However, the specific situation for the Devils River minnow does not present this case. For two of the units, no projects with a Federal nexus are anticipated, and for the third unit, the projects expected would generally be minor and not expected to affect an entire unit. Therefore, projects in the third unit would not likely result in adverse modification or jeopardy. Based on discussions among stakeholders, affected Federal agencies, and the Service, no new conservation measures are expected to occur as a result of consultations in areas designated as critical habitat for the Devils River minnow. Rather, current and forecast conservation measures for the species are a result of the listing of the Devils River minnow as a threatened species. The additional cost of consulting for adverse modification above the cost of consulting for jeopardy, in the amount of $64,000 (undiscounted) over 20 years, are quantified as incremental post-designation impacts in the administrative costs appendix of the economic analysis.

(40) *Comment:* The critical habitat proposal and the DEA fail to fully address the threat of climate change to the Devils River minnow, despite the fact that its southwestern aquatic habitat is in extreme peril from the climate crisis.

Our Response: At this time, climate change has not been identified as an impact needing special management in the Devils River minnow critical habitat, as projections of specific impacts of climate change in this area are not currently available. As such, no conservation measures are expected in the reasonably foreseeable future that would directly address the threat of climate change to the Devils River minnow. Thus, the economic analysis does not quantify impacts associated with conservation measures for the Devils River minnow related to global climate change.

(41) *Comment:* The potential impacts of future groundwater development for municipal use should not be ignored in the economic analysis. With the potential groundwater yields that could be produced for municipal use, it is recommended that the parameters used in performing the economic analysis be reexamined and revised to reflect the potential future impacts of pumping for municipal use. If these factors are ignored, it is conceivable that future limitations could impose unreasonable restrictions on groundwater development in the region, in turn resulting in significant economic impacts.

Our Response: Section 3.2 of the final economic analysis (FEA) recognizes that any limitations on available future groundwater resource options for San Antonio or other municipalities wishing to export water from the critical habitat area would result in potentially substantial economic impacts on municipal users, presumably in terms of increased water prices occurring if supply is constrained, or as more costly options for water development are undertaken. However, due to the uncertainties with regard to linking specific groundwater withdrawals to

impacts on Devils River minnow habitat, future Federal involvement in potential water extraction projects, and any potential changes to those projects that could be requested by the Service as part of a consultation, the FEA is unable to quantify potential economic impacts of Devils River minnow conservation measures related to such groundwater extraction activities. The analysis does recognize that potential negative impacts on both the water suppliers and the end water users could occur should restrictions on water use be undertaken on behalf of the Devils River minnow. The analysis also points out that there have not been any consultations related to groundwater extraction and its effects on the Devils River minnow to date.

(42) *Comment:* In Section 3.1 of the DEA, the quotation attributed to the document, ''Texas Water Law,'' Texas Water Resource Education, Texas A&M University, is not completely accurate with respect to Texas Law. While the so-called ''Rule of Capture'' continues to be the underlying basis of groundwater law in Texas, groundwater districts, and now, more importantly, Groundwater Management Areas (GMAs) play a major and superseding role in groundwater planning and management. In particular, House Bill 1763 from the 79th Regular Session of the Texas Legislature created GMAs that now cover all of Texas, and together with groundwater districts, GMAs override in many respects the effects of the ''Rule of Capture'' as known and practiced in the past.

Our Response: Section 3.1 of the FEA has been revised following receipt of this comment. This section now states the following: ''Generally, groundwater in Texas is governed by the 'rule of capture,' that is, groundwater is the private property of the owner of the overlying land. However, a number of state-mandated groundwater conservation districts (GCDs) have the ability to regulate the spacing and production of groundwater wells. Each GCD falls within a larger Groundwater Management Area (GMA). Currently, 16 GMAs exist in Texas spanning the state's major and minor aquifers. In 2005, the Texas State Legislature required that all GCDs in a given GMA meet annually to determine a future desired groundwater condition for their respective GMA. Based on the desired future condition specified by a given GMA, the Texas Water Development Board (TWDB) determines a managed available groundwater level for the GMA. Lands outside of GCDs are not subject to groundwater pumping regulations unless a landowner seeks state funding for a groundwater project. In this case, the specific project must be included in the GMA's regional water plan. The total groundwater allotments permitted by the GMA must not exceed its managed available groundwater level.''

(43) *Comment:* WaterTexas' ongoing water exportation project is too preliminary to know for certain whether consultation with the Federal government above and beyond the U.S. Army Corps of Engineers (for Section 404 permits under the Clean Water Act) will be necessary. With respect to WaterTexas' planned water exportation project, WaterTexas does not see the KCGCD's management plan revision currently underway as any sort of barrier to the commencement or further development of their current project.

Our Response: Section 3.2 of the FEA has now been clarified to state that the WaterTexas project is too preliminary to know for certain whether or not consultation with the Federal government, other than the U.S. Army Corps of Engineers for a section 404 permit, will be necessary. A statement has also been added to the FEA clarifying that ''currently, WaterTexas does not expect the forthcoming KCGCD management plan to affect their ongoing groundwater exportation project.''

(44) *Comment:* In section 3.2 paragraph 86, the DEA states that ''supplementing San Antonio's water supply would, among other things, ease water-related threats to other listed species within the Edwards Aquifer.'' WaterTexas wishes to correct any perception that they believe their planned water exportation project will assist in directly reviving or rescuing any endangered species in any other area of Texas.

Our Response: Section 3.2 of the FEA has been revised to clarify that one water company believes that its project may help to ease water-related threats to other species in the Edwards Aquifer. The section now states: ''Grass Valley Water LP is proposing to export 22,000 acre-feet annually to San Antonio from a 22,000-acre ranch in eastern Kinney County. The project would draw water from the Edwards Balcones Fault Zone, which according to the company, does not affect Las Moras Springs. Grass Valley Water LP has already invested a significant amount of resources into the project and believes that supplementing San Antonio's water supply could, among other positive effects, ease water-related threats to other listed species within the Edwards Aquifer.''

(45) *Comment:* Voluntary conservation plans, such as the City of Del Rio's Management Plan for San Felipe Creek and the San Felipe Country Club Management Plan, should not be included in the economic baseline calculation in the EA. Due to the voluntary nature of these plans, the water quality protection measures described are not guaranteed to occur. As such, these voluntary measures might lower the perceived benefit to designating critical habitat by guaranteeing conservation, which, in reality, may or may not occur.

Our Response: The FEA examines the impacts of restricting or modifying specific land uses or activities for the benefit of the species and its habitat within the areas considered for critical habitat designation. The analysis employs ''without critical habitat'' and ''with critical habitat'' scenarios. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already accorded the Devils River minnow, voluntary or otherwise. The City of Del Rio's Management Plan for San Felipe Creek and the San Felipe Country Club Management Plan were both developed in 2003 following a Conservation Agreement for the Devils River minnow between the Service, TPWD, and the City of Del Rio in 1998, prior to the species' listing. Thus, the costs of developing these plans, and those conservation measures listed in the management plans that have already occurred or are planned to occur in the near future are included in the baseline. Impacts related to conservation measures discussed in the management plans that are not anticipated to occur in the foreseeable future are not quantified in the analysis.

(46) *Comment:* The DEA failed to consider the entirety of potential effects of all Federal nexuses and ensuing regulatory actions on small businesses, in particular, private landowners and ranchers along the Devils River Unit. Pursuant to the 2002 Farm Bill, there are at least two NRCS programs that provide assistance to landowners to control brush. The proposed rule lists brush-clearing as an ''action that would significantly increase sediment deposition within the stream channel.'' Potential brush-clearing consultations may delay actual brush-clearing to a point where landowners may miss the opportunity to carry out planned brush control activities for an entire year.

Our Response: Section 2 of the FEA now clarifies that threats to water quality in Devils River minnow critical habitat may include sedimentation due to grazing, brush-clearing, road construction, channel alteration, off-road vehicle use, and other watershed activities in the rural Devils River,

Sycamore Creek, and Pinto Creek units. Section 2 of the FEA also includes a discussion of the concern that private brush-clearing activities conducted using funds from NRCS could be delayed to a point where landowners may miss the opportunity to carry out those activities for an entire year. The analysis examines a 2004 formal consultation between the Service and the NRCS regarding activities associated with implementation of the 2002 Farm Bill conservation programs and their effects on listed species in western Texas. This consultation, which focused on brush management treatment practices targeting control of honey mesquite (*Prosopis glandulosa*), salt cedar, Ashe juniper (*Juniperus ashei*), and redberry juniper (*J. coahuilensis*) concluded that the proposed brush-clearing activities would benefit the Devils River minnow by increasing the base flow of the Devils River if the brush-control activities were part of brush management practices intended to improve the quality and quantity of water, improve range conditions, and improve the value of wildlife habitat. Thus, all brush removal activities receiving funding from the NRCS under the 2002 Farm Bill remained unaltered as a result of that consultation. The analysis concludes that few, if any, impacts on brush-clearing activities, even when supported by NRCS funds, appear likely to result from Devils River minnow conservation activities.

(47) *Comment:* Several commenters requested that stigma effects be addressed in the economic analysis. One commenter stated that he believes this effect could significantly decrease and lower the land value of the land along the Devils River. The number could be anywhere from 2 to 10 million dollars of land devaluation impacts.

Our Response: Section 1.3.2 of the FEA has been revised and expanded to respond to concerns over stigma effects related to the designation. The analysis recognizes that, in some cases, public perception of critical habitat designation may result in limitations of private property uses above and beyond those associated with anticipated project modifications and uncertainty related to regulatory actions. Public attitudes regarding the limits or restrictions of critical habitat can cause real economic effects to property owners, regardless of whether such limits are actually imposed. To the extent that potential stigma effects on real estate markets are probable and identifiable, these impacts are considered indirect, incremental impacts of the designation.

The FEA finds that, in the case of the Devils River minnow critical habitat areas, it appears unlikely that critical habitat designation for the Devils River minnow will result in long-term stigma effects for property owners abutting designated stream segments. Unless a landowner receives Federal assistance or needs a Federal permit to carry out property management actions, no nexus exists that would compel a Federal action agency to consider requiring conservation measures for the species. For ongoing private land-use activities, such a nexus is expected to be rare. Further, recent land-use trends in critical habitat areas are a transition from ranching and agricultural uses to recreation and conservation-based land uses. In these cases, any perceptions that development activities may be limited in those areas could in fact increase the attractiveness of property in those areas. In either case, as the public becomes aware of the true regulatory burden imposed by critical habitat, any impact of the designation on property values would be expected to decrease.

(48) *Comment:* The economic analysis states that it measures net economic costs, but it does not quantify benefits. Therefore, the Service cannot estimate the ''net'' impacts of critical habitat. Consequently, they cannot appropriately invoke section 4(b)(2) of the Act to exclude areas from its final critical habitat designation for the Devils River minnow. The commenter also states that benefits derived from conservation measures such as improving water quality, eliminating non-native species, and preserving/maintaining ecosystem services also benefit human communities and have been captured in economic literature and should be considered in the DEA. The commenter notes that the costs of these conservation measures are attributed to baseline protections.

Our Response: Where sufficient information is available, the FEA attempts to recognize and measure the net economic costs of species conservation efforts imposed on regulated entities and the regional economy as a result of critical habitat designation. That is, it attempts to measure costs imposed on landowners or other users of the resource net of any offsetting gains experienced by these individuals associated with these conservation efforts.

The analysis does not attempt to assign a monetary value to broader social benefits that may result from species conservation. The primary purpose of the rulemaking is the potential to enhance conservation of the species. As stated in the FEA, and as quoted in the comment, ''rather than rely on economic measures, the Service believes that the direct benefits of the Proposed Rule are best expressed in biological terms that can be weighed against the expected cost impacts of the rulemaking.'' Thus, the Service utilizes cost estimates from the economic analysis as one factor against which biological benefits are compared during the 4(b)(2) weighing process. The Service agrees that, to the extent that additional social benefits such as improving water quality, eliminating non-native species, and preserving/maintaining ecosystem services result from conservation measures for the Devils River minnow, these improvements could also benefit human communities. In this case, the DEA predicts that the incremental costs resulting from the proposed rule are solely administrative in nature. As the commenter points out, no new conservation measures are anticipated to result from the designation.

Summary of Changes From the Proposed Rule

In preparing the final critical habitat designation for the Devils River minnow, we reviewed and considered comments from the public and peer reviewers on the July 31, 2007, proposed designation of critical habitat (72 FR 41679) and on the draft economic analysis, made available on February 7, 2008 (73 FR 7237). As a result of comments received, we made the following changes to our proposed designation:

(1) We updated the Required Determinations sections to incorporate updated analyses from the FEA.

(2) We have excluded 47.0 stream km (29.2 stream mi) of stream within the Devils River Unit (Unit 1) proposed as critical habitat for Devils River minnow from the final designation (see the ''Exclusions under Section 4(b)(2) of the Act'' section of this final rule for further details).

(3) We determined, based upon the comments received and consistent with the recovery plan, that Sycamore and Las Moras creeks are essential to the conservation of the Devils River minnow. We are excluding these areas from critical habitat (see the ''Exclusions under Section 4(b)(2) of the Act'' section of this final rule for further details).

Critical Habitat

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species and

(b) Which may require special management consideration or protections; and

(2) Specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered or threatened species to the point at which the measures provided under the Act are no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against Federal agencies carrying out, funding, or authorizing the destruction or adverse modification of critical habitat. Section 7(a)(2) of the Act requires consultation on Federal actions that may affect critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by private landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the consultation requirements of section 7(a)(2) would apply, but even in the event of a destruction or adverse modification finding, the landowner's obligation is not to restore or recover the species, but to implement reasonable and prudent alternatives to avoid destruction or adverse modification of critical habitat.

For inclusion in a critical habitat designation, the habitat within the geographical area occupied by the species at the time of listing must contain the physical and biological features essential to the conservation of the species. Critical habitat designations identify, to the extent known using the best scientific data available, habitat areas that provide essential life cycle needs of the species (*i.e.*, areas on which are found the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species).

Occupied habitat that contains the features essential to the conservation of the species meets the definition of critical habitat only if those features may require special management considerations or protection.

Under the Act, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that the best available scientific data demonstrate that the designation of that area is essential to the conservation needs of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When determining which areas should be designated as critical habitat, our primary source of information is generally the information developed during the listing process for the species. Additional information sources may include the recovery plan for the species, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, biological assessments, or other unpublished materials and expert opinion or personal knowledge.

Habitat is often dynamic, and species may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that we may eventually determine, based on scientific data not now available to the Service, are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

Areas that support populations, but are outside the critical habitat designation, will continue to be subject to conservation actions we implement under section 7(a)(1) of the Act. They are also subject to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, as determined on the basis of the best available scientific information at the time of the agency action. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may require consultation under section 7 of the Act and may still result in jeopardy findings in some cases. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements

In accordance with section 3(5)(A)(i) of the Act and regulations at 50 CFR 424.12, in determining which areas occupied by the species at the time of listing to designate as critical habitat, we consider those physical and biological features essential to the conservation of the species that may require special management considerations or protection. We consider the physical or biological features to be the PCEs laid out in the appropriate quantity and spatial arrangement for the conservation of the species. The PCEs include, but are not limited to:

(1) Space for individual and population growth and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, and rearing (or development) of offspring; and

(5) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

We derive the specific primary constituent elements required by the Devils River minnow from the biological needs of the species as understood from studies of its biology and ecology, including but not limited to, Edwards *et al.* (2004), Garrett *et al.* (1992), Garrett *et al.* (2004), Gibson *et al.* (2004), Harrell (1978), Hubbs (2001), Hubbs and Garrett (1990), Lopez-Fernandez and Winemiller (2005), Valdes Cantu and Winemiller (1997), and Winemiller (2003).

Space for Individual and Population Growth, Normal Behavior, and Cover

The Devils River minnow is a fish that occurs only in aquatic environments of small to mid-sized streams that are

tributaries of the Rio Grande in south Texas and northern Mexico. The species spends its full life cycle within streams. The stream environment provides all of the space necessary to allow for individual and population growth, food, cover, and normal behaviors of the species. Studies of the specific micro-habitats used by any life stages of Devils River minnow in the wild have not been conducted. Studies of fish habitat within its range have found too few individuals of Devils River minnow to analyze specific habitat associations (Garrett *et al.* 1992, p. 266; Valdes Cantu and Winemiller 1997, p. 268; Robertson and Winemiller 2003, p. 119). However, observational studies have been conducted throughout its limited range that generally defined stream conditions where Devils River minnows have been collected.

General habitat descriptions of areas where Devils River minnow have been found include the following: ''the area where spring runs enter the river'' (Hubbs and Garrett 1990, p. 448); ''channels of fast-flowing water over gravel bottoms'' (Garrett *et al.* 1992, p. 259); ''associated with water willow (*Justicia americana*) and other aquatic macrophytes over a gravel-cobble substrate'' (Garrett *et al.* 2004, p. 437) (macrophytes are plants large enough to be seen without a microscope); and ''stream seeps'' at sites that ''had abundant riparian vegetation overhanging the banks'' (Lopez-Fernandez and Winemiller 2005, p. 249). Stream seeps are specific sites along the stream where small amounts of water enter the stream from the ground. They are small springs, but may be less defined and more temporal. We based our determinations of the PCEs on the physical and biological features that have been measured in streams where Devils River minnow occur.

a. Water Depth and Velocity. Flowing water within streams is critical to provide living space for the Devils River minnow. All of the streams where the Devils River minnow is found are supported by springs that derive their discharge from underground aquifers, either the Edwards Aquifer or the Edwards-Trinity Aquifer (Brune 1981, pp. 274–277, 449–456; Edwards *et al.* 2004, p. 256; Garrett *et al.* 1992, p. 261; Garrett *et al.* 2004, p. 439; Hubbs and Garrett 1990, p. 448; Lopez-Fernandez and Winemiller 2005, p. 249). The Devils River minnow has been associated within the stream channel with areas with slow to moderate velocities between 10 and 40 centimeters (cm)/second (4 and 16 inches (in)/second) (Winemiller 2003, p. 13). The Devils River minnow is usually found in areas with shallow to moderate water depths between about 10 cm (4 in) and 1.5 meters (m) (4.9 feet (ft)) (Garrett *et al.* 2004, p. 436). Appropriate water depths and velocities are required physical features for Devils River minnows to complete all life history functions.

b. Cover. The presence of vegetative structure appears to be particularly important for the Devils River minnow. Garrett *et al.* (2004, p. 437) states that the species is most often found associated with emergent or submerged vegetation. Although some sites where Lopez-Fernandez and Winemiller (2005, p. 249) found Devils River minnow had little or no aquatic vegetation, they often found the Devils River minnow associated with stream banks having riparian vegetation that overhangs into the water column, presumably providing similar structure for the fish to use as cover. The structure provided by vegetation likely serves as cover for predator avoidance by the Devils River minnow and as a source of food where algae and other microorganisms may be attached. In controlled experiments in an artificial stream setting, minnows in the *Dionda* genus (the experiment did not distinguish between the Devils River minnow and the closely related manantial roundnose minnow) were found consistently associated with plants, and, in the presence of a predator, sought shelter in plant substrate habitat (Thomas 2001, p. 8). Also, laboratory observations by Gibson *et al.* (2004, p. 42) suggested that spawning only occurred when structure was provided in aquaria. Instream vegetative structure is an important biological feature for the Devils River minnow to avoid predation and complete other normal behaviors, such as feeding and spawning.

c. Substrates. The Devils River minnow is most often associated with substrates (stream bottom) described as gravel and cobble (Garrett *et al.* 2004, p. 436). Lopez-Fernandez and Winemiller (2005, p. 248) found the Devils River minnow associated with areas where the amounts of fine sediment on stream bottoms were low (less than 65 percent stream bottom coverage) (Winemiller 2003, p. 13) and where there was low or moderate amounts of substrate embeddedness. The term embeddedness is defined by Sylte and Fischenich (2003, p. 1) as the degree to which fine sediments surround coarse substrates on the surface of a streambed. Low levels of substrate embeddedness and low amounts of fine sediment are physical stream features that provide interstitial spaces within cobble and gravel substrates where microorganisms grow. These microorganisms are a component of the diet of the Devils River minnow (Lopez-Fernandez and Winemiller 2005, p. 250). We estimate substrate sizes for gravel-cobble between 2 and 10 cm (0.8 and 4 in) in diameter (Cummins 1962, p. 495) are important for supporting food sources for the Devils River minnow.

d. Stream Channel. The Devils River minnow occurs in the waters of stream channels that flow out of the Edwards Plateau of Texas. The streams contain a variety of mesohabitats for fish that are temporally and spatially dynamic (Harrell 1978, p. 60–61; Robertson and Winemiller 2003, p. 115). Mesohabitat types are stream conditions with different combinations of depth, velocity, and substrate, such as pools (stream reaches with low velocity and deep water), riffles (stream reaches with moderate velocity and shallow depths and some turbulence due to high gradient), runs (stream reaches with moderate depths, moderate velocities, and a uniformly flat stream bottom), and backwaters (areas in streams with little or no velocities along stream margins) (Parasiewicz 2001, p. 7). These physical conditions in stream channels are mainly formed by large flood events that shape the banks and alter stream beds. Healthy stream ecosystems require intact natural stream banks (including rocks and native vegetation) and stream beds (dynamically fluctuating from silt, sand, gravel, cobble, and bedrock). These physical features allow natural ecological processes in stream ecosystems, such as nutrient cycling, aquatic species reproduction and rearing of young, predator-prey interactions, and maintenance of habitat for Devils River minnow behaviors of feeding, breeding, and seeking shelter.

Devils River minnow may move up and downstream to use diverse mesohabitats during different seasons and life stages, which could partially explain the highly variable sampling results assessing abundance of the fish (Garrett *et al.* 2002, p. 478). However, it is unknown to what extent Devils River minnow may move within occupied stream segments because no research on movement has been conducted. Linear movement (upstream or downstream) within streams may be important to allow fishes to complete life history functions and adjust to resource abundance, but this linear movement may often be underestimated due to limited biological studies (Fausch *et al.* 2002, p. 490). The Devils River minnow occurs in relatively short stream segments and, therefore, needs to be able to move within the stream unimpeded to access different areas

within the stream to complete life history functions and find resources, such as food and cover.

Food

The Devils River minnow, like other minnows in the *Dionda* genus, has a long coiled gut for digesting algae and other plant material. Lopez-Fernandez and Winemiller (2005, p. 250) noted that Devils River minnows graze on algae attached to stream substrates (such as gravel, rocks, submerged plants, and woody debris) and associated microorganisms. Thomas (2001, p. 13) observed minnows in the *Dionda* genus (the experiment did not distinguish between Devils River minnow and the closely related manantial roundnose minnow) feeding extensively on filamentous algae growing on plants and rocks in an artificial stream experiment. The specific components of the Devils River minnow diet have not been investigated, but a study is underway to identify stomach contents of the Devils River minnow in San Felipe Creek (TPWD 2006, p. 1). An abundant aquatic food base of algae and other aquatic microorganisms attached to stream substrates is an essential biological feature for conservation of Devils River minnow.

Water Quality

The Devils River minnow occurs in spring-fed streams originating from groundwater. The aquifers that support these streams are of high quality and are free of pollution and most human-caused impacts (Plateau Water Planning Group (PWPG) 2006, pp. 5–9). This region of Texas has limited human development that would compromise water quality of the streams where Devils River minnows occur. San Felipe Creek may be an exception; see ''Special Management Considerations or Protection'' below. The watersheds are largely rural and were altered in the past to some extent by livestock grazing (cattle, sheep, and goats) for many decades (Brune 1981, p. 449), which may have caused some degradation in water quality. In recent years, land management has shifted away from sheep and goat grazing toward cattle grazing and recreational uses, such as hunting, that can promote maintenance of healthier grasslands (McCormick 2008, p. 33).

No specific studies have been conducted to determine water quality preferences or tolerances for Devils River minnow. However, because the species now occurs in only three streams, observations of water quality conditions in these streams are used to evaluate the needed water quality parameters for critical habitat. In addition, laboratory studies by Gibson *et al.* (2004, pp. 44–46) and Gibson and Fries (2005, pp. 299–203) have also provided useful information for the water quality conditions in captivity for Devils River minnow, as described in the following discussion.

a. Water temperature. Water temperatures from groundwater discharge at these springs are considered constant (Hubbs 2001, p. 324). However, water temperatures downstream from springs vary daily and seasonally (Hubbs 2001, p. 324). Water temperatures have been measured in these stream segments where Devils River minnow are found to range from about 17 °C (degrees Celsius) to 29 °C (63 °F (degrees Fahrenheit) to 84 °F). Temperatures in the Devils River ranged from 17 °C to 27 °C (63 °F to 81 °F) (Lopez-Fernandez and Winemiller 2005, p. 248; Hubbs 2001, p. 312). Measurements in San Felipe Creek have ranged from 19 °C to 24 °C (66 °F to 75 °F) (Hubbs 2001, p. 311; Winemiller 2003, p. 13). Gibson and Fries (2005, p. 296) had successful spawning by Devils River minnow in laboratory settings at temperatures from about 18 °C to 24 °C (64 °F to 75 °F). Higher water temperatures are rare in Devils River minnow habitat, but temperatures up to 29 °C (84 °F) were recorded in Pinto Creek (Garrett *et al.* 2004, p. 437). Pinto Creek generally has the lowest seasonal discharge rates (in other words, lower flows) of the streams known to contain the Devils River minnow, resulting in higher seasonal temperatures. Lower discharges during the summer can result in areas of shallow water with high levels of solar heat input leading to high water temperatures. Maintaining water temperatures within an acceptable range in small streams is an essential physical feature for the Devils River minnow to allow for survival and reproduction. Maintaining water temperatures within these ranges is interdependent on maintaining adequate spring flows to streams from groundwater aquifers, which generally discharge stable cooler water (Mathews 2007, p. 2).

b. Water chemistry. Researchers have noted the need for high-quality water in habitats supporting the Devils River minnow (Garrett 2003, p. 155). Field studies at sites where Devils River minnow have been collected in conjunction with water quality measurements have documented that habitats contain the following water chemistry: dissolved oxygen levels are greater than 5.0 mg/l (milligrams per liter) (Hubbs 2001, p. 312; Winemiller 2003, p. 13; Gibson *et al.* 2004, p. 44); pH ranges between 7.0 and 8.2 (Garrett *et al.* 2004, p. 440; Hubbs 2001, p. 312; Winemiller 2003, p. 13); conductivity is less than 0.7 mS/cm (microseimens per centimeter) and salinity is less than 1 ppt (part per thousand) (Hubbs 2001, p. 312; Winemiller 2003, p. 13; Garrett *et al.* 2004, p. 440; Gibson *et al.* 2004, p. 45); and ammonia levels are less than 0.4 mg/l (Hubbs 2001, p. 312; Garrett *et al.* 2004, p. 440). Streams with water chemistry within the observed ranges are essential physical features to provide habitat for normal behaviors of Devils River minnow.

Garrett *et al.* (2004, pp. 439–440) highlighted the conservation implications of water quality when describing the distribution of Devils River minnow in Pinto Creek. The species is abundant in upstream portions of the creek and is abruptly absent at and downstream from the Highway 90 Bridge crossing. A different aquifer (Austin Chalk) feeds the lower portion of the creek (Ashworth and Stein 2005, p. 19), which results in changes in water quality (different measurements of water temperature, pH, ammonia, and salinity). Garrett *et al.* (2004, p. 439) found that the change in water quality also coincided with the occurrence of different fish species that were more tolerant of these changes in water quality parameters.

c. Pollution. The Devils River minnow occurs only in habitats that are generally free of human-caused pollution. Garrett *et al.* (1992, pp. 266–267) suspected that the addition of chlorine to Las Moras Creek for the maintenance of a recreational swimming pool may have played a role in the extirpation of Devils River minnow from that system. Unnatural addition of pollutants such as chlorine, copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; suspended sediments; and petroleum compounds and gasoline or diesel fuels will alter habitat functions and threaten the continued existence of Devils River minnow. Fish, particularly herbivores and bottom-feeders, such as the Devils River minnow, are most likely affected by aquatic pollutants because their food source (algae and other macroinvertebrates) can be particularly susceptible to pollutant impacts (Buzan 1997, p. 4). Because Devils River minnow occurs in spring-fed waters that are generally free of sedimentation, protection from increased turbidity from suspended sediments or increased sedimentation from runoff are important to maintain suitable habitat (Robertson 2007, pp. 2–3). Areas with waters free of pollution are essential physical features to allow normal behaviors and growth of the Devils River minnow and

to maintain healthy populations of its food sources.

Sites for Breeding, Reproduction, and Rearing of Offspring

The specific sites and habitat associated with Devils River minnow breeding and reproduction have not been documented in the wild. However, Gibson *et al.* (2004) studied preferred conditions for spawning by Devils River minnow in a laboratory setting. Gibson *et al.* (2004, pp. 45–46) documented that the species is a broadcast spawner (they release eggs and sperm into the open water), over unprepared substrates (they don't build nests), and males display some territorial behavior. Broadcast spawning is the most common reproductive method in minnows (Johnston 1999, p. 22; Johnston and Page 1992, p. 604). Fertilized eggs of Devils River minnow were slightly adhesive (or became more adhesive with time) and tended to stick to gravels just below the surface of the substrate (Gibson *et al.* 2004, p. 46). The eggs can hatch less than one week after deposition (Gibson 2007, p. 1). There was little seasonality in spawning periods observed (Gibson *et al.* 2004, p. 45–46), which is consistent with a species that lives in a relatively stable temperature environment, such as spring-fed streams with low seasonal temperature variations. Based on this information, it is likely the species can spawn during most of the year. This is supported by Garrett *et al.* (2004, p. 437), who observed distinct breeding coloration of Devils River minnow (blue sheen on the head and yellow tint on body) in Pinto Creek in December 2001, and Winemiller (2003, p. 16), who found juveniles from early spring to late fall in San Felipe Creek.

a. Substrate. Gibson and Fries (2005, p. 299) found that Devils River minnow preferred gravel for spawning substrate, with size ranging mostly from 2 to 3 cm (0.8 to 1.2 in) in diameter. Gravel and rock substrates are required physical features for spawning (depositing, incubating, and hatching) of Devils River minnow eggs.

b. Cover. In laboratory experiments, Devils River minnow did not spawn in tanks until live potted plants (*Vallisnaria* spp. and *Justicia* spp.) were added; however, eggs were never found on the plants or other parts of the tank (Gibson *et al.* 2004, pp. 42, 43, 46). The plants apparently served as cover for the fish and allowed favorable conditions for spawning to occur. This condition is supported by observations in the wild that associates Devils River minnow with aquatic habitats where vegetative structure is present. This vegetative structure is a biological feature that is important for reproduction of Devils River minnow.

Habitat Protected From Disturbance or Representative of the Historic Geographical and Ecological Distribution of a Species

a. Nonnative Species. The introduction and spread of nonnative species have been identified as major factors in the continuing decline of native fishes throughout North America (Moyle *et al.* 1986, pp. 415–416) and particularly in the southwestern United States (Miller 1961, p. 397; Miller 1977, pp. 376–377). Williams *et al.* (1989, p. 1) concluded that nonnative species were a causal factor in 68 percent of the fish extinctions in North America in the last 100 years. For 70 percent of those fish still extant, but considered to be endangered or threatened, introduced nonnative species are a primary cause of the decline (Lassuy 1995, p. 392). Nonnative species have been referenced as a cause of decline in native Texas fishes as well (Anderson *et al.* 1995, p. 319; Hubbs 1990, p. 89; Hubbs *et al.* 1991, p. 2).

Aquatic nonnative species are introduced and spread into new areas through a variety of mechanisms, intentional and accidental, authorized and unauthorized. Mechanisms for nonnative fish dispersal in Texas include sport fish stocking (intentional and inadvertent, non-target species), aquaculture escapes, aquarium releases, and bait bucket releases (release of fish used as bait by anglers) (Howells 2001, p. 1).

Within the range of the Devils River minnow, nonnative aquatic species of potential concern include: armored (or suckermouth) catfish (*Hypostomus* sp.) in San Felipe Creek (Lopez-Fernandez and Winemiller 2005, pp. 246–251); smallmouth bass (Thomas 2001, p. 1), carp (*Cyprinus carpio*), goldfish (*Carassius auratus*), and redbreast sunfish (*Lepomis auritus*) (Edwards 2007, p. 1) in the Devils River; African cichlid (*Oreochromis aureus*) in San Felipe Creek (Lopez-Fernandez and Winemiller 2005, p. 249) and Devils River (Garrett *et al.* 1992, p. 266); Asian snail (*Melanoides tuberculata*) and associated parasites (McDermott 2000, pp. 13–14) in San Felipe Creek; and Asian bivalve mollusk (*Corbicula* sp.) (Winemiller 2003, p. 25) in San Felipe Creek. Effects from nonnative species can include predation, competition for resources, altering of habitat, changing of fish assemblages (combinations of species), or transmission of harmful diseases or parasites (Aquatic Nuisance Species Task Force 1994, pp. 51–59; Baxter *et al.* 2004, p. 2656; Howells 2001, pp. 17–18; Light and Marchetti 2007, pp. 442–444; Moyle *et al.* 1986, pp. 416–418). Studies have suggested effects on the Devils River minnow from the armored catfish in San Felipe Creek, most likely due to competition for food (Lopez-Fernandez and Winemiller 2005, p. 250). Armored catfish may also be piscivorous and directly prey on Devils River minnow (Wiersema 2007, pp. 5–6). Nonnative aquatic and riparian plants, such as hydrilla, water hyacinth, and giant river cane, also represent concerns for Devils River minnow from altering habitat conditions, food sources, and stream hydrology (Mathews 2007, p. 2).

The absence of impacts from harmful nonnative species is an essential biological feature for the conservation of the Devils River minnow. The persistence of Devils River minnow in its natural habitat depends on either having areas devoid of harmful nonnative aquatic species or having areas where nonnative aquatic species are present, but with sufficiently low levels of impacts to allow for healthy populations of the Devils River minnow.

b. Hydrology. Natural stream flow regimes (both quantity and timing) are vital components to maintaining ecological integrity in stream ecosystems (Poff *et al.* 1997, p. 769; Resh *et al.* 1988, pp. 443–444). Aquatic organisms, like the Devils River minnow, have specific adaptations to use the environmental conditions provided by natural flowing systems and the highly variable stream flow patterns (Lytle and Poff 2004, p. 94). As with other streams in the arid southwestern United States, streams where the Devils River minnow occurs can have large fluctuations in stream flow levels. In Texas, streams are characterized by high variation between large flood flows (occurring irregularly from rainfall events) and extended period of low flows (Jones 1991, p. 513). Base flows in streams containing Devils River minnow are generally maintained by constant spring flows (Ashworth and Stein 2005, p. 4), but in periods of drought, especially in combination with groundwater withdrawals, portions of stream segments can be periodically dewatered. The occurrence of intermittent stream segments within the range of the Devils River minnow is most common in Pinto Creek (Ashworth and Stein 2005, Figure 13; Uliana 2005, p. 4; Allan 2006, p. 1).

Although portions of stream segments included in this designation may experience short periods of low or no flows (causing dry sections of stream), they are still important because the

Devils River minnow is adapted to stream systems with some fluctuating water levels. Fish cannot persist in dewatered areas (Hubbs 1990, p. 89). However, Devils River minnows will use dewatered areas that are subsequently wetted as connective corridors between occupied or seasonally occupied habitat. Fausch *et al.* (2002, p. 490) notes in a review of movement of fishes related to metapopulation dynamics that, ''Even small fishes may move long distances to repopulate rewetted habitats.'' Preventing habitat fragmentation of fish populations is important in reducing extinction risks in rare species (Fagan 2002, p. 3255). Areas within stream courses that may be periodically dewatered but that serve as connective corridors between occupied or seasonally occupied habitat and through which the species may move when the habitat is wetted are important physical features of Devils River minnow habitat.

Flooding is also a large part of the natural hydrology of streams within the range of Devils River minnow. Large floods have been shown to alter fish community structure and fish habitat use in the Devils River (Harrell 1978, p. 67) and in San Felipe Creek (Garrett and Edwards 2003, p. 787; Winemiller 2003, p. 12). Pearsons *et al.* (1992, pp. 427) state that ''Flooding is one of the most important abiotic factors that structure biotic assemblages in streams.'' Floods provide flushing flows that remove fine sediments from gravel and provide spawning substrates for species like the Devils River minnow (Instream Flow Council 2002, p. 103; Poff *et al.* 1997, p. 775). Flooding is the physical mechanism that shapes stream channels by a process known as scour and fill, where some areas are scoured of fine sediments while fine sediments are redeposited in other areas (Gordon *et al.* 1992, pp. 304–305; Poff *et al.* 1997, pp. 771–772). This dynamic process is fundamental to maintaining habitat diversity in streams that ensure healthy ecosystem function (Lytle and Poff 2004, pp. 96–99; Poff *et al.* 1997, pp. 774–777). Allowing natural stream flows, particularly during flood events, is an essential physical process to maintain stream habitats for Devils River minnow.

Primary Constituent Elements for the Devils River Minnow

Within the geographical area we know to be occupied by the Devils River minnow, we must identify the physical and biological features within the geographical area occupied by the Devils River minnow at the time of listing that are essential to the conservation of the species and which may require special management considerations or protections. The physical and biological features are those primary constituent elements (PCEs) laid out in a specific spatial arrangement and quantity to be essential to the conservation of the species.

Based on the above needs and our current knowledge of the life history, biology, and ecology of the species, we have determined that the Devils River minnow's PCEs are:

(1) Streams characterized by:

a. Areas with slow to moderate water velocities between 10 and 40 cm/second (4 and 16 in/second) in shallow to moderate water depths between approximately 10 cm (4 in) and 1.5 m (4.9 ft), near vegetative structure, such as emergent or submerged vegetation or stream bank riparian vegetation that overhangs into the water column;

b. Gravel and cobble substrates ranging in diameter between 2 and 10 cm (0.8 and 4 in) with low or moderate amounts of fine sediment (less than 65 percent stream bottom coverage) and low or moderate amounts of substrate embeddedness; and

c. Pool, riffle, run, and backwater components free of artificial instream structures that would prevent movement of fish upstream or downstream.

(2) High-quality water provided by permanent, natural flows from groundwater springs and seeps characterized by:

a. Temperature ranging between 17 °C and 29 °C (63 °F and 84 °F);

b. Dissolved oxygen levels greater than 5.0 mg/l;

c. Neutral pH ranging between 7.0 and 8.2;

d. Conductivity less than 0.7 mS/cm and salinity less than 1 ppt;

e. Ammonia levels less than 0.4 mg/l; and

f. No or minimal pollutant levels for copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; fertilizers; suspended sediments; and petroleum compounds and gasoline or diesel fuels.

(3) Abundant aquatic food base consisting of algae; attached to stream substrates; and other microorganisms associated with stream substrates.

(4) Aquatic stream habitat either devoid of nonnative aquatic species (including fish, plants, and invertebrates) or in which such nonnative aquatic species are at levels that allow for healthy populations of Devils River minnows.

(5) Areas within stream courses that may be periodically dewatered for short time periods, during seasonal droughts, but otherwise serve as connective corridors between occupied or seasonally occupied areas through which the species moves when the area is wetted.

This final designation is designed for the conservation of PCEs necessary to support the life history functions that were the basis for the designation and the areas containing those PCEs in the appropriate quantity and spatial arrangement. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the areas occupied by the species at the time of listing contain the physical and biological features that are essential to the conservation of the species and that may require special management considerations or protections. We provide a summary discussion below of the special management needs for the Devils River, San Felipe Creek, and Pinto Creek stream segments. For additional information regarding the threats to the Devils River minnow and the needed management strategies to address those threats, see the Devils River Minnow Recovery Plan (Service 2005, pp. 1.7–1–1.7–7; 1.8–1–1.8–4; 2.5–1–2.5–5).

The following special management needs apply to all three stream segments, Devils River, San Felipe Creek, and Pinto Creek, and will be further discussed for each stream segment in the ''Critical Habitat Designation'' section below.

a. Groundwater Management. The waters that produce all three stream segments issue from springs that are supported by underground aquifers, generally some portion of the Edwards-Trinity Aquifer or the Edwards Aquifer (Ashworth and Stein 2005, pp. 16–33; Barker and Ardis 1996, pp. B5-B6; Brune 1981, pp. 274–277, 449–456; Green *et al.* 2006, pp. 28–29; LBG-Guyton Associates 2001, pp. 5–6; PWPG 2006, pp. 3–5, 3–6, 3–30; USGS 2007, p.2). Regional groundwater flow in this area is generally from north to south (Ashworth and Stein 2005, Figure 8). These aquifers are currently pumped to provide water for human uses including agricultural, municipal, and industrial (Ashworth and Stein 2005, p. 1; Green *et al.* 2006, pp. 28–29; LBG-Guyton Associates 2001, pp. 22–27; PWPG 2006, pp. 3–14, 3–15). Some parts of these aquifers have already experienced large water level declines due to a combination of pumping withdrawals and regional drought (Barker and Ardis 1996, p. B50). There are a number of

preliminary project plans to significantly increase the amount of groundwater pumped in this area to export it to other metropolitan centers (HDR Engineering Inc. 2001, p. 1–1; Khorzad 2002, p. 19; PWPG 2006, pp. 4–54). If the aquifers are pumped beyond their ability to sustain levels that support spring flows, these streams will no longer provide habitat for the Devils River minnow (Ashworth and Stein 2005, p.34; Edwards *et al.* 2004, p. 256; Garrett *et al.* 2004, pp. 439–440). Flow reductions can have indirect effects on fishes by impacting thermal regimes because higher water volumes buffers against temperature oscillations (Hubbs 1990, p. 89).

Groundwater pumping that could affect stream flows within the Devils River minnow's range is subject to local management control. State or Federal agencies do not control groundwater. Local groundwater conservation districts and groundwater management areas are the method for groundwater management in Texas and essentially replace the rule of capture where they exist (Caroom and Maxwell 2004, pp. 41–42; Holladay 2006, p. 3). Most districts are created by action of the Texas Legislature (Lesikar *et al.* 2002, p. 13). The regulations adopted by local groundwater conservation districts vary across the State and often reflect local decisions based on regional preferences, geologic limitations, and the needs of citizens (Holladay 2006, p. 3). The KCGCD is a local authority with some regulatory control over the pumping and use of groundwater resources in Kinney County (Brock and Sanger 2003, p. 42–44). The KCGCD intends to manage the groundwater in Kinney County on a sustainable basis and yet beneficially use the groundwater without exploiting or adversely affecting the natural flow of the intermittent streams, such as Pinto Creek. Additional scientific information is needed on the geology and hydrology in Kinney County to increase the knowledge on the relationships of groundwater and stream flows.

The 16 groundwater management areas in Texas include all of the state's major and minor aquifers. Each GMA is required to determine a future desired groundwater condition for their aquifers. Based on the desired future condition specified, the Texas Water Development Board determines a managed available groundwater level for the groundwater management area. Lands outside of a groundwater conservation district, such as Val Verde County, are not subject to groundwater pumping regulations unless a landowner seeks State funding for a groundwater project. In this case, the project must be included in the groundwater management area's regional water plan. The total groundwater allotments permitted by the groundwater management area must not exceed its managed available groundwater level. Val Verde is Groundwater Management Area 7 and Kinney County is within Groundwater Management Areas 7 and 10.

Currently, there is no groundwater district in Val Verde County. Absent a local groundwater district, groundwater resources in Texas are generally under the ''Rule of Capture,'' (Holladay 2006, p. 2; Potter 2004, p. 9) or subject to the groundwater management area plans. The rule of capture essentially provides that groundwater is a privately owned resource and, absent malice or willful waste, landowners have the right to take all the water they can capture under their land (Holladay 2006, p. 2; Potter 2004, p. 1). The regional water plan adopted by the Plateau Regional Water Planning Group for this area recognizes that groundwater needs to be managed for the benefit of spring flows (PWPG 2006, p. 3–30) and that groundwater use should be limited so that ''base flows of rivers and streams are not significantly affected beyond a level that would be anticipated due to naturally occurring conditions'' (Ashworth and Stein 2005, p. 34; PWPG 2006, p. 3–8). The Plateau Regional Water Plan is a non-regulatory water planning document for a 6-county area (including both Val Verde and Kinney counties) that maps out how to conserve water supplies, meet future water supply needs, and respond to future droughts.

Special management efforts are needed across the range of the Devils River minnow to ensure that aquifers are used in a manner that will sustain spring flows and provide water as an essential physical feature for the species. We would like to work cooperatively with landowners, conservation districts, and others to assist in accomplishing these management needs.

b. Nonnative Species. Controlling existing nonnative species and preventing the release of new nonnative species are special management actions needed across the range of the Devils River minnow. The best tool for preventing new releases is education of the public on the problems associated with nonnative species (Aquatic Nuisance Species Task Force 1994, pp. 16–17). Current nonnative species issues have been cited for possible impacts to the Devils River (smallmouth bass) and San Felipe Creek (armored catfish) (Lopez-Fernandez and Winemiller 2005, p. 247; Thomas 2001, p. 1; Robertson and Winemiller 2001, p. 220). The armored catfish may already be impacting Devils River minnows in San Felipe Creek through competition for common food resources of attached algae and associated microorganisms (Lopez-Fernandez and Winemiller 2005, p. 250). Hoover *et al.* (2004, pp. 6–7) suggest that nonnative catfishes in the family Loricariidae, such as armored catfish, will impact stream systems and native fishes by competing for food with other herbivores, changing plant communities, causing bank erosion due to burrowing in stream banks for spawning, incidentally ingesting fish eggs, and directly preying on native fishes (Wiersma 2007, p. 5). Problematic, nonnative species have not been documented in Pinto Creek.

c. Pollution. Special management actions are needed to prevent point and nonpoint sources of pollution entering the stream systems where the Devils River minnow occurs. Devils River and Pinto Creek are generally free of threats from obvious sources of pollution. San Felipe Creek is in an urban environment where threats from human-caused pollution are substantial. Potential for spill or discharge of toxic materials is an inherent threat in urban environments. In addition, there are little to few current controls in the City of Del Rio to minimize the pollutants that will run off into the creek during rainfall events from streets, parking lots, roof tops, and maintained lawns from private yards and the golf course (Winemiller 2003, p. 27). All of these surfaces will contribute pollutants (for example, fertilizers, pesticides, herbicides, petroleum products) to the creek and potentially impact biological functions of the Devils River minnow. In addition, trash is often dumped into or near the creek and can be a source of pollutants (City of Del Rio 2006, p. 11). Special management by the City of Del Rio is needed (City of Del Rio 2006, p. 13) to institute best management practices for controlling pollution sources that enter the creek and maintain the water quality at a level necessary to support Devils River minnow.

Special management actions may be needed to ensure appropriate best management practices are used in the exploration and development of petroleum resources in the watersheds of the Devils River minnow, particularly the Devils River (Smith 2007, p. 1). This will ensure that site development and drilling practices do not impact groundwater or surface water quality in habitats of the Devils River minnow.

d. Stream Channel Alterations. The stream channels in the three streams where Devils River minnow occurs

should be maintained in natural conditions, free of instream obstructions to fish movement and with intact stream banks of native vegetation. Devils River and Pinto Creek are generally free of stream channel alterations; however, San Felipe Creek has been altered by diversion dams, bridges, and armoring of stream banks (replacing native vegetation and soils with rock or concrete). Special management is needed in all three occupied streams to protect the integrity of the stream channels for the maintenance of the PCEs.

Criteria Used To Identify Critical Habitat

We are designating critical habitat for the Devils River minnow in areas that were occupied by the species at the time of listing and that contain PCEs in the quantity and spatial arrangement to support life history functions essential for the conservation of the species. We are also designating critical habitat in areas not considered to be occupied at the time of listing, but were subsequently discovered to be occupied and are essential for the conservation of the Devils River minnow.

Critical habitat is designated based on sufficient PCEs being present to support the life processes of the species. Some areas contain all PCEs and support multiple life processes. Some areas contain only a portion of the PCEs necessary to support the particular use of that habitat.

a. Range. We evaluated the geographical range of the Devils River minnow, as described in the Recovery Plan (Service 2005, p. 1.4.1–1.4.5). There are five stream segments in the United States (all in Texas) that have ever been known to have been occupied by the Devils River minnow: (1) The Devils River (Val Verde County) from Beaver Lake downstream to near the confluence with the Rio Grande; (2) San Felipe Creek (Val Verde County) from the headsprings on the Lowe Ranch to downstream of the City of Del Rio; (3) Sycamore Creek (Val Verde/Kinney county boundary), only documented from the Highway 277 Bridge crossing; (4) Pinto Creek (Kinney County) from Pinto Springs downstream to 0.5 stream km (0.3 stream mi) upstream of the Highway 90 Bridge crossing; and (5) Las Moras Creek (Kinney County), only documented from the Las Moras Spring in the City of Brackettville.

Each of these five stream segments has (or formerly had) isolated populations of Devils River minnow separated by long distances, unsuitable habitat, or large dams that prevent fish movements. Although each of these streams is a tributary of the Rio Grande, we do not expect any contemporary exchange of individuals between these stream segments. The Devils River minnow is generally associated with upstream reaches of these streams, and connectivity would require movement through downstream reaches, through the Rio Grande, and back upstream through uninhabited reaches. The Devils River minnow has not been documented in the Rio Grande, or any other of its tributaries in the United States in modern times (Contreras-Balderas *et al.* 2002, pp. 228–240; Edwards *et al.* 2002, p. 123; Garrett *et al.* 1992, pp. 261–265; Hoagstrom 2003, p. 95; Hubbs 1957, p. 93; Hubbs 1990, p. 90; Hubbs *et al.* 1991, p. 18; Treviño-Robinson 1959, p. 255). The mainstem Rio Grande is considered unsuitable habitat (Garrett *et al.* 1992, p. 261) because the aquatic habitat is very different (larger volume, higher suspended sediments, different suite of native fishes) than the streams where the Devils River minnow is found. The presence of Amistad Reservoir and Dam has further isolated the Devils River stream segment from the other stream segments. While some exchange of individuals could have occurred across a geologic time scale, any natural exchange of individual Devils River minnows between currently occupied streams in modern times is unlikely because of habitat changes in the Rio Grande, nonnative species, and potential instream barriers.

Lack of access to private property can limit opportunities to sample for the presence of Devils River minnow (such as occurred on Pinto Creek, see Garrett *et al.* 2004, p. 436) and may limit our ability to accurately determine the full range of the species. However, we do not expect any additional streams outside of the known historical range of the species to be occupied. There could be additional stream segments within the known range that may be found to be occupied during future surveys, but the best available information at this time supports only these five stream segments known to be or to have been occupied by Devils River minnow in the United States.

b. Occupancy. We have assessed the occupancy of streams based on the best survey information available. For the purpose of this critical habitat designation, we consider a stream segment to be occupied if Devils River minnow has been found to be present by species experts within the last 10 years, or where the stream segment is directly connected to a segment with documented occupancy within the last 10 years (see the ''Critical Habitat Designation'' section for additional occupancy information). The life expectancy of Devils River minnow is assumed to be about 3 years, although individuals have lived 5 years in captivity (Gibson 2007, p. 1). This represents new information compared to the estimate of 2 years life expectancy from the recovery plan (Service 2005 p. 2.2–3). Ten years is estimated to represent a time period that provides for at least three generations. We believe that a time period that provides for at least three generations allows adequate time to detect occupancy because the time period would encompass potential fluctuations in species abundance associated with seasonal or annual changes. Based on our biological expertise, it is reasonable to assume that combining life expectancy with environmental factors that may occur in a 10-year period will provide us with an indication of habitat occupancy. We expect a variety of environmental factors such as floods, droughts, and average precipitation and hydrologic conditions would be experienced over a 10-year period. Most stream segments have not been surveyed with a high degree of frequency, and this species can be difficult to detect, as even multiple samples within a short time in the same location by the same researcher can yield different results (Garrett *et al.* 2002, p. 478). If Devils River minnow are not documented in a 10-year period, which would encompass at least 3 generations and variable environmental conditions that could influence fish abundance and detect ability, we will consider that stream not occupied.

c. Areas Occupied at the Time of Listing. At the time the Devils River minnow was listed as a threatened species, it was only confirmed to occur at two sites on the Devils River (small tributaries) and in San Felipe Creek in the City of Del Rio, Texas (64 FR 56597). This species is reasonably expected to move throughout connected stream reaches, based on past and recent collection records from these streams (Garrett *et al.* 2002, p. 478). Therefore, we determine there are two stream segments that were occupied at the time of listing: (1) Devils River from Pecan Springs to downstream of Dolan Falls (Garrett 2006a, p. 4; Garrett 2007, p. 1); and (2) San Felipe Creek from the Head Spring to downstream through the City of Del Rio (Garrett 2006b, p. 1; Garrett 2007, p.1). The full extent of both stream segments is considered occupied, as surveys in the last 10 years have confirmed the species' presence in the streams and the unit consists of

contiguous habitat that allows fish movement throughout the stream. Because no collections had been made in Pinto Creek prior to the time of listing, we have chosen to treat this stream as unoccupied for the purposes of this designation (see the description of Pinto Creek under ''Areas Not Occupied at Time of Listing'' section).

d. Primary Constituent Elements. We are proposing to designate the stream segments that we have determined to be occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the species. Both of the stream segments occupied at the time of listing (Devils River and San Felipe Creek) contain sufficient PCEs to support life history functions essential for the conservation of the Devils River minnow.

e. Areas Not Occupied at Time of Listing. Section 3(5)(A)(ii) of the Act allows for critical habitat to be designated in areas outside the geographical area occupied by the species at the time it is listed if those areas are essential for the conservation of the species. Three stream segments historically occupied by Devils River minnow but not considered occupied at the time of listing are Pinto Creek, Sycamore Creek, and Las Moras Creek.

Pinto Creek. At the time of listing in 1999, previous fish surveys in Pinto Creek were limited to the locations of public access at highway bridge crossings and did not find the species present (Garrett *et al.* 1992, p. 260). In 2001, fish surveys were conducted in upstream areas of Pinto Creek that had not been sampled before; the surveys discovered a previously unknown population of Devils River minnow (Garrett *et al.* 2004, pp. 436–439). The species has been confirmed to occur from just upstream of the Highway 90 Bridge crossing further upstream to the origin of Pinto Creek at Pinto Springs (Garrett *et al.* 2004, pp. 438–439). Since this stream segment is isolated from other occupied areas, this stream segment was likely occupied at the time of listing, but appropriate surveys had not been conducted to verify it. We find that the Pinto Creek stream segment is essential to the conservation of the Devils River minnow because preliminary analysis has shown significant genetic variation between Devils River minnow populations in Pinto Creek and the Devils River (Conway *et al.* 2007, pp. 9–10). This makes Pinto Creek a unique population of Devils River minnow and an essential unit to maintain overall genetic diversity of the species to improve the likelihood of persistence in the future. In addition, maintaining a population in Pinto Creek is included in the recovery criteria (Service 2005, p. 2.1–2) and Pinto Creek provides the best source of Devils River minnows (due to proximity and habitat similarity) to implement possible future recovery actions if reestablishing the species into nearby Las Moras Creek proves feasible (Garrett *et al.* 2004, p. 440). As a result of this finding, it is not necessary to determine whether Pinto Creek was occupied at the time of listing for purposes of this particular rule.

Sycamore Creek and Las Moras Creek. For the purposes of the designation of critical habitat, Sycamore Creek and Las Moras Creek are not currently considered occupied by the Devils River minnow (that is, they have not been collected in either stream in the last 10 years). The last known occurrence of the species in these stream segments was 1989 for Sycamore Creek (Garrett *et al.* 1992, p. 265) and 1955 for Las Moras Creek (Garrett *et al.* 1992, p. 266; Hubbs and Brown 1956, pp. 70–71). Although recent publications continue to list Sycamore Creek as a stream where Devils River minnow may still occur (Garrett *et al.* 2004, p. 435; Lopez-Fernandez and Winemiller 2005, p. 247), we have a high degree of uncertainty as to the status of the fish in Sycamore Creek. Surveys in 1999 and 2002 from the area of last known occurrence (in 1989) did not yield Devils River minnow (Service 2005, Appendix A). In addition, Garrett *et al.* (1992, pp. 265–266) surveyed portions of Mud Creek (a tributary to Sycamore Creek) in 1989, but found no Devils River minnow. Additional surveys are needed to determine the current status of the fish in the Sycamore Creek watershed. Devils River minnow has not been collected from Las Moras Creek since the 1950s and is believed to be extirpated from the Las Moras Creek drainage. This conclusion is based on the absence of the species in sampling efforts from the late 1970s to 2002 (Hubbs *et al.* 1991, p. 18; Garrett *et al.* 1992, p. 266; Garrett *et al.* 2002, p. 479).

In our proposed critical habitat designation for Devils River minnow we specifically requested information from the public and peer reviewers regarding whether or not Sycamore and Las Moras creeks should be considered essential for the conservation of the Devils River minnow (72 FR 41687). Additionally, these streams were also included in our draft economic analysis. We received several comments, including from multiple peer reviewers, encouraging us to include these streams in the critical habitat because of their importance in the recovery of the Devils River minnow. Three peer reviewers expressed specific support for including Las Moras and Sycamore creeks in the critical habitat designation for the following reasons: (1) To maintain suitable habitat within its range because if left undesignated, the PCEs currently present will fall out of range and potential use for the recovery of the species will be lost; (2) to protect genetic diversity within the range of the species; (3) including them may be important for future recovery efforts, based on metapopulation theory that unoccupied patches are not less important than the occupied ones; (4) not including them as ecologically significant stream segments would be possibly detrimental to the species over time; and (5) if the creeks are determined not to provide essential habitat elements, they could be removed from the designation later or the habitat could be improved by future management. Three peer reviewers did not call for the inclusion of Las Moras and Sycamore creeks in the designation. However, two of those peer reviewers stressed that recovery of the Devils River minnow would need to include restoring the species to these streams to maintain genetic diversity and population redundancy and encouraged us to continue to work on these efforts.

Based on these comments and the guidance in the Devils River Minnow Recovery Plan we have determined these streams are essential for the conservation of the species. The delisting recovery criteria (1) in the Recovery Plan states that we have stable or increasing population trends for at least 10 years throughout the range of the Devils River (middle portion), San Felipe Creek, Sycamore Creek, and Pinto Creek and the species should be reestablished in Las Moras Creek, if scientifically feasible (Service 2005, p. iv). We explain in the following discussion our finding that these two streams are essential. However, we are excluding these areas from critical habitat because we find the benefits of excluding them outweigh the benefits of including them (see the ''Exclusions under Section 4(b)(2) of the Act'' section of this final rule for further details).

Because the recovery objectives, criteria, and strategy include having populations of Devils River minnow in Sycamore Creek and Las Moras Creek (if reestablishment is technologically feasible) (Service 2005, pp. 2.1–1—2.2–3), we find that these two streams are essential for the conservation of the Devils River minnow. Restoring Devils River minnow to Sycamore Creek and Las Moras Creek is important to achieving recovery goals for the species

and optimizes the chances of long-term species conservation because these creeks are isolated, vulnerable to threats, and therefore not likely to be naturally recolonized (Service 2005, p. 2.2–2). As discussed in the recovery plan, the feasibility of restoring populations in these areas is uncertain and the recovery plan provides no information as to which specific reaches of the creeks could support the restored populations. The recovery plan advises additional assessment to develop an effective restoration strategy. Landowner willingness and cooperation will be necessary in both streams before restoration could occur and will require using tools specifically designed for restoration efforts, such as Safe Harbor Agreements and reintroduction as an experimental population under section 10(j) of the Act.

f. Lateral Extent. The areas designated as critical habitat are designed to provide sufficient areas for breeding and non-breeding adults and rearing of juvenile Devils River minnow. In general, the essential physical and biological features of critical habitat for Devils River minnow include the spring heads and the wetted channel during average flow conditions of the stream segments. The Devils River minnow evolved in streams maintained by consistent flows from groundwater springs that varied little seasonally. Episodic floods, sometimes very large floods, are important hydrological processes for maintaining the natural stream channels and fish communities (Harrell 1978, p. 67; Valdes Cantu and Winemiller 1997, pp. 276–277). However, the streams do not have a regular seasonal pattern of flooding. Unlike some other stream fishes, the Devils River minnow is not known to be dependent on high flow events or use flooded habitats in overbank areas for reproduction or rearing of young. Therefore, the floodplain is not known to contain the features essential for the conservation of the Devils River minnow and is not included in this critical habitat designation.

The critical habitat designation includes a lateral extent that is limited to the normal wetted channel at bankfull discharge of the streams included in this designation. For the purposes of this designation, the wetted channel is considered the width of the stream channel at bankfull stage. Bankfull stage is the water height when stream flows just fill the stream to its banks before water spills out onto the adjacent floodplain (Gordon *et al.* 1992, pp. 305–307). The stream discharge that reaches bankfull stage occurs 1 or 2 days each year and has a recurrence interval that averages 1.5 years (Leopold 1994, pp. 129–141). The width of the lateral extent of critical habitat will vary depending on the stream geometry; however, it generally includes the immediate streamside vegetation that can extend into the water column and provide vegetative structure, one of the PCEs.

The critical habitat areas include the stream channels up to bankfull width within the identified stream reaches. The stream beds of navigable waters (stream beds of at least 30 ft wide) in Texas are generally owned by the State, in trust for the public, while the lands alongside the streams can be privately owned (Kennedy 2007, p. 3; Riddell 1997, p. 7). We believe that the bulk of the stream beds (including the small portion of the stream beds' lateral extent that is not under water when streams are not at bankfull stage) for all stream segments included in the critical habitat are considered public property, owned by the State, for the purpose of this rule.

Summary. We are designating critical habitat in areas that we have determined were occupied at the time of listing, and that contain sufficient PCEs to support life history functions essential for the conservation of the species. Stream segments are designated based on sufficient PCEs being present to support the life processes of the species. Some stream segments contain all PCEs and support multiple life processes. Some stream segments contain only a portion of the PCEs necessary to support the particular use of that habitat. For stream segments that were not occupied at the time of listing, we evaluated whether those areas were essential to the conservation of the Devils River minnow.

We find that two stream segments were occupied at the time of listing and contain sufficient PCEs to support life history functions essential for the conservation of the species: (1) Devils River from Pecan Springs to downstream of Dolan Falls, including short stretches of two tributaries, Phillips Creek and Dolan Creek; and (2) San Felipe Creek from the headsprings downstream through the City of Del Rio, including the outflow channels of East and West Sandia springs. We find that a third stream segment, Pinto Creek from Pinto Springs downstream to the Highway 90 Bridge crossing, was subsequently discovered to be occupied after listing and, for purposes of this rule, is essential for the conservation of the Devils River minnow for the reasons discussed above. We also find that Sycamore Creek and Las Moras Creek are essential for the conservation of the Devils River minnow.

Within this final rule, the critical habitat boundary is limited to bankfull width of the stream segments included in the designation, at the height in which stream flows just fill the stream to its banks before water spills out onto the adjacent floodplain. The scale of the critical habitat maps prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of developed areas such as bridge pylons, concrete paving, and other similar structures that lack PCEs for the Devils River minnow. Areas under bridge pylons and concrete paving do not contain PCEs, and we are excluding them from the boundaries of critical habitat, although the structures are too small to digitally delete from maps at the scale that we used to delineate the critical habitat boundaries. Any such structures and the land under them inside critical habitat boundaries shown on the maps of this final rule are not designated as critical habitat. Some such structures likely exist only within the San Felipe Creek Unit. Therefore, Federal actions limited to these areas would not trigger section 7 consultation, unless they affect the species or PCEs in adjacent critical habitat.

Final Critical Habitat Designation

Five areas meet the definition of critical habitat for the Devils River minnow. The five areas are: (1) Devils River Unit; (2) San Felipe Creek Unit; (3) Pinto Creek Unit; (4) Sycamore Creek; and (5) Las Moras Creek. The Devils River, San Felipe Creek, and Pinto Creek units are currently occupied by the Devils River minnow and all five areas constitute our best assessment of areas that meet the definition of critical habitat for the species.

All distances reported in this designation are estimated stream lengths calculated using geographic information system computer software (ArcGIS) approximating the stream channel (reported in stream km and stream mi). Stream channel lines were based on the National Hydrography Dataset and 7.5' topographic quadrangle maps obtained from the U.S. Geological Survey. We made some minor adjustments using the 2004 National Agriculture Imagery Program digital orthophotos obtained from the Texas Natural Resources Information System. The approximate length of each designated stream segment for each critical habitat unit is shown in Table 1. Critical habitat for Devils River minnow includes a total of 73.5 stream km (45.7 stream mi) that meet the definition of critical habitat for this species.

TABLE 1—CRITICAL HABITAT UNITS FOR THE DEVILS RIVER MINNOW

Critical habitat unit *	Stream km (stream mi) meeting the definition of critical habitat	Stream km (stream mi) excluded from critical habitat	Critical habitat stream km (stream mi)
1. Devils River Unit (includes Philips and Dolan Creeks)	47.0 (29.2)	47.0 (29.2)	0 (0)
2. San Felipe Creek Unit (includes outflow of East and West springs)	9.0 (5.6)	0 (0)	9.0 (5.6)
3. Pinto Creek Unit	17.5 (10.9)	0 (0)	17.5 (10.9)
4. Sycamore Creek Unit	4.0 (2.5)	4.0 (2.5)	0 (0)
5. Las Moras Creek Unit	18.8 (11.7)	18.8 (11.7)	0 (0)
Total	96.3 (59.9)	69.8 (43.4)	26.5 (16.5)

* The stream beds of the units meeting the definition of critical habitat are considered public and owned by the State of Texas.

Below, we provide brief descriptions of the Devils River, San Felipe Creek, and Pinto Creek, Sycamore Creek, and Las Moras Creeks units and reasons why each meets the definition of critical habitat for the Devils River minnow.

Unit 1: Devils River Unit

Unit 1 consists of approximately 43.6 stream km (27.1 stream mi) of the Devils River; 1.1 stream km (0.7 stream mi) of Phillips Creek; and 2.3 stream km (1.4 stream mi) of Dolan Creek. Phillips Creek and Dolan Creek are small tributaries to the Devils River that contain the PCEs and are occupied by the Devils River minnow. The upstream boundary on the Devils River is at, and includes, Pecan Springs. The downstream boundary on the Devils River is 3.6 stream km (2.2 stream mi) below Dolan Falls. Phillips Creek is included in this unit from the confluence with the Devils River to a point 1.1 stream km (0.7 stream mi) upstream. Dolan Creek is included from the confluence with the Devils River 2.3 stream km (1.4 stream mi) upstream to Dolan Springs. Including all three streams, the total distance in the Devils River Unit is approximately 47.0 stream km (29.2 stream mi).

The Devils River minnow was originally described from this unit in the 1950s (Hubbs and Brown 1956, p. 70), and it has been continually occupied ever since (Harrell 1978, pp. 64, 67; Garrett *et al.* 1992, p. 261; Service 2005, Appendix A). The Devils River minnow occupied this unit at the time of listing; at that time, the fish had been collected from only a few locations. Subsequent surveys by TPWD have established current occupancy of this entire unit (Service 2005, Appendix A). The upstream boundary of critical habitat represents the beginning of the permanent flow of the river (De La Cruz 2004, p. 1). The downstream boundary, 3.6 stream km (2.2 stream mi) downstream of Dolan Falls, represents the downstream extent of collections of the Devils River minnow by TPWD (Garrett 2007, p. 1).

The Devils River Unit contains one or more of the PCEs essential for conservation of the Devils River minnow. Special management in the Devils River Unit may be needed to control groundwater pumping to ensure spring flows are maintained and to prevent the introduction of nonnative species. See additional discussion above in the ''Special Management Considerations or Protections'' section.

Areas meeting the definition of critical habitat for Devils River minnow do not include lands adjacent to the stream channels. However, land ownership adjacent to the streams in the Devils River Unit is primarily private. Private ownership of the area includes The Nature Conservancy's 1,943-ha (4,800-ac) Dolan Falls Preserve, which also includes river frontage on the Devils River and Dolan Creek. The Nature Conservancy has owned this area since 1991 (The Nature Conservancy 2004, p. 9). The Nature Conservancy also holds conservation easements on about 66,800 ha (about 165,000 ac) of private land along the Devils River or in the Devils River watershed (McWilliams 2006, p. 1). The only public land adjacent to the streams of this unit is the State-owned Devils River State Natural Area (DRSNA) managed by the TPWD. The portion of this unit within the DRSNA includes about 1.6 stream km (1.0 stream mi) along the east bank of the Devils River and about 1.9 stream km (1.17 stream mi) along both banks of a portion of Dolan Creek.

As described below, we are excluding the Devils River Unit from the critical habitat designation for Devils River minnow (see the ''Exclusions Under Section 4(b)(2)'' section).

Unit 2: San Felipe Creek Unit

Unit 2 consists of approximately 7.9 stream km (4.9 stream mi) on San Felipe Creek, 0.8 stream km (0.5 stream mi) of the outflow of San Felipe Springs West, and 0.3 stream km (0.2 stream mi) of the outflow of San Felipe Springs East. The upstream boundary on San Felipe Creek is the Head Springs located about 1.1 stream km (0.7 stream mi) upstream of the Jap Lowe Bridge crossing. The downstream boundary on San Felipe Creek is in the City of Del Rio 0.8 stream km (0.5 stream mi) downstream of the Academy Street Bridge crossing. The unit includes the outflow channels of San Felipe Springs West and San Felipe Springs East. These channels are included in the critical habitat unit from their spring origin downstream to the confluence with San Felipe Creek. Including all three streams, the total distance included in the critical habitat in the San Felipe Creek Unit is approximately 9.0 stream km (5.6 stream mi). For specific coordinates of the boundaries for the critical habitat designation, please reference to the unit descriptions in the Regulation Promulgation section below.

San Felipe Creek was occupied by the Devils River minnow at the time of listing and is still occupied (Hubbs and Brown 1956, p. 70; Garrett *et al.* 1992, pp. 261, 265; Service 2005, Appendix A; Lopez-Fernandez and Winemiller 2005, p. 249). Although limited survey data are available, we consider the entire unit occupied because the habitat is contiguous, allowing fish to move in the upstream portions of the unit (Garrett 2006b, p. 1). The boundaries of critical habitat include all areas where TPWD has collected Devils River minnow within the San Felipe Creek Unit (Garrett 2007, p. 1).

The San Felipe Creek Unit contains one or more of the PCEs essential for conservation of the Devils River minnow. There are several unnatural barriers to fish movement that may currently segment the reaches within the City of Del Rio. Portions of the stream banks in the City of Del Rio have been significantly altered by arming with concrete and the invasion of an exotic cane (*Arundo donax*). However, much of the riparian area remains a functional part of the stream ecosystem,

contributing to the physical (for example, stream bank stabilization and water runoff filtration) and biological (for example, invertebrate communities using riparian vegetations and input of nutrient material from riparian vegetation) features of Devils River minnow habitat. Water quality in San Felipe Creek has been a concern due to the urban environment through which much of the creek flows. Potential for spill or discharge of toxic materials is an inherent threat in urban environments (City of Del Rio 2006, p. 13). The threats to the San Felipe Creek Unit that require special management include the potential for large-scale groundwater withdrawal and exportation that would impact spring flows, surface water diversion, pollution from urban runoff, nonnative vegetation on stream banks, other nonnative species (such as the armored catfish), and potential new nonnative species' introductions into the stream.

Land ownership adjacent to the streams areas being designated as critical habitat within the San Felipe Creek Unit includes private ranch lands from the Head Springs downstream to the City of Del Rio. Within the city limits, the City owns various tracts of land along the stream. Some of these areas are developed as public use parks and others have been recently obtained through a buyout program from the Federal Emergency Management Agency following damages from the 1998 flood (City of Del Rio 2006, pp. 5–6). Most of the City-owned property along the creek appears to be on the east bank of the creek, while the west bank is primarily private-owned residences. The San Felipe Springs East and West and their immediate outflow channels are on a golf course, privately owned by the San Felipe Country Club. In all, we estimate that the City of Del Rio owns about 1.1 stream km (0.7 stream mi) along both banks of the creek and spring outflow channels, mainly located downstream of the Highway 90 Bridge. Through the remainder of the City of Del Rio, we estimated the City of Del Rio owns about 2.2 stream km (1.4 stream mi) along the east bank of San Felipe Creek in parcels fragmented by private holdings.

Unit 3: Pinto Creek Unit

Unit 3 consists of approximately 17.5 stream km (10.9 stream mi) on Pinto Creek. The upstream boundary is Pinto Springs. The downstream boundary is 100 m (330 ft) upstream of the Highway 90 Bridge crossing of Pinto Creek. For specific coordinates of the boundaries for the critical habitat designation, please reference the unit descriptions in the Regulation Promulgation section below.

Pinto Creek was not considered occupied by Devils River minnow at the time of listing; however, Devils River minnows were documented in 2001 in upstream reaches of the creek where fish surveys had not been previously conducted (Garrett *et al.* 2004, pp. 437). The Pinto Creek Unit is essential for the conservation of the Devils River minnow because fish from this stream show significant genetic variation from other populations (Service 2006, p. 15). Because of its proximity to Las Moras Creek and the genetic variation from the more western population, fish from Pinto Creek would be the likely source population for possible future reintroduction into formerly occupied areas (Garrett *et al.* 2004, p. 440).

The boundaries of critical habitat represent all the areas within Pinto Creek where Devils River minnow has been collected (Garrett *et al.* 2004, p. 437–438). Further, the Pinto Creek Unit contains one or more of the PCEs essential for conservation of the Devils River minnow. The main threat to the Pinto Creek Unit that requires special management is the potential for large-scale groundwater withdrawal that, in combination with nature hydrological variation, could significantly impact spring flows. While nonnative species are not currently known to be a problem in Pinto Creek, preventing nonnative species from being introduced into the stream is an additional threat needing special management. Land ownership adjacent to the Pinto Creek Unit is all private ranches.

Unit 4: Sycamore Creek

The documented habitat for Devils River minnow in Sycamore Creek is at the U.S. Highway 277 bridge (Garrett *et al.* 1992, p. 265). Based on this information, we have estimated a critical habitat area of 4 stream km (about 2.5 stream mi) encompassing this site. Garrett *et al.* (1992, p. 265–266) recognized that the majority of surface flow in the drainage comes from Mud Creek, an eastern tributary that confluences with Sycamore Creek approximately 3 stream km (about 2 stream mi) upstream of the U.S. Highway 277 bridge crossing. The origin of the surface flows in Mud Creek is Mud Springs, located about 24 air km (about 15 air mi) north of U.S. Highway 277 crossing of Sycamore Creek and north of the U.S. Highway 90 (Brune 1981, p. 276). Despite collection efforts from Mud Creek, Devils River minnow has not been documented to occur there (Garrett *et al.* 1992, p. 266).

Sycamore Creek was not considered occupied by Devils River minnow at the time of listing. Sycamore Creek is essential for the conservation of the Devils River minnow because it is identified as a necessary population to achieve recovery (Service 2005, p. 2.1–2). The main threat to Sycamore Creek that requires special management is the potential for large-scale groundwater withdrawal that, in combination with natural hydrological variation, could significantly impact spring flows. While nonnative species are not currently known to be a problem in Sycamore Creek, preventing nonnative species from being introduced into the stream is an additional threat needing special management. Land ownership adjacent to Sycamore Creek is all private.

Unit 5: Las Moras Creek

The only confirmed habitat for Devils River minnow in Las Moras Creek is at the headwater spring on the grounds of Fort Clark in Brackettville based on collections in the 1950s (Garrett *et al.* 1992, p. 266; Brune 1981, p. 275). Based on this information and the longitudinal distribution of the fish in Pinto Creek and San Felipe Creek, we estimate that the critical habitat extends approximately 18.8 stream km (about 11.7 stream mi) downstream from Las Moras Spring to the Standard Pacific Railroad bridge crossing.

Las Moras Creek was not considered occupied by Devils River minnow at the time of listing. Las Moras Creek is essential for the conservation of the Devils River minnow because it is identified as a necessary population to achieve recovery (Service 2005, p. 2.1–2). The main threat to Las Moras Creek that requires special management is the potential for large-scale groundwater withdrawal that, in combination with natural hydrological variation, could significantly impact spring flows. Special management is also needed within the local watershed to maintain water quality and stream flows. While nonnative species are not currently known to be a problem in Las Moras Creek, preventing nonnative species from being introduced into the stream is an additional threat needing special management. Land ownership adjacent to Las Moras Creek includes the Fort Clark Springs Association in the upper portion of the reach and the remainder is all private.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies, including the Service, to ensure that actions they fund,

authorize, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify designated critical habitat. Decisions by the Fifth and Ninth Circuit Court of Appeals have invalidated our definition of ''destruction or adverse modification'' (50 CFR 402.02) (see *Gifford Pinchot Task Force* v. *U.S. Fish and Wildlife Service*, 378 F. 3d 1059 (9th Cir 2004) and *Sierra Club* v. *U.S. Fish and Wildlife Service et al.*, 245 F.3d 434, 442F (5th Cir 2001)), and we do not rely on this regulatory definition when analyzing whether an action is likely to destroy or adversely modify critical habitat. Under the statutory provisions of the Act, we determine destruction or adverse modification on the basis of whether, with implementation of the proposed Federal action, the affected critical habitat would remain functional (or retain the current ability for the PCEs to be functionally established) to serve its intended conservation role for the species.

If a species is listed or critical habitat is designated, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency (action agency) must enter into consultation with us. As a result of this consultation, we document compliance with the requirements of section 7(a)(2) through our issuance of:

(1) A concurrence letter for Federal actions that may affect, but are not likely to adversely affect, listed species or critical habitat; or

(2) A biological opinion for Federal actions that are likely to adversely affect listed species or critical habitat.

When we issue a biological opinion concluding that a project is likely to jeopardize the continued existence of a listed species or destroy or adversely modify critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. We define ''Reasonable and prudent alternatives'' at 50 CFR 402.02 as alternative actions identified during consultation that:

- Can be implemented in a manner consistent with the intended purpose of the action,
- Can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction,
- Are economically and technologically feasible, and
- Would, in the Director's opinion, avoid jeopardizing the continued existence of the listed species or destroying or adversely modifying critical habitat.

Reasonable and prudent alternatives can vary from slight project modifications to extensive redesign or relocation of the project. Costs associated with implementing a reasonable and prudent alternative are similarly variable.

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions in instances where we have listed a new species or subsequently designated critical habitat that may be affected and the Federal agency has retained discretionary involvement or control over the action (or such discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the Devils River minnow or its designated critical habitat will require section 7 consultation under the Act. Activities on State, Tribal, local, or private lands requiring a Federal permit (such as a permit from the U.S. Army Corps of Engineers under section 404 of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or a permit from us under section 10 of the Act) or involving some other Federal action (such as funding from the Federal Highway Administration, Federal Aviation Administration, or the Federal Emergency Management Agency) are examples of agency actions that may be subject to the section 7 consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, Tribal, local or private lands that are not federally funded, authorized, or carried out, do not require section 7 consultations.

There are no Federal lands in the areas we are designating as critical habitat for the Devils River minnow. Laughlin Air Force Base is located east of the City of Del Rio and obtains its municipal water from the City of Del Rio (which ultimately is withdrawn from the two San Felipe Springs). The Amistad National Recreation Area, located around Amistad Reservoir, is owned by the National Park Service and includes the downstream portions of the Devils River, but is not included in the critical habitat designation.

Since the Devils River minnow was listed in 1999, one formal section 7 consultation has occurred specifically concerning the species. That consultation was completed in 2006 with the Federal Highway Administration, through the Texas Department of Transportation, to replace the Beddell Avenue Bridge over San Felipe Creek in the City of Del Rio. One substantial informal consultation was completed in 2001 with the Environmental Protection Agency for funding through the TWDB to the City of Del Rio to upgrade the City's water treatment and distribution facilities. One programmatic consultation was completed with NRCS in 2004 concerning USDA programs for brush management in the western portions of Texas. This consultation concluded that the proposed actions were likely to result in benefits to the Devils River minnow by improving instream flows in the streams where the species occurs. The nature of the proposed brush clearing was not considered to have adverse affects (such as sedimentation) to Devils River minnow. Seven other informal consultations have occurred in the range of the species since its listing in 1999 which only peripherally involved Devils River minnow. Since the listing we provided technical assistance on five other projects that considered Devils River minnow but had no effects on the species. Based on this consultation history, we anticipate similarly low numbers of future Federal actions within the area designated as critical habitat for Devils River minnow.

Application of the ''Adverse Modification'' Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or would retain its current ability for the PCEs to be functionally established. Activities that may destroy or adversely modify critical habitat are those that alter the physical and biological features to an extent that appreciably reduces the conservation value of critical habitat for Devils River minnow.

Section 4(b)(8) of the Act requires us to briefly evaluate and describe, in any proposed or final regulation that designates critical habitat, activities involving a Federal action that may destroy or adversely modify such habitat, or that may be affected by such designation.

Activities that, when carried out, funded, or authorized by a Federal agency, may affect critical habitat and therefore would result in consultation for the Devils River minnow include, but are not limited to:

(1) Actions that would alter the natural flow regime, particularly the reduction of spring flows. These activities could include, but are not limited to, excessive groundwater pumping (significantly greater than current levels), water diversions from streams, and stream impoundments. These activities could reduce the amount of available habitat and space for normal behaviors of Devils River minnow, alter water quality as an indirect effect of reduced flows, alter the mesohabitat (pools, riffles, and runs) conditions necessary for Devils River minnow life history functions, and alter fish community dynamics to unnaturally favor species other than the Devils River minnow.

(2) Actions that would reduce native aquatic vegetation or native vegetation along stream banks. These activities could include, but are not limited to, channelization of the stream, armoring stream banks (replacing native vegetation and soils with rock or concrete), dredging the stream bottom, introducing nonnative plants that would replace native vegetation, or introducing herbivorous nonnative species. Loss of aquatic vegetation would eliminate an important structural component of Devils River minnow habitat (important for predator avoidance and spawning cues) and could reduce the amount of available habitat for reproduction, growth, and feeding.

(3) Actions that would significantly alter water quality or introduce pollutants into streams. Such activities could include, but are not limited to, release of chemicals, biological pollutants, or heated effluents (liquid waste products) into the surface water or connected groundwater at a point source or by dispersed release (non-point source). Sources of pollutants also include, but are not limited to, storm water runoff from urban development without adequate storm water controls, spill of hazardous chemicals into the creek or groundwater, or groundwater contamination by improperly drilled or maintained oil or gas wells. These activities could alter water conditions that are beyond the tolerances of the Devils River minnow or their food sources and could result in direct or cumulative adverse effects to these individuals and their life cycles.

(4) Actions that would significantly increase sediment deposition within the stream channel. Such activities could include, but are not limited to, excessive sedimentation from livestock grazing, road construction, channel alteration, brush clearing, off-road vehicle use, and other watershed and floodplain disturbances. Under some circumstances, these activities could eliminate or reduce the habitat necessary for the reproduction of Devils River minnow and could reduce the availability of food sources by affecting light penetration into the water column, filling in of stream beds with silt, or increasing the embeddedness of stream bottoms that reduces algae availability. The effects of any particular activity on Devils River minnow habitat must be evaluated on project-specific basis. The impacts of any specific activity will depend on the location, extent, and manner in which the activity is carried out.

(5) Actions that would significantly alter channel shape or geometry. Such activities could include, but are not limited to, channelization, impoundment, armoring stream banks, road and bridge construction, mining, dredging, and destruction of riparian vegetation. These activities may alter the natural pattern of available mesohabitats (pools, riffles, and runs). These actions can reduce the amount of habitat available for Devils River minnow to complete its normal life cycle and can give other species, especially nonnative species, competitive advantages. These actions can also lead to increased sedimentation and degradation in water quality to levels that are beyond the tolerances of the fish or their food sources.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the statute on its face, as well as the legislative history, are clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give any factor. In the following sections, we address a number of general issues that are relevant to the exclusions we considered.

Benefits of Designating Critical Habitat

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species that may require special management considerations or protection, and those areas outside the geographical area occupied by the species at the time of listing that are essential to the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that, on the basis of the best scientific and commercial data available at the time of designation, the habitat that is identified, if managed, could provide for the survival and recovery of the species.

The identification of those areas that are essential for the conservation of the species and can, if managed, provide for the recovery of a species is beneficial. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine the physical and biological features essential for conservation of the species within the geographical area occupied by the species at the time of listing, as well as to determine other areas essential to the conservation of the species. The designation process includes peer review and public comment on the identified physical and biological features and areas. This process is valuable to land owners and managers in developing conservation management plans for identified areas, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

The consultation provisions under section 7(a)(2) of the Act constitute the regulatory benefits of critical habitat. As discussed above, Federal agencies must consult with us on actions that may affect critical habitat and must avoid destroying or adversely modifying critical habitat. Federal agencies must also consult with us on actions that may affect a listed species and refrain from undertaking actions that are likely to jeopardize the continued existence of such species. The analysis of effects to critical habitat is a separate and different analysis from that of the effects to the species. Therefore, the difference in outcomes of these two analyses represents the regulatory benefit of critical habitat. For some species, and in some locations, the outcome of these analyses will be similar, because effects to habitat will often also result in effects to the species. However, the regulatory

standard is different, as the jeopardy analysis looks at the action's impact to survival and recovery of the species and the adverse modification analysis looks at the effects to the designated habitat's contribution to conservation of the species. This will, in many instances, lead to different results, and different regulatory requirements.

For 30 years prior to the Ninth Circuit's decision in *Gifford Pinchot*, consistent with the 1986 regulations, we essentially combined the jeopardy standard with the standard for destruction or adverse modification of critical habitat when evaluating Federal actions that affected currently occupied critical habitat. However, the court of appeals ruled that the two standards are distinct and that adverse modification evaluations require consideration of impacts on species recovery. Thus, critical habitat designations may provide greater regulatory benefits to the recovery of a species than would listing alone.

There are two limitations to the regulatory effect of critical habitat. First, a section 7(a)(2) consultation is required only where there is a Federal nexus (an action authorized, funded, or carried out by any Federal agency)—if there is no Federal nexus, the critical habitat designation of private lands itself does not restrict any actions that destroy or adversely modify critical habitat. Second, the designation only limits destruction or adverse modification. By its nature, the prohibition on adverse modification is designed to ensure that the conservation role and function of those areas that contain the physical and biological features essential to the conservation of the species or of unoccupied areas that are essential for the conservation of the species are not appreciably reduced. Critical habitat designation alone, however, does not require private property owners to undertake specific steps toward recovery of the species.

Once an agency determines that consultation under section 7(a)(2) of the Act is necessary, the process may conclude informally when the Service concurs in writing that the proposed Federal action is not likely to adversely affect critical habitat. However, if the Service determines through informal consultation that adverse impacts are likely to occur, then formal consultation is initiated. Formal consultation concludes with a biological opinion issued by the Service on whether the proposed Federal action is likely to result in destruction or adverse modification of critical habitat.

For critical habitat, a biological opinion that concludes in a determination of no destruction or adverse modification may contain discretionary conservation recommendations to minimize adverse effects to the physical and biological features essential to the conservation of the species, but it would not suggest the implementation of any reasonable and prudent alternative. We suggest reasonable and prudent alternatives to the proposed Federal action only when our biological opinion results in an adverse modification conclusion.

As stated above, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and/or adverse modification of its critical habitat, but not necessarily to manage critical habitat or institute recovery actions on critical habitat. Conversely, voluntary conservation efforts implemented through management plans institute proactive actions over the lands they encompass and are put in place to remove or reduce known threats to a species or its habitat; therefore, implementing recovery actions. We believe that in many instances the regulatory benefit of critical habitat is low when compared to the conservation benefit that can be achieved through conservation efforts or management plans. The conservation achieved through implementing Habitat Conservation Plans (HCPs), Safe Harbor Agreements, or experimental populations established under section 10 of the Act or other habitat management plans is typically greater than would be achieved through multiple site-by-site, project-by-project section 7 consultations involving consideration of critical habitat. Management plans commit resources to implement long-term management and protection to particular habitat for at least one and possibly other listed or sensitive species. Section 7 consultations only commit Federal agencies to prevent adverse modification to critical habitat caused by the particular project; they do not commit Federal agencies to provide conservation or long-term benefits to areas not affected by the proposed project. Thus, implementation of any HCP or management plan that incorporates enhancement or recovery as the management standard may often provide as much or more benefit than a consultation for critical habitat designation.

Another benefit of including lands in critical habitat is that designation of critical habitat serves to educate landowners, State and local governments, and the public regarding the potential conservation value of an area. This helps focus and promote conservation efforts by other parties by clearly delineating areas of high conservation value for Devils River minnow. In general, critical habitat designation always has educational benefits; however, in some cases, it may be redundant with other educational effects. For example, HCPs have significant public input and may largely duplicate the educational benefits of a critical habitat designation. Including lands in critical habitat also would inform State agencies and local governments about areas that could be conserved under State laws or local ordinances.

Recovery Benefits

The process of designating critical habitat as described in the Act requires that the Service identify those lands on which are found the physical or biological features essential to the conservation of the species which may require special management consideration or protections and specific unoccupied areas that are determined to be essential for the conservation of the species. In identifying those lands, the Service must consider the recovery needs of the species, such that the habitat that is identified, if managed, could provide for the survival and recovery of the species. Furthermore, once critical habitat has been designated, Federal agencies must consult with the Service under section 7(a)(2) of the Act to ensure that their actions will not adversely modify designated critical habitat or jeopardize the continued existence of the species. As noted in the Ninth Circuit's *Gifford Pinchot* decision, the Court ruled that the jeopardy and adverse modification standards are distinct, and that adverse modification evaluations require consideration of impacts to the recovery of species. Thus, through the section 7(a)(2) consultation process, critical habitat designations provide recovery benefits to species by ensuring that Federal actions will not destroy or adversely modify designated critical habitat.

It is beneficial to identify those lands that are necessary for the conservation of the species and that, if managed appropriately, would further recovery measures for the species. The process of proposing and finalizing a critical habitat rule provides the Service with the opportunity to determine lands essential for conservation as well as identify the physical and biological

features essential for conservation on those lands. The designation process includes peer review and public comment on the identified features and lands. This process is valuable to landowners and managers in developing habitat management plans for identified lands, as well as any other occupied habitat or suitable habitat that may not have been included in the Service's determination of essential habitat.

However, the designation of critical habitat does not require that any management or recovery actions take place on the lands included in the designation. Even in cases where consultation has been initiated under section 7(a)(2) of the Act, the end result of consultation is to avoid jeopardy to the species and adverse modification of its critical habitat, but not specifically to manage remaining lands or institute recovery actions on remaining lands. Conversely, management plans institute proactive actions over the lands they encompass intentionally to remove or reduce known threats to a species or its habitat and, therefore, implement recovery actions. We believe that the conservation of a species and its habitat that could be achieved through the designation of critical habitat, in some cases, is less than the conservation that could be achieved through the implementation of a management plan that includes species-specific provisions and considers enhancement or recovery of listed species as the management standard over the same lands. Consequently, implementation of an HCP or management plan that considers enhancement or recovery as the management standard will often provide as much or more benefit than a consultation for critical habitat designation conducted under the standards required by the Ninth Circuit in the *Gifford Pinchot* decision.

Conservation Partnerships on Non-Federal Lands

Most federally listed species in the United States will not recover without the cooperation of non-Federal landowners. More than 60 percent of the United States is privately owned (National Wilderness Institute 1995, p. 2), and at least 80 percent of endangered or threatened species occur either partially or solely on private lands (Crouse *et al.* 2002, p. 720). Stein *et al.* (1995, p. 400) found that only about 12 percent of listed species were found almost exclusively on Federal lands (90 to 100 percent of their known occurrences restricted to Federal lands) and that 50 percent of federally listed species are not known to occur on Federal lands at all.

Given the distribution of listed species with respect to land ownership, conservation of listed species in many parts of the United States is dependent upon working partnerships with a wide variety of entities and the voluntary cooperation of many non-Federal landowners (Wilcove and Chen 1998, p. 1407; Crouse *et al.* 2002, p. 720; James 2002, p. 271). Building partnerships and promoting voluntary cooperation of landowners is essential to our understanding the status of species on non-Federal lands, and necessary to implement recovery actions such as reintroducing listed species, habitat restoration, population monitoring, and habitat protection.

Many non-Federal landowners derive satisfaction from contributing to endangered species recovery. We promote these private-sector efforts through the Department of the Interior's Cooperative Conservation philosophy. Conservation agreements with non-Federal landowners (HCPs, safe harbor agreements, 10(j) experimental populations, other conservation agreements, easements, and State and local regulations) enhance species conservation by extending species protections beyond those available through section 7 consultations. In the past decade, we have encouraged non-Federal landowners to enter into conservation agreements, based on the view that we can achieve greater species conservation on non-Federal land through such partnerships than we can through regulatory methods (61 FR 63854; December 2, 1996).

Many private landowners, however, are wary of the possible consequences of encouraging endangered species to their property. Mounting evidence suggests that some regulatory actions by the Federal Government, while well-intentioned and required by law, can (under certain circumstances) have unintended negative consequences for the conservation of species on private lands (Wilcove *et al.* 1996, pp. 5–6; Bean 2002, pp. 2–3; Conner and Mathews 2002, pp. 1–2; James 2002, pp. 270–271; Koch 2002, pp. 2–3; Brook *et al.* 2003, pp. 1639–1643). Many landowners fear a decline in their property value due to real or perceived restrictions on land-use options where threatened or endangered species are found. Consequently, harboring endangered species is viewed by many landowners as a liability. This perception results in anti-conservation incentives because maintaining habitats that harbor endangered species represents a risk to future economic opportunities (Main *et al.* 1999, pp. 1264–1265; Brook *et al.* 2003, pp. 1644–1648).

According to some researchers, the designation of critical habitat on private lands significantly reduces the likelihood that landowners will support and carry out conservation actions (Main *et al.* 1999, p. 1263; Bean 2002, p. 2; Brook *et al.* 2003, pp. 1644–1648). The magnitude of this outcome is greatly amplified in situations where active management measures (such as reintroduction, fire management, and control of invasive species) are necessary for species conservation (Bean 2002, pp. 3–4). The Service believes that the judicious exclusion of specific areas of non-federally owned lands from critical habitat designations can contribute to species recovery and provide a superior level of conservation than critical habitat alone.

The purpose of designating critical habitat is to contribute to the conservation of threatened and endangered species and the ecosystems upon which they depend. The outcome of the designation, triggering regulatory requirements for actions funded, authorized, or carried out by Federal agencies under section 7(a)(2) of the Act, can sometimes be counterproductive to its intended purpose on non-Federal lands. Thus, the benefits of excluding areas that may be covered by effective partnerships or other conservation commitments can often be high.

Benefits of Excluding Lands With HCPs or Other Management Plans From Critical Habitat

The benefits of excluding lands with approved long-term management plans from critical habitat designation include relieving landowners, communities, and counties of any additional regulatory burden that might be imposed by a critical habitat designation. Many conservation plans provide conservation benefits to unlisted sensitive species. Imposing an additional regulatory review as a result of the designation of critical habitat may undermine these conservation efforts and partnerships in many areas. Designation of critical habitat within the boundaries of management plans that provide conservation measures for a species is a disincentive to entities currently developing these plans or contemplating them in the future, because one of the incentives for undertaking conservation is greater ease of permitting where listed species will be affected. Addition of a new regulatory requirement would remove a significant incentive for undertaking the time and expense of management planning.

A related benefit of excluding lands within management plans from critical habitat designation is the unhindered, continued ability it gives us to seek new partnerships with future plan participants, including States, Counties, local jurisdictions, conservation organizations, and private landowners, which together can implement conservation actions that we would be unable to accomplish otherwise. Designating lands within approved management plan areas as critical habitat would likely have a negative effect on our ability to establish new partnerships to develop these plans, particularly plans that address landscape-level conservation of species and habitats. By preemptively excluding these lands, we preserve our current partnerships and encourage additional conservation actions in the future.

Furthermore, both HCP and Natural Community Conservation Plan (NCCP)–HCP applications require consultation, which would review the effects of all HCP-covered activities that might adversely impact the species under a jeopardy standard, including possibly significant habitat modification (see definition of ''harm'' at 50 CFR 17.3), even without the critical habitat designation. In addition, all other Federal actions that may affect the listed species would still require consultation under section 7(a)(2) of the Act, and we would review these actions for possibly significant habitat modification in accordance with the definition of harm referenced above.

The information provided in the previous section applies to all the following discussions of benefits of inclusion or exclusion of critical habitat.

Exclusions Under Section 4(b)(2) of the Act

We found that the public comments we received made a compelling case that excluding the Devils River Unit will provide for maintenance of positive relationships with private landowners along that stretch of river. These relationships are fundamental for implementing recovery actions for the Devils River minnow and outweigh the limited benefits that may occur from the designation of critical habitat there. Maintaining non-Federal partnerships in the other units in San Felipe Creek and Pinto Creek are of equal importance. However, as explained below, we believe that designation of critical habitat in those units does not put our non-Federal partnerships at risk and, therefore, no additional benefits for the Devils River minnow would be expected by excluding those units.

We also found in this final rule that Sycamore Creek and Las Moras Creek are essential streams for the conservation of the Devils River minnow. However, both streams are located exclusively on non-Federal lands and will require significant cooperation with private landowners and implementation of cooperative tools, such as safe harbor agreements and experimental populations established under section 10(j) of the Act, to achieve the recovery goals for the Devils River minnow in these creeks as outlined in the Recovery Plan. These recovery actions would be potentially precluded if critical habitat were designated on these streams since we consider these areas not occupied and landowner cooperation is a necessary step in the restoration and reestablishment of the Devils River minnow to these two creeks.

Devils River Unit

Benefits of Inclusion

The benefits of including lands in critical habitat can be regulatory, educational, or to aid in recovery of species as generally discussed in the ''Benefits of Designating Critical Habitat'' section above. The following is our assessment of the estimated benefits for inclusion of the Devils River Unit.

We expect only minimal regulatory benefits from the designation of critical habitat for the Devils River minnow. As explained in the final economic analysis (FEA) (p. A–1) and the ''Effects of Critical Habitat Designation'' section in this final rule, we have had very few section 7 consultations for this species since its listing, (one formal consultation, nine informal consultations, and five technical assistance events since 1999) and we foresee few section 7 consultations in the next 20 years. Appendix A in the FEA (p. A–5) estimates a total of 2 formal consultations, 21 informal consultations, and 12 technical assistance events over the next 20 years throughout the range of the species. This is because there are few, if any, actions occurring with a Federal nexus within the range of the species that may affect the species or its habitat. The FEA found that no formal section 7 consultations are likely to occur in the Devils River Unit in the next 20 years. Comments received during the public comment period indicated that oil and gas development in the Devils River watershed could adversely affect Devils River minnow habitat in the Devils River. However, we are not aware of a Federal nexus to oil and gas activities that would result in a section 7 consultation and possible regulatory benefit of critical habitat. The lack of section 7 consultations results in very limited regulatory benefits for the designation of critical habitat in the Devils River Unit.

We expect there may be some limited educational benefits associated with the designation of critical habitat. However, most people actively involved in water resource management in these areas likely already know the need for conservation of the Devils River minnow. Designating critical habitat could provide another opportunity to highlight these areas as important for the conservation of the species and provide more specific information on the physical and biological features that define habitat for the species. We expect the educational benefits to be especially limited in the Devils River Unit, where the few local landowners along the river have been engaged in Devils River minnow issues for the 30 years since the species was initially proposed for listing and the river proposed for critical habitat designation in 1978. Many of the families involved in Devils River minnow issues in 1978 are still involved. We therefore foresee very limited additional education value that the designation would be expected to offer to these landowners.

We expect few to no additional benefits to the recovery of the Devils River minnow as a result of the designation of critical habitat in the Devils River Unit. The habitat areas are outlined and the biological features are readily defined in the species' recovery plan. With limited regulatory and educational benefits likely, we foresee no other tangible benefits to further recovery of the species as a result of the designation of critical habitat.

Benefits of Exclusion

Non-Federal Partnerships

The distribution of the Devils River minnow is largely within private ownership, and, therefore, the management of its habitat has limited influence by Federal agency actions. As a result, partnerships with and among non-Federal organizations and private individuals are the key to conserving the Devils River minnow. The top priority task in the Devils River Minnow Recovery Plan, for example, includes ''Seek and maintain the cooperation of landowners'' (Service 2005, p. 3.3–1). Therefore, we believe it is important to consider the potential benefits that will be realized by preserving our positive relationships with landowners and other non-Federal organizations if we

exclude an area from the final critical habitat designation.

The need for strong partnerships on non-Federal lands for the conservation of the Devils River minnow is of heightened importance in the Devils River watershed. The remote, rural area is comprised of large private ranches with very limited influence by public activities. Land management to promote and conserve healthy watersheds, native riparian areas, and groundwater recharge and sustainable use depends on the voluntary actions of the private landowners.

During the second public comment period, at least 12 individuals (either landowners along the Devils River or representatives for those interests) commented negatively about the perceived effects of the designation of the Devils River Unit as critical habitat. They envisioned that the designation would restrict landowner activities, lead to a change in the status of the Devils River minnow from threatened to endangered, and result in a devaluation of land values in the area.

We do not believe that these concerns are likely to be realized. We provide specific responses to these comments in the ''Comments and Responses'' section-that the designation of critical habitat should have little to no effect on landowner actions, is not a factor in the species' status as threatened rather than endangered, and should not result in a stigma effect to decrease land values. However, these widely held perceptions by landowners in the Devils River Unit could result in anti-conservation incentives because furthering Devils River minnow conservation is seen as a risk to future economic opportunities or loss of private property rights.

In addition, we received specific comments from the President of The Devils River Association (a 164-member local landowner organization to promote balance between preservation of the Devils River ecosystem and the desire to use the river and respect private property rights). These comments specifically stated that the Devils River Unit should be excluded because the benefits of doing so outweighed the benefits of inclusion. The comments included a discussion of the importance of cooperation with landowners that has occurred in the past. The comment states that this action (designating the Devils River as critical habitat) ''significantly decreases our interest to work cooperatively with USFWS.'' The comment goes on to state that, ''This action would terribly and, I am afraid, irreparably damage the trust that we have all built up over the last few years.''

Losing landowner trust and cooperation would be a significant setback to recovery efforts for the Devils River minnow on the Devils River. The designation of critical habitat could reduce the likelihood that landowners will support and carry out conservation actions needed to implement the recovery plan. The recovery plan calls for the following actions: monitor the status of Devils River minnow; determine biological and life history requirements; identify specific habitat requirements; and manage Devils River minnow habitat (Service 2005, pp. 2.3–1—2.4–6). All of these actions require the cooperation of private landowners.

One practical aspect of landowner cooperation in this area is the need for access to locations on the Devils River to carry out many recovery actions. In the past, landowners on the Devils River have been open to allowing access to conduct studies and for monitoring efforts by TPWD, the Service, and others. This is important on the Devils River because public access is limited to only two small areas, one on the Devils River State Natural Area and one at the Highway 163 bridge crossing. Past efforts for monitoring the Devils River minnow populations and habitats benefited from landowners voluntarily permitting access on private property to collect valuable information. Field monitoring of the river conditions and fish populations is a vital component to the recovery of the Devils River minnow.

In the past, this non-Federal partnership was under the guidance of the 1998 Devils River Minnow Conservation Agreement. The purpose of this agreement was to expedite conservation measures needed to ensure the continued existence and facilitate recovery of the species prior to a final listing decision. Although the formal agreement expired in 2003 without renewal, the landowners along the Devils River have continued to cooperate with us and TPWD to further the agreement's conservation goals (this was also highlighted in the public comments we received). Without this ongoing non-Federal partnership with private landowners, we expect that conservation opportunities for the species in the Devils River will be greatly reduced. We believe that maintaining non-Federal partnerships with local landowners on the Devils River is a substantial benefit of excluding the Devils River Unit from critical habitat designation and outweighs any benefits expected from including this unit in the designation. We anticipate that exclusion of this unit is likely to provide a superior level of conservation than critical habitat designation.

Conservation Efforts and Management Plans

When performing the required analysis under section 4(b)(2) of the Act to consider any potential exclusions of areas proposed for critical habitat, we considered planned or ongoing conservation efforts within the Devils River minnow's range (described in the proposed rule, 72 FR 41692). We received no new information during the public comment periods on the existence of other plans or conservation efforts, beyond those discussed below in this section. We evaluated these ongoing conservation efforts based on whether excluding one or more critical habitat units might provide recovery benefits for the Devils River minnow. Each effort provides some opportunity to benefit the Devils River minnow. However, we are not excluding any areas based solely on these conservation efforts and management plans.

The Nature Conservancy has a Conservation Area Plan (CAP) and several conservation easements in the Devils River Watershed. The CAP has significant goals for conserving the Devils River watershed and its implementation will provide benefits for the Devils River minnow. The Nature Conservancy has limited opportunity to implement the conservation strategies outside of the lands under their ownership or easement. Implementing the goals of the CAP will depend on the voluntary cooperation of the private landowners throughout the watershed.

We support the past and ongoing conservation efforts by The Nature Conservancy and encourage their continued work. Without the voluntary cooperation of neighboring landowners, the local and State agencies, the efforts by The Nature Conservancy provide only minimal benefits for the Devils River minnow. We believe The Nature Conservancy will continue to work on conservation efforts with or without the designation of critical habitat, and there are no benefits to The Nature Conservancy's ongoing conservation efforts by designating the Devils River Unit as critical habitat. However, there may be benefits accrued by excluding this unit from critical habitat if it increases The Nature Conservancy's ability to work more successfully with private landowners. As discussed above in the ''Benefits of Excluding Lands With HCPs or Other Management Plans From Critical Habitat'' section, designating critical habitat in an area with existing management plans may

provide a disincentive for voluntary cooperation by private landowners. Therefore, to maintain landowner relationships, there could be some benefits to excluding the Devils River Unit.

Benefits of Exclusion Outweigh the Benefits of Inclusion

In weighing the benefits of including versus the benefits of excluding the Devils River Unit, we find that the benefits of exclusion of these lands outweigh the benefits of inclusion of these lands in the critical habitat designation. This is based on the fact that there are very limited benefits to inclusion and substantial benefits from maintaining non-Federal partnerships by excluding this unit. Therefore, we find that excluding Devils River Unit is reasonable under the Secretary's discretion for ''other relevant impacts'' under section 4(b)(2) of the Act. We believe the loss of non-Federal partnerships on the Devils River, as expressed in the public comments we received on the proposed rule, is a relevant impact. The cooperation of private landowners to provide access to the river and participate in other recovery actions is a vital component to conservation of the Devils River minnow, and this could be lost if we designate critical habitat. In contrast, the benefits of inclusion are, as noted above, likely to be minor because of very limited opportunities for additional education and the lack of any Federal nexus for section 7 consultations specific to Devils River minnow in the unit. Recovery of the Devils River minnow is best served by the exclusion of the Devils River Unit.

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of the Devils River Unit that includes 29.2 stream mi (47.0 stream km) from the final designation of critical habitat will not result in the extinction of Devils River minnow. As described above, all of the area we are excluding from critical habitat is occupied by the species, and consultations will still occur under section 7 of the Act if there is a Federal nexus, even in the absence of their designation as critical habitat. Application of the jeopardy standard of section 7 of the Act also provides assurances that the species will not go extinct in the absence of this designation.

In summary, the benefits of including the Devils River Unit in the critical habitat designation for the Devils River minnow are few. The benefits of excluding this area from designated critical habitat are greater, and include maintaining important non-Federal partnerships. We find that the benefits of excluding this area from critical habitat designation outweigh the benefits of including this area and will not result in the extinction of the species.

Sycamore Creek and Las Moras Creek

Benefits of Inclusion

We expect only minimal regulatory benefits from the designation of critical habitat for the Devils River minnow. As explained in the FEA (p. A–1) and the ''Effects of Critical Habitat Designation'' section in this final rule, we have had very few section 7 consultations for this species since its listing (one formal consultation, nine informal consultations, and five technical assistance events since 1999) and we foresee few section 7 consultations in the next twenty years. Appendix A in the FEA (p. A–5) estimates a total of 2 formal consultations, 21 informal consultations, and 12 technical assistance events over the next 20 years throughout the range of the species. This is because there are few, if any, actions occurring with a Federal nexus within the range of the species that may affect the species or its habitat. There are no Federal lands within the watersheds of Sycamore or Las Moras creeks and the FEA found no formal section 7 consultations are likely to occur in the area of Sycamore or Las Moras creeks in the next 20 years. The absence of expected section 7 consultations suggests there are very limited regulatory benefits for the designation of critical habitat in Sycamore or Las Moras creeks.

We expect there may be some limited educational benefits associated with the designation of critical habitat. However, most people actively involved in water resource management in these areas likely already know the need for conservation of the Devils River minnow. Both Sycamore and Las Moras creeks are highlighted in the Devils River Minnow Recovery Plan. The streams are located in Kinney County where we are already actively working with local officials on conservation issues for the Devils River minnow. Designating critical habitat could provide another opportunity to highlight these areas as important for the conservation of the species and to seek specific information on the physical and biological features that define habitat for the species in these creeks. However, as discussed above, we expect the educational benefits of designating critical habitat in Sycamore or Las Moras creeks would be minimal since the importance of these creeks and the need for further information is already highlighted in the recovery plan and in the rules and economic analysis associated with this designation.

We expect few to no additional benefits to recovery of the Devils River minnow if critical habitat were designated in Sycamore or Las Moras creeks. With limited regulatory and educational benefits likely, we foresee no other tangible benefits to further recovery of the species as a result of the designation of critical habitat in these streams.

Benefits of Exclusion

As stated above and in the recovery plan, achieving recovery objectives for the Devils River minnow will include, if feasible, restoring populations in Sycamore and Las Moras creeks. We believe that the best way to achieve these objectives will be to use the authorities under section 10(j) of the Act to reestablish experimental populations or through safe harbor agreements. We believe that section 10(j) of the Act would be an appropriate tool to utilize in future restoration efforts. An overview of the process to establish an experimental population under section 10(j) of the Act is described below. Alternately, developing voluntary safe harbor agreements under section 10 of the Act is another tool that would allow restoring these populations in a cooperative effort with local landowners. Developing safe harbor agreements, as described below will require extensive partnerships with non-Federal landowners. Either alternative to accomplish these recovery objectives would benefit from excluding the areas from critical habitat designation.

Section 10(j) of the Act enables us to designate certain populations of federally listed species that are released into the wild as ''experimental.'' The circumstances under which this designation can be applied are the following: (1) The population is geographically separate from nonexperimental populations of the same species (*e.g.*, the population is reintroduced outside the species' current range but within its probable historic range); and (2) we determine that the release will further the conservation of the species. Section 10(j) is designed to increase our flexibility in managing an experimental population by allowing us to issue a special rule that provides flexibility in how the experimental population is managed. In situations where we have experimental populations, portions of

the statutory section 9 prohibitions (*e.g.*, harm, harass, capture) that apply to all endangered species and most threatened species may no longer apply, and a special rule can be developed that contains the specific prohibitions and exceptions necessary and appropriate to conserve that species. This flexibility allows us to manage the experimental population in a manner that will ensure that current and future land, water, or air uses and activities will not be unnecessarily restricted and that the population can be managed for recovery purposes.

When we designate a population as experimental, section 10(j) of the Act requires that we determine whether that population is either essential or nonessential to the continued existence of the species, on the basis of the best available information. Nonessential experimental populations located outside National Wildlife Refuge System or National Park System lands are treated, for the purposes of section 7 of the Act, as if they are proposed for listing. Thus, for nonessential experimental populations, only two provisions of section 7 would apply outside National Wildlife Refuge System and National Park System lands: section 7(a)(1), which requires all Federal agencies to use their authorities to conserve listed species, and section 7(a)(4), which requires Federal agencies to informally confer with us on actions that are likely to jeopardize the continued existence of a proposed species. Section 7(a)(2) of the Act, which requires Federal agencies to ensure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply except on National Wildlife Refuge System and National Park System lands.

The flexibility gained by establishment of an experimental population through section 10(j) would be of little value if a designation of critical habitat overlaps it. This is because Federal agencies would still be required to consult with us on any actions that may adversely modify critical habitat. In effect, the flexibility gained from section 10(j) would be rendered useless by the designation of critical habitat. In fact, section 10(j)(2)(C)(ii) of the Act states that critical habitat shall not be designated under the Act for any experimental population determined to be not essential to the continued existence of a species.

We strongly believe that, in order to facilitate recovery for the Devils River minnow, we would need the flexibility provided for in section 10(j) of the Act to help ensure the success of reestablishing populations in Sycamore or Las Moras creeks. Use of section 10(j) is meant to encourage local cooperation through management flexibility. Because critical habitat is often viewed negatively by the public, as is the case here as discussed elsewhere in this rule (see Non-Federal Partnerships discussion above), we believe it is important and necessary for recovery of this species that we have the support of the public when we develop and implement recovery actions.

Safe harbor agreements are another alternative that provide voluntary arrangements between us and cooperating non-Federal landowners. This policy's main purpose is to promote voluntary management for listed species on non-Federal property while giving assurances to participating landowners that no additional future regulatory restrictions will be imposed. The agreements are intended to benefit endangered and threatened species, by creating or restoring habitat for the species, while giving landowners assurances from additional restrictions. As part of a safe harbor agreement, we issue an ''enhancement of survival'' permit under section 10 of the Act, to authorize any necessary future incidental take to provide participating landowners with assurances that no additional restrictions would be imposed as a result of their conservation actions.

Developing future safe harbor agreements to facilitate restoration efforts for Devils River minnow in Sycamore and Las Moras creeks would require close cooperation with a number of private or non-Federal landowners. The negative perceptions of landowners regarding critical habitat, as described above, would most likely forestall any opportunity to engage landowners in Devils River minnow restoration using safe harbor agreements. Excluding these two streams from critical habitat provides better opportunities to work with landowners through safe harbor agreements to further restoration efforts of Devils River minnow. The ability to implement these conservation actions provides a clear benefit of excluding these streams from critical habitat designation.

This voluntary approach is consistent with the actions identified in the Recovery Plan necessary to establish additional viable populations of Devils River minnow within its historic range (Service 2005, pp. 2.4–6—2.4–7). The recovery plan recognizes that, ''Support of private landowners will be necessary to plan and implement reestablishment of the Devils River minnow'' (Service 2005, p. 2.4–6). The recovery plan also recognizes the need for landowner agreements (Recovery Action 2.1) to document landowner cooperation and a commitment to future conservation measures to ensure successful repatriation of the species (Service 2005, p. 2.4–6). Working with landowners in the future through either a establishing a section 10(j) experimental population or developing one or more safe harbor agreements would fulfill the anticipated recovery actions envisioned in the recovery plan.

Engaging private citizens and local landowners in proactive, voluntary measures such as restoration through experimental populations or safe harbor agreements requires a high level of trust and cooperation with Federal agencies. We believe it is highly unlikely we will develop this level of cooperation if these streams were designated as critical habitat. The strong negative perceptions that are likely to persist if these lands were designated as critical habitat would prevent us from realizing these voluntary opportunities for restoration in the near future. Maintaining existing non-Federal partnerships and creating new ones are necessary recovery actions to conserve the Devils River minnow. We note that Texas Governor Rick Perry submitted a letter to us dated June 27, 2008, indicating that he believes a cooperative method of land, water, and wildlife management is the best way to protect property rights and support healthy habitats and that critical habitat will do little to improve the habitat of the Devils River minnow. We believe this philosophy of cooperation between private landowners and the Service is consistent with the information in our analysis and is supported by the comments we received.

The Devils River Minnow Recovery Plan also recognizes the need to develop and implement a reintroduction plan, including a captive propagation plan and a genetics management plan (estimated cost of $100,000 per the Recovery Plan) (Service 2005, p. 3.3.–3), as first steps in our restoration efforts (Service 2005, pp. 2.4–7—2.4–8). We've been working to collect the necessary information to develop these plans through research since 2000 with the captive stocks of Devils River minnows being maintained at our San Marcos National Fish Hatchery and Technology Center (Conway *et al.* 2007; Gibson *et al.* 2004; Gibson and Fries, 2005; Service 2005, p. 1.8–2). These scientific studies have provided important baseline biological data on the species through experiments on captive breeding techniques. This information will allow us to develop reintroduction plans and begin seeking funding and landowner

cooperation to put these recovery tools in place to implement restoration efforts.

We have worked with local groups in the past to discuss the opportunities for restoration of the Devils River minnow in Las Moras Creek (Service 2005, p. 1.8–2). The implementation schedule from the recovery plan anticipates that landowner agreements to restore Devils River minnow to former sites of occurrence would, depending on availability of funding and cooperation, occur between years 3 through 6 following the approval of the recovery plan in 2005 (Service 2005, p. 3.3–2). The recovery plan estimates the cost of developing these agreements at $20,000. The recovery plan foresees the development and implementation of a reintroduction plan would occur in years 3 through 8 (Service 2005, p. 3.3–1), at an estimated cost of $200,000. We are committed to continue to actively examine the opportunities for developing the necessary landowner agreements to implement the actions identified in the Devils River Minnow Recovery Plan. The Service's lead field office for the Devils River minnow is also committed to using their funding through the Partners for Fish and Wildlife Program to work with landowners to develop and implement stream channel restoration projects if necessary. At the time of preparation of the Recovery Plan, the Service was not able to determine the cost of future restoration projects.

Benefits of Exclusion Outweigh the Benefits of Inclusion

In weighing the benefits of including versus the benefits of excluding Sycamore and Las Moras creeks, we find that the benefits of exclusion of these streams outweigh the benefits of inclusion of these streams in the critical habitat designation. This is based on the facts that there are very limited benefits to inclusion and substantial benefits to exclusion from maintaining non-Federal partnerships and providing opportunities for using flexible tools for restoration of the species to these streams. Use of these tools (safe harbor agreements and section 10(j) of the Act) would not be possible or effective without landowner cooperation. Therefore, we find that excluding Sycamore Creek and Las Moras Creek is reasonable under the Secretary's discretion for ''other relevant impacts'' under section 4(b)(2) of the Act. We believe the cooperation of private landowners to provide access to the river and participate in restoration actions under section 10 of the Act is a vital component to conservation of the Devils River minnow and these opportunities would be lost if critical habitat were designated. In contrast, the benefits of inclusion are, as noted above, likely to be minor because of limited opportunities for additional education and the lack of any Federal nexus for section 7 consultations specific to Devils River minnow in these two streams. Recovery of the Devils River minnow is best served by the exclusion of the Sycamore Creek and Las Moras Creek from critical habitat designation.

Exclusion Will Not Result in Extinction of the Species

We have determined that the exclusion of Sycamore Creek and Las Moras Creek from the final designation of critical habitat will not result in the extinction of Devils River minnow. As described above, we do not consider either of these streams to be currently occupied by the Devils River minnow. The species occurs in three other streams, two of which are being designated as critical habitat. Excluding these two streams will not affect conservation efforts ongoing throughout the currently occupied range of the species. We do not anticipate any loss of protection to the species or other impacts that would result from excluding these two streams from the designation of critical habitat.

In summary, the benefits of including Sycamore and Las Moras creeks in the critical habitat designation for the Devils River minnow are few. The benefits of excluding these streams from being designated as critical habitat are greater, and include creating important non-Federal partnerships and opportunities for restoration of the populations using tools under section 10 of the Act. We find that the benefits of excluding these two streams from critical habitat designation outweigh the benefits of including them and will not result in the extinction of the species. Therefore, these two streams are not included in the final critical habitat designation.

Pinto Creek Unit

We considered the exclusion of the Pinto Creek unit, but based on the record before us have elected not to exercise our discretion under section 4(b)(2) of the Act to exclude this unit. We expect there may be some limited educational benefits associated with the designation of critical habitat. However, most people actively involved in water resource management in these areas likely already know the need for conservation of the Devils River minnow. Pinto Creek is highlighted in the Devils River Minnow Recovery Plan. The stream is located in Kinney County where we are already working with local officials on conservation issues for the Devils River minnow. Designating critical habitat could provide another opportunity to highlight these areas as important for the conservation of the species and provide more specific information on the physical and biological features that define habitat for the species. We expect the educational benefits of designating critical habitat in Pinto Creek would be minimal.

We considered the Kinney County Groundwater Conservation District (KCGCD) draft management plan in our analysis. An updated management plan by the KCGCD was under development during completion of this final rule, and the final plan was approved after the close of the public comment period. We received comments from the KCGCD that the draft management plan would provide benefits to the Devils River minnow by managing groundwater on a sustainable basis without exploiting or adversely affecting the natural flow of the intermittent streams. We also received comments that groundwater pumping authorized by the KCGCD will result in adverse impact to Devils River minnow habitat in Pinto Creek. The KCGCD management plan was not approved until after the public comment period for this designation and, therefore, was not considered in its entirety as a basis for possible exclusion. We received comments from the KCGCD during the public comment period indicating that the future plan will likely provide spring flows in Pinto Creek. If so, it will be of great value to the conservation of the Devils River minnow and its habitat. We fully expect the KCGCD's plan will be carried out with or without the designation of critical habitat for the Devils River minnow and we look forward to working with the KCGCD to conserve Devils River minnow habitats in Kinney County. Landowners in the District are under the authority of the KCGCD for pumping permits, and their compliance does not depend on their voluntary cooperation. Therefore, we do not expect landowner cooperation with the KCGCD to be influenced by the designation of critical habitat or the exclusion from critical habitat, of Pinto Creek.

However, for all the reasons discussed above under the Devils River Unit, ''Benefits of Exclusion,'' section, maintaining strong non-Federal partnerships with landowners along Pinto Creek are important. This unit flows only through private lands, and there is only one bridge crossing that provides very limited access, so

landowner cooperation here is also vital to accomplishing recovery tasks. In the past we have had good relationships with the landowners along Pinto Creek, and access has been provided upon request. Based on our current relationships with the landowners, particularly in the most upstream reaches, we do not expect that critical habitat designation in this unit will likely negatively impact those relationships. We received only one comment from a landowner on Pinto Creek. This landowner was concerned about the impacts of groundwater pumping on stream flows and did not express any concerns about the proposed designation of critical habitat.

The KCGCD included as a public comment a resolution opposing the designation of critical habitat because they considered the Pinto Creek population of Devils River minnow introduced and stream flows there intermittent. They made no comment relative to any cooperation or potential that it would damage any future non-Federal partnership opportunities. We hope to build a strong partnership with the KCGCD in the future to work together to conserve spring flows in Pinto Creek. While the critical habitat designation may be perceived negatively by the KCGCD, we do not believe it will impact the long-term conservation efforts of the KCGCD. The KCGCD stated in their resolution that they were committed to maintaining natural flows in Pinto Creek. This is part of their authority to manage groundwater pumping through a permitting program. We believe the KCGCD will continue to strive toward maintaining spring flows whether or not the Pinto Creek Unit is included in the designation. Therefore, excluding the Pinto Creek Unit is not anticipated to provide benefits for Devils River minnow through preventing the loss of non-Federal partnerships in the Pinto Creek Unit. We received no other information during the comment period that would indicate there are additional benefits to excluding the Pinto Creek Unit.

San Felipe Creek Unit

We considered the exclusion of the San Felipe Creek Unit, but based on the record before us have elected not to exercise our discretion under section 4(b)(2) of the Act to exclude this unit. There are some limited educational benefits for the designation of the San Felipe Creek Unit. Many local officials and agency personnel are already aware of the need for conservation of San Felipe Creek for the benefit of the Devils River minnow. However, educating the general public (citizens of Val Verde County and the City of Del Rio) is a continuing goal for the recovery of the species (related to water use conservation by the City of Del Rio and preventing water pollution in San Felipe Creek) and requires ongoing efforts to accomplish. Designation of critical habitat could help to elevate the awareness to the public of the importance of the conservation of San Felipe Creek.

We considered the San Felipe Creek management plans by the City of Del Rio and the San Felipe Creek Country Club. These plans, signed in 2003, provide some conservation opportunities for the Devils River minnow in San Felipe Creek. However, to date, many of the actions in the plans have not been implemented. We have worked with the City of Del Rio to draft a new San Felipe Creek Master Plan, but this plan was not completed before the close of the comment period, and we do not know when it will be finalized. Most of the lands along San Felipe Creek are owned by the City of Del Rio. We do not expect the designation of critical habitat to have any bearing on the management of San Felipe Creek by the City of Del Rio. We have a good working relationship with the City of Del Rio, and we expect to continue this relationship. We received no indication from the City of Del Rio that designation of critical habitat would impact our relationship. We believe the City of Del Rio will continue to work toward completion and implementation of the master plan and conservation efforts for San Felipe Creek whether or not critical habitat is designated on San Felipe Creek. Therefore, we do not believe there are any benefits of excluding San Felipe Creek Unit based on these management plans and ongoing conservation efforts.

Economic Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. Section 4(b)(2) of the Act allows the Secretary to exclude areas from critical habitat for economic or other reasons if the Secretary determines that the benefits of such exclusion exceed the benefits of designating the area as critical habitat. However, this exclusion cannot occur if it will result in the extinction of the species concerned.

Following the publication of the proposed critical habitat designation, we conducted an economic analysis to estimate the potential economic effects of the designation. The draft analysis (dated December 21, 2007) was made available for public review on February 7, 2008 (73 FR 7237). We accepted comments on the draft analysis until March 10, 2008. Following the close of the comment period, a final analysis of the potential economic effects of the designation was developed taking into consideration the public comments and any new information.

The economic analysis considers the potential economic effects of all actions relating to the conservation of Devils River minnow, including costs associated with sections 4, 7, and 10 of the Act, as well as those attributable to designating critical habitat. It further considers the economic effects of protective measures taken as a result of other Federal, State, and local laws that aid habitat conservation for Devils River minnow in areas containing the features essential to the conservation of the species. The analysis considers both economic efficiency and distributional effects. In the case of habitat conservation, efficiency effects generally reflect the ''opportunity costs'' associated with the commitment of resources to comply with habitat protection measures (such as lost economic opportunities associated with restrictions on land use). The economic analysis also addresses how potential economic impacts are likely to be distributed, including an assessment of any local or regional impacts of habitat conservation and the potential effects of conservation activities on small entities and the energy industry. This information can be used by the decision-makers to assess whether the effects of the designation might unduly burden a particular group or economic sector (see ''Required Determinations'' section below). Finally, the economic analysis looks retrospectively at costs that have been incurred since the date this species was listed as threatened (October 20, 1999; 64 FR 56596), and considers those costs that may occur in the 20 years following designation of critical habitat (*i.e.*, coextensive costs, 2008–2027).

The economic analysis focuses on the direct and indirect costs of the rule. However, economic impacts to land-use activities can exist in the absence of critical habitat. These impacts may result from, for example, section 7 consultations under the jeopardy standard, local zoning laws, State and natural resource laws, and enforceable management plans and best management practices applied by other State and Federal agencies. Economic impacts that result from these types of protections are not included in the analysis as they are considered to be

part of the regulatory and policy baseline.

The economic analysis estimates potential economic impacts resulting from the implementation of Devils River minnow conservation efforts in three categories: (a) Water quality; (b) nonnative species; and (c) Devils River minnow sampling and monitoring. The final economic analysis estimates total pre-designation baseline impacts (8-year total from 1999 to 2007) to be $388,000, assuming a 3 percent discount rate, and $402,000, assuming a 7 percent discount rate. Post-designation baseline impacts over the next 20 years (2008 to 2027) are estimated to be $406,000, assuming a 3 percent discount rate, and $300,000, assuming a 7 percent discount rate. The post-designation incremental impacts (2008 to 2027) are estimated to be $47,600, assuming a 3 percent discount rate, and $33,600, assuming a 7 percent discount rate.

We evaluated the potential economic impact of this designation as identified in the economic analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts that warrant exclusion under section 4(b)(2) of the Act at this time. The final economic analysis is available on the Internet at *http://www.regulations.gov* and *http://www.fws.gov/southwest/es/AustinTexas/* or upon request from the Austin Ecological Services Field Office (see **ADDRESSES** section).

Required Determinations

In our July 31, 2007, proposed rule (72 FR 41679), we indicated that we would defer our determination of compliance with several statutes and Executive Orders until the information concerning potential economic impacts of the designation and potential effects on landowners and stakeholders was available in the draft economic analysis. In this final rule, we affirm the information contained in the proposed rule concerning Executive Order (E.O.) 13132, E.O. 12988, the Paperwork Reduction Act, the National Environmental Policy Act, and the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951).

Regulatory Planning and Review

The Office of Management and Budget (OMB) has determined that this rule is not significant and has not reviewed this rule under Executive Order 12866 (E.O. 12866). OMB bases its determination upon the following four criteria:

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

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

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

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

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

Under the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) (5 U.S.C. 802(2)), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental 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 RFA to require Federal agencies to provide a certification statement of the factual basis for certifying that the rule will not have a significant economic impact on a substantial number of small entities. In this final rule, we are certifying that the critical habitat designation for Devils River minnow will not have a significant economic impact on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration (SBA), small entities include small organizations, such as independent nonprofit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses (13 CFR 121.201). Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we considered the types of activities that might trigger regulatory impacts under this designation as well as types of project modifications that may result. In general, the term ''significant economic impact'' is meant to apply to a typical small business firm's business operations.

To determine if the rule could significantly affect a substantial number of small entities, we considered the number of small entities affected within particular types of economic activities (*e.g.*, residential and commercial development and agriculture). We apply the ''substantial number'' test individually to each industry to determine if certification is appropriate. However, the SBREFA does not explicitly define ''substantial number'' or ''significant economic impact.'' Consequently, to assess whether a ''substantial number'' of small entities is affected by this designation, this analysis considers the relative number of small entities likely to be impacted in an area. In some circumstances, especially with critical habitat designations of limited extent, we may aggregate across all industries and consider whether the total number of small entities affected is substantial. In estimating the number of small entities potentially affected, we also consider whether their activities have any Federal involvement.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies. Some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation. In areas where the species is present, Federal agencies already are required to consult with us under section 7 of the Act on activities they fund, permit, or carry out that may affect Devils River minnow (see Section 7 Consultation section). Federal agencies also must consult with us if their activities may affect critical habitat. Designation of critical habitat, therefore, could result in an additional economic impact on small entities due to the requirement to reinitiate consultation for ongoing Federal activities (see Application of the ''Adverse Modification'' Standard section).

Appendix B of the final economic analysis (FEA) examined the potential for Devils River minnow conservation efforts to affect small entities. The analysis was based on the estimated impacts associated with the proposed critical habitat designation. Based on the analysis, the potential for economic impacts of the designation on small

entities are expected to be borne primarily by the City of Del Rio and other miscellaneous small entities. The identities of these small entities are not known at this time but are expected to include local developers and private landowners that may represent third parties in section 7 consultations on the Devils River minnow in the future. The City of Del Rio and other miscellaneous small entities are expected to incur, at most, combined annualized administrative costs related to consultations for adverse modification of approximately $3,000, assuming a 3 percent discount rate. This estimated $3,000 in combined annual administrative costs is not expected to have a significant impact on small entities, including the City of Del Rio. In addition, because the annualized post-designation incremental impacts expected for the City of Del Rio and other miscellaneous small entities are relatively small, no future indirect impacts associated with post-designation incremental impacts are expected for the small businesses and entities included in this analysis.

Small Business Regulatory Enforcement Fairness Act (5 U.S.C 801 et seq.)

Under SBREFA, this rule is not a major rule. Our detailed assessment of the economic effects of this designation is described in the economic analysis. Based on the effects identified in the economic analysis, we believe that this rule will not have an annual effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and 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. Refer to the final economic analysis for a discussion of the effects of this determination (see **ADDRESSES** for information on obtaining a copy of the final economic analysis).

Executive Order 13211—Energy Supply, Distribution, or Use

On May 18, 2001, the President issued E.O. 13211 on regulations that significantly affect energy supply, distribution, or use. E.O. 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. OMB has provided guidance for implementing this E.O. that outlines nine outcomes that may constitute ''a significant adverse effect'' when compared without the regulatory action under consideration. The economic analysis finds that none of these criteria are relevant to this analysis. Thus, based on information in the economic analysis, energy-related impacts associated with Devils River minnow conservation activities within critical habitat are not expected. As such, the designation of critical habitat is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action, and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501), the Service makes the following findings:

(a) This rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or Tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)–(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or tribal governments'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and tribal governments under entitlement authority,'' if the provision would ''increase the stringency of conditions of assistance'' or ''place caps upon, or otherwise decrease, the Federal Government's responsibility to provide funding,'' and the State, local, or Tribal governments ''lack authority'' to adjust accordingly. At the time of enactment, these entitlement programs were: Medicaid; Aid to Families with Dependent Children work programs; Child Nutrition; Food Stamps; Social Services Block Grants; Vocational Rehabilitation State Grants; Foster Care, Adoption Assistance, and Independent Living; Family Support Welfare Services; and Child Support Enforcement. ''Federal private sector mandate'' includes a regulation that ''would impose an enforceable duty upon the private sector, except (i) a condition of Federal assistance or (ii) a duty arising from participation in a voluntary Federal program.''

The designation of critical habitat does not impose a legally binding duty on non-Federal government entities or private parties. Under the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not destroy or adversely modify critical habitat under section 7. Non-Federal entities that receive Federal funding, assistance, permits, or otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. However, the legally binding duty to avoid destruction or adverse modification of critical habitat rests squarely on the Federal agency. Furthermore, to the extent that non-Federal entities are indirectly impacted because they receive Federal assistance or participate in a voluntary Federal aid program, the Unfunded Mandates Reform Act would not apply, nor would critical habitat shift the costs of the large entitlement programs listed above on to State governments.

(b) We do not believe that this rule will significantly or uniquely affect small governments because it will not produce a Federal mandate of $100 million or greater in any year; that is, it is not a ''significant regulatory action'' under the Unfunded Mandates Reform Act. The designation of critical habitat imposes no obligations on State or local governments. By definition, Federal agencies are not considered small entities, although the activities they fund or permit may be proposed or carried out by small entities. As such, a Small Government Agency Plan is not required.

Executive Order 12630—Takings

In accordance with E.O. 12630 (''Government Actions and Interference with Constitutionally Protected Private Property Rights''), we have analyzed the potential takings implications of critical habitat for the Devils River minnow in a takings implications assessment. Critical habitat designation does not affect landowner actions that do not require Federal funding or permits, nor does it preclude development of habitat conservation programs or issuance of incidental take permits to permit actions that do require Federal funding or permits to go forward. The takings implications assessment concludes that this final designation of critical habitat for Devils River minnow does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), the final rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of the Interior and Department of Commerce

policy, we requested information from, and coordinated development of, this final critical habitat designation with appropriate State resource agencies in Texas. The designation of critical habitat in areas currently occupied by the Devils River minnow is not likely to impose any additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designation may have some benefit to these governments because the areas that contain the physical and biological features essential to the conservation of the species are more clearly defined, and the PCEs of the habitat necessary to the conservation of the species are specifically identified. This information does not alter where and what federally sponsored activities may occur. However, it may assist local governments in long-range planning (rather than having them wait for case-by-case section 7 consultation to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the Office of the Solicitor has determined that the rule does not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of the Order. We are designating critical habitat in accordance with the provisions of the Act. This final rule uses standard property descriptions and identifies the physical and biological features essential to the conservation of the species within the designated areas to assist the public in understanding the habitat needs of the Devils River minnow.

Paperwork Reduction Act of 1995

This rule does not contain any new collections of information that require approval by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act (NEPA) (42 U.S.C. 4321 et seq.)

It is our position that, outside the Tenth Circuit, we do not need to prepare environmental analyses as defined by the NEPA in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld in the courts of the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. Ore. 1995), cert. denied 116 S. Ct. 698 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), Executive Order 13175, and the Department of Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no tribal lands occupied at the time of listing that contain the features essential for the conservation of Devils River minnow, and no Tribal lands that are unoccupied areas that are essential for the conservation of the Devils River minnow. Therefore, we are not designating critical habitat for the Devils River minnow on Tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available upon request from the Field Supervisor, Austin Ecological Services Field Office (see **ADDRESSES**).

Author(s)

The primary authors of this rulemaking are staff members of the Austin Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

■ Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Public Law 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. Amend § 17.11(h) by revising the entry for ''Minnow, Devils River'' under ''FISHES'' to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*	*	*	*	*	*		*
FISHES							
*	*	*	*	*	*		*
Minnow, Devils River	*Dionda diaboli*	U.S.A. (TX), Mexico	Entire	T	669	17.95(e)	NA
*	*	*	*	*	*		*

■ 3. Amend § 17.95(e) by adding an entry for ''Devils River Minnow (*Dionda diaboli*)'' in the same alphabetical order that the species appears in the table at § 17.11(h) to read as follows:

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(e) *Fishes.*

* * * * *

Devils River Minnow (*Dionda diaboli*)

(1) Critical habitat units are depicted for Val Verde County and Kinney County, Texas, on the maps below.

(2) The primary constituent elements of critical habitat for the Devils River

minnow are the following habitat components:

(i) Streams characterized by:

(A) Areas with slow to moderate water velocities between 10 and 40 cm/second (4 and 16 in/second) in shallow to moderate water depths between approximately 10 cm (4 in) and 1.5 m (4.9 ft), near vegetative structure, such as emergent or submerged vegetation or stream bank riparian vegetation that overhangs into the water column;

(B) Gravel and cobble substrates ranging in diameter between 2 and 10 cm (0.8 and 4 in) with low or moderate amounts of fine sediment (less than 65 percent stream bottom coverage) and low or moderate amounts of substrate embeddedness; and

(C) Pool, riffle, run, and backwater components free of artificial instream structures that would prevent movement of fish upstream or downstream.

(ii) High-quality water provided by permanent, natural flows from groundwater spring and seeps characterized by:

(A) Temperature ranging between 17 °C and 29 °C (63 °F and 84 °F);

(B) Dissolved oxygen levels greater than 5.0 mg/l;

(C) Neutral pH ranging between 7.0 and 8.2;

(D) Conductivity less than 0.7 mS/cm and salinity less than 1 ppt;

(E) Ammonia levels less than 0.4 mg/l; and

(F) No or minimal pollutant levels for copper, arsenic, mercury, and cadmium; human and animal waste products; pesticides; fertilizers; suspended sediments; and petroleum compounds and gasoline or diesel fuels.

(iii) An abundant aquatic food base consisting of algae attached to stream substrates and other microorganisms associated with stream substrates.

(iv) Aquatic stream habitat either devoid of nonnative aquatic species (including fish, plants, and invertebrates) or in which such nonnative aquatic species are at levels that allow for healthy populations of Devils River minnows.

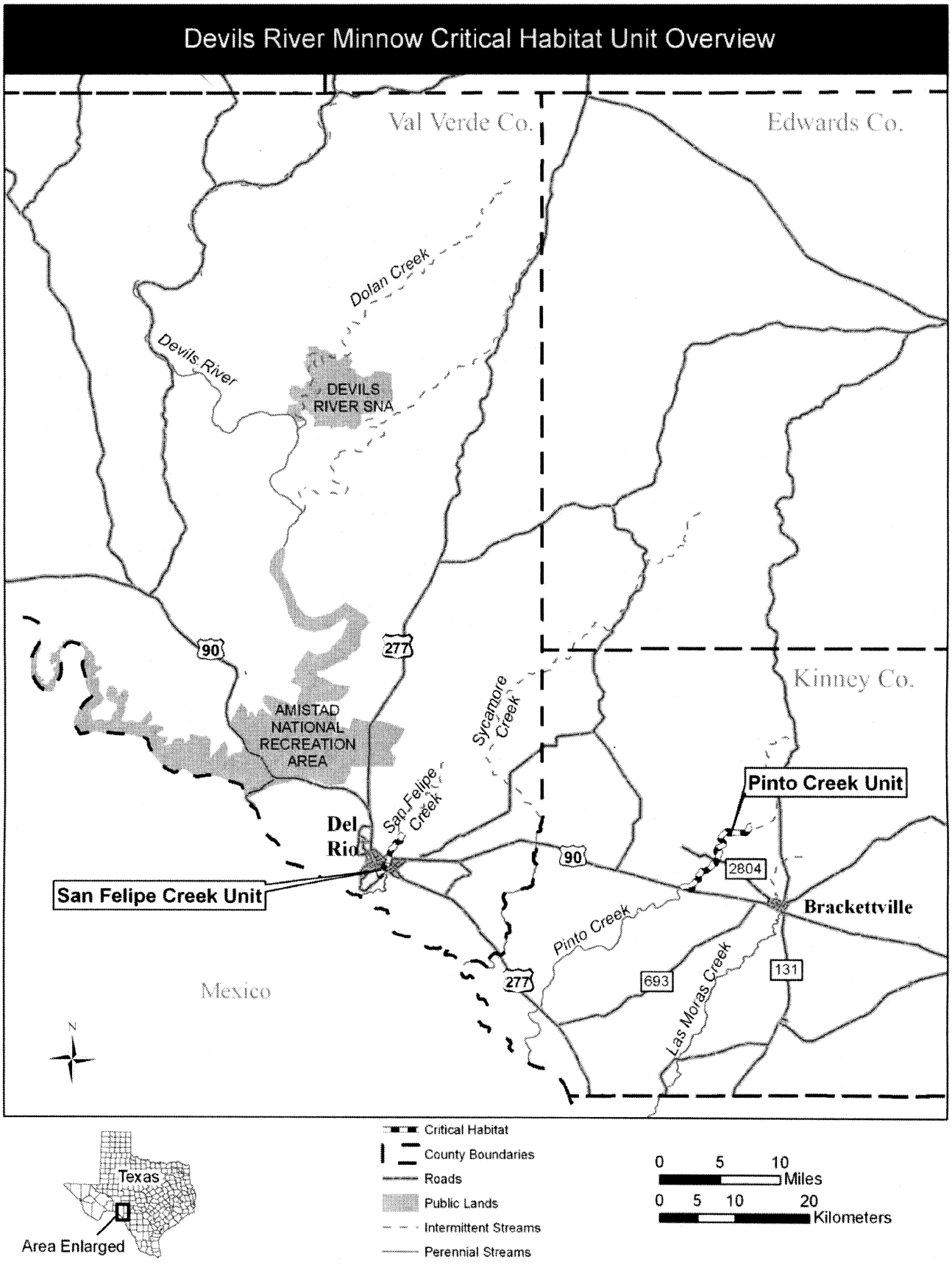
(v) Areas within stream courses that may be periodically dewatered for short time periods, during seasonal droughts, but otherwise serve as connective corridors between occupied or seasonally occupied areas through which the species moves when the area is wetted.

(3) Critical habitat does not include manmade structures (such as buildings, aqueducts, airports, roads, and other paved areas) and the land on which they are located existing on the effective date of this rule and not containing one or more of the primary constituent elements.

(4) *Critical habitat map units.* Data layers defining map units were created in ArcGIS using the National Hydrography Dataset and 7.5' topographic quadrangle maps obtained from U.S. Geological Survey to approximate stream channels and calculate distances (stream km and stream mi). We made some minor adjustments to stream channels using the 2004 National Agriculture Imagery Program digital orthophotos obtained from the Texas Natural Resources Information System. For each critical habitat unit, the upstream and downstream boundaries are described as paired geographic coordinates X, Y (meters E, meters N, UTM Zone 14, referenced to North American Horizontal Datum 1983). Additionally, critical habitat areas include the stream channels within the identified stream reaches and areas within these reaches up to the bankfull width.

(5) Note: Index map of critical habitat units for the Devils River minnow follows:

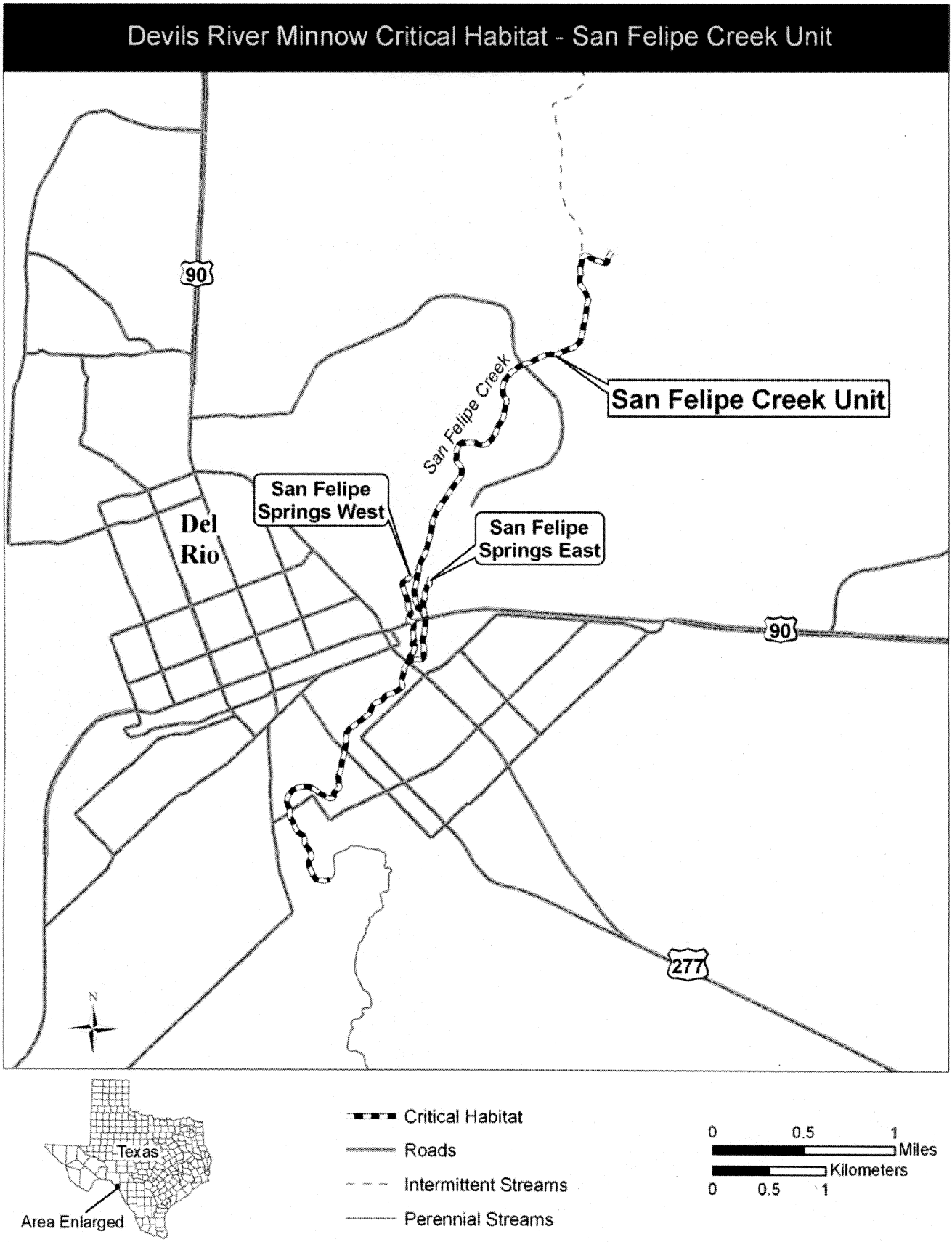
BILLING CODE 4310–55–P


Devils River Minnow Critical Habitat Unit Overview
Val Verde Co.
Edwards Co.
Kinney Co.
Dolan Creek
Devils River
DEVILS RIVER SNA
AMISTAD NATIONAL RECREATION AREA
Sycamore Creek
San Felipe Creek
Del Rio
San Felipe Creek Unit
Pinto Creek Unit
Brackettville
Pinto Creek
Las Moras Creek
Mexico
90
277
2804
693
131
N
Texas
Area Enlarged
Critical Habitat
County Boundaries
Roads
Public Lands
Intermittent Streams
Perennial Streams
0 5 10 Miles
0 5 10 20 Kilometers

(6) Unit 2: San Felipe Creek, Val Verde County, Texas.

(i) Unit 2 consists of approximately 7.9 stream km (4.9 stream mi) on San Felipe Creek, 0.8 stream km (0.5 stream mi) of the outflow of San Felipe Springs West, and 0.3 stream km (0.2 stream mi) of the outflow of San Felipe Springs East. The upstream boundary on San Felipe Creek is the Head Springs (UTM 318813E, 3253702N) located about 1.1 stream km (0.7 stream mi) upstream of the Jap Lowe Bridge crossing. The downstream boundary on San Felipe Creek is in the City of Del Rio 0.8 stream km (0.5 stream mi) downstream of the Academy Street Bridge crossing (UTM 316317E, 3248147N). This unit includes the outflow channels from the origin of the two springs, San Felipe Springs West (UTM 317039E, 3250850N) and San Felipe Springs East (UTM 317212E, 250825N), downstream to the confluence with San Felipe Creek. Including all three streams, the total distance in Unit 2 is approximately 9.0 stream km (5.6 stream mi).

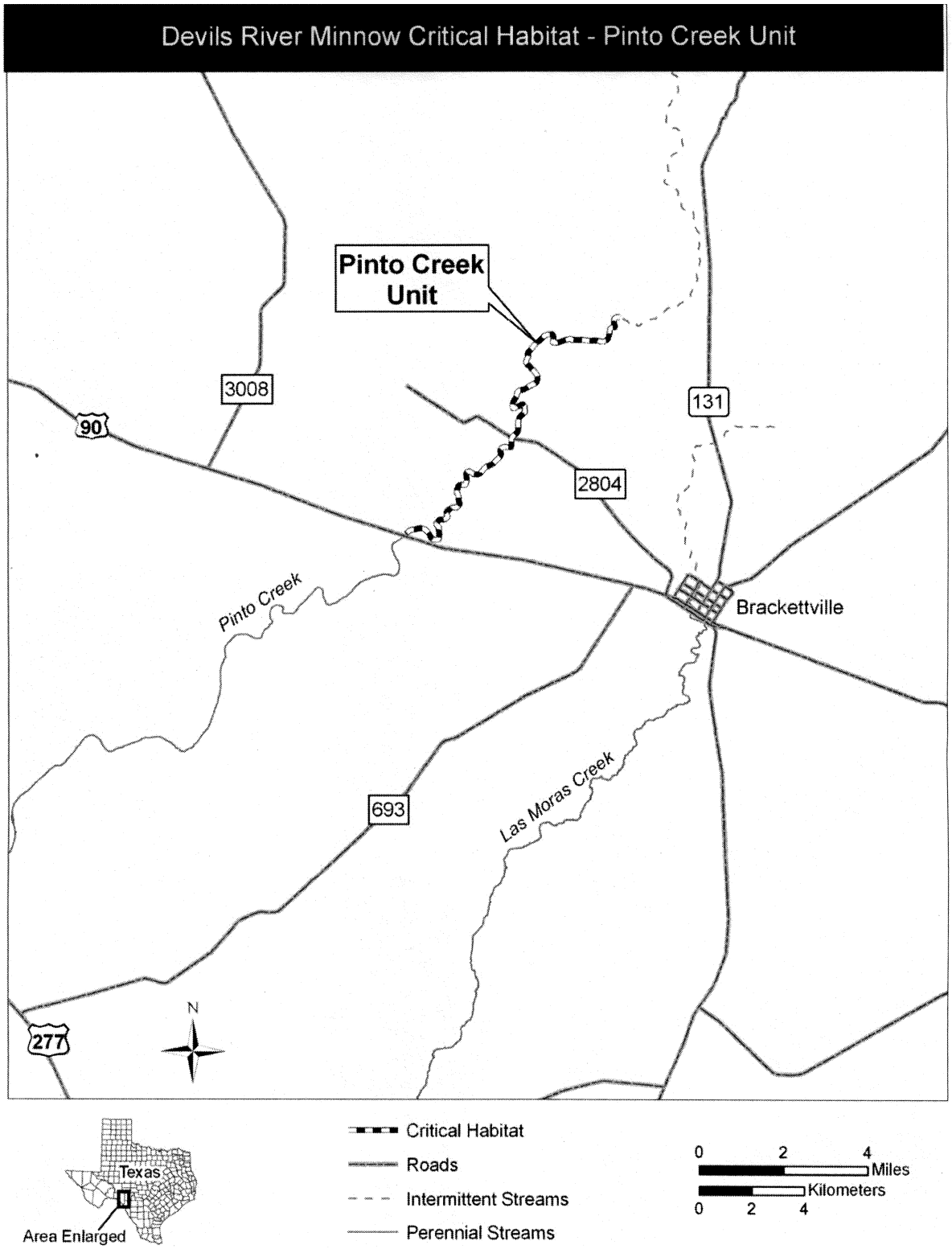
(ii) Note: Map of Unit 2, San Felipe Creek Unit, follows:


Devils River Minnow Critical Habitat - San Felipe Creek Unit
90
San Felipe Creek
San Felipe Creek Unit
San Felipe Springs West
San Felipe Springs East
Del Rio
90
277
N
Texas
Area Enlarged
Critical Habitat
Roads
Intermittent Streams
Perennial Streams
0 0.5 1
Miles
Kilometers
0 0.5 1

(7) Unit 3: Pinto Creek, Kinney County, Texas.

(i) Unit 3 consists of approximately 17.5 stream km (10.9 stream mi) on Pinto Creek. The upstream boundary is Pinto Springs (UTM 359372E, 3254422N). The downstream boundary is 100 m (330 ft) upstream of the Highway 90 Bridge crossing of Pinto Creek (UTM 351163E, 3246179N).

(ii) Note: Map of Unit 3, Pinto Creek Unit, follows:



* * * * *

Dated: July 29, 2008.

Lyle Laverty,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E8–17985 Filed 8–11–08; 8:45 am]

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LIST OF PUBLIC LAWS

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H.R. 4841/P.L. 110–297

Soboba Band of Luiseno Indians Settlement Act (July 31, 2008; 122 Stat. 2975)

S. 2565/P.L. 110–298

Law Enforcement Congressional Badge of Bravery Act of 2008 (July 31, 2008; 122 Stat. 2985)

S. 3298/P.L. 110–299

To clarify the circumstances during which the Administrator of the Environmental Protection Agency and applicable States may require permits for discharges from certain vessels, and to require the Administrator to conduct a study of discharges incidental to the normal operation of vessels. (July 31, 2008; 122 Stat. 2995)

S. 3352/P.L. 110–300

To temporarily extend the programs under the Higher Education Act of 1965. (July 31, 2008; 122 Stat. 2998)

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