5–19–09 Tuesday
Vol. 74 No. 95 May 19, 2009

Pages 23287–23604

Federal Register

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, June 9, 2009
9:00 a.m.–12:30 p.m.

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

RESERVATIONS: (202) 741–6008

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Presidential Documents

Title 3—

The President

Notice of May 14, 2009

Continuation of the National Emergency With Respect To Burma

On May 20, 1997, the President issued Executive Order 13047, certifying to the Congress under section 570(b) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1997 (Public Law 104–208), that the Government of Burma has committed large-scale repression of the democratic opposition in Burma after September 30, 1996, thereby invoking the prohibition on new investment in Burma by United States persons contained in that section. The President also declared a national emergency to deal with the threat posed to the national security and foreign policy of the United States by the actions and policies of the Government of Burma, invoking the authority, *inter alia*, of the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq*.

On July 28, 2003, the President issued Executive Order 13310, taking additional steps with respect to that national emergency by putting in place an import ban required by the Burmese Freedom and Democracy Act of 2003 and prohibiting exports of financial services to Burma and the dealing in property in which certain designated persons have an interest. On October 18, 2007, the President issued Executive Order 13448, expanding the national emergency declared in Executive Order 13047 and taking additional steps to prohibit transactions or dealings with certain persons, including the Burmese regime's financial supporters and their companies, as well as individuals determined to be responsible for or to have participated in human rights abuses or to have engaged in activities facilitating public corruption in Burma.

On April 30, 2008, the President issued Executive Order 13464, taking additional steps with respect to the national emergency declared in Executive Order 13047, in order to address the Government of Burma's continued repression of the democratic opposition in Burma.

Because the actions and policies of the Government of Burma continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on May 20, 1997, and the measures adopted on that date, July 28, 2003, October 18, 2007, and April 30, 2008, to deal with that emergency, must continue in effect beyond May 20, 2009. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to Burma. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
May 14, 2009.

[FR Doc. E9–11753
Filed 5–18–09; 8:45 am]
Billing code 3195–W9–P

Rules and Regulations

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

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1340]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule; official staff commentary.

SUMMARY: On July 30, 2008, the Board published a final rule amending Regulation Z, which implements the Truth in Lending Act (TILA) and the Home Ownership and Equity Protection Act (HOEPA). The July 2008 final rule requires creditors to give consumers transaction-specific cost disclosures shortly after application for closed-end loans secured by a consumer's principal dwelling. The disclosures must be provided before the consumer pays any fee, other than a fee for obtaining the consumer's credit history. Also on July 30, 2008, the Congress enacted the Housing and Economic Recovery Act of 2008, which included amendments to TILA, known as the Mortgage Disclosure Improvement Act of 2008 (MDIA). On October 3, 2008, the Congress amended the MDIA in connection with its enactment of the Emergency Economic Stabilization Act of 2008 (Stabilization Act). The Board is now revising Regulation Z to implement the provisions of the MDIA, as amended.

The MDIA broadens and adds to the requirements of the Board's July 2008 final rule. Among other things, the MDIA requires early, transaction-specific disclosures for mortgage loans secured by dwellings other than the consumer's principal dwelling and requires waiting periods between the time when disclosures are given and consummation of the mortgage transaction. Moreover, these requirements of the MDIA will become effective on July 30, 2009, about two months earlier than the Board's regulatory amendments adopted in the July 2008 final rule.

Consistent with the MDIA, the final rule amending Regulation Z requires creditors to make good faith estimates of the required mortgage disclosures, and deliver or place them in the mail, no later than three business days after receiving a consumer's application for a dwelling-secured closed-end loan. Consummation may occur on or after the seventh business day after the delivery or mailing of these disclosures. If the annual percentage rate provided in the good faith estimates changes beyond a specified tolerance for accuracy, creditors must provide corrected disclosures, which the consumer must receive on or before the third business day before consummation of the transaction. The final rule allows consumers to expedite consummation to meet a *bona fide* personal financial emergency. The MDIA, as amended by the Stabilization Act, specifies different requirements for providing early disclosures for mortgage transactions that are secured by a consumer's interest in a timeshare plan.

DATES: The amendments to §§ 226.2(a)(6), 226.17(b) and (f), and 226.19(a)(1); and amendments 13, 14, 16, and 17 to Supplement I to part 226, published on July 30, 2008 (73 FR 44522), previously to become effective on October 1, 2009, are now effective on July 30, 2009.

Additionally, this final rule is also effective on July 30, 2009 and includes further amendments to Regulation Z.

FOR FURTHER INFORMATION CONTACT: Paul Mondor, Senior Attorney, or Jamie Z. Goodson, Attorney; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–2412 or (202) 452–3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

One of the purposes of the Truth in Lending Act (TILA), 15 U.S.C. 1601 *et seq.,* is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling.

TILA mandates that the Board prescribe regulations to carry out the purposes of the act. 15 U.S.C. 1604(a). TILA is implemented by the Board's Regulation Z, 12 CFR part 226. An Official Staff Commentary interprets the requirements of the regulation and provides guidance to creditors in applying the rules to specific transactions. *See* 12 CFR part 226 (Supp. I).

TILA Section 128, 15 U.S.C. 1638, requires creditors to make specified disclosures in connection with closed-end consumer credit transactions before the credit is extended. Before amendment by the MDIA, for certain mortgage loans TILA required creditors to make good faith estimates of the disclosures (''early disclosures'') within three business days after the consumer has submitted an application or before the credit is extended, whichever is earlier. In implementing TILA Section 128, Regulation Z requires creditors to give these early disclosures only for loans that finance the purchase or initial construction of a consumer's principal dwelling.

On July 30, 2008, the Board published a final rule amending Regulation Z (the July 2008 final rule) (73 FR 44522). The July 2008 final rule requires, among other things, that a creditor provide the early disclosures even when the loan is not for the purpose of financing the purchase or initial construction of the consumer's principal dwelling. Under the July 2008 final rule, the early disclosures also must be provided for non-purchase closed-end loans secured by the consumer's principal dwelling (such as a refinance loan). The July 2008 final rule also required these disclosures to be given before the consumer pays any fee, other than a *bona fide* and reasonable fee for obtaining the consumer's credit history. As published, these provisions of the July 2008 final rule were scheduled to become effective on October 1, 2009 (73 FR at 55494). Consistent with the MDIA, however, this final rule sets an earlier effective date of July 30, 2009 for these fee

collection restrictions, as discussed below.

On the same day that the July 2008 final rule was published, Congress amended TILA by enacting the Mortgage Disclosure Improvement Act of 2008 (MDIA).[1] The MDIA amends TILA and codifies some of the early disclosure requirements of the July 2008 final rule, but also expands upon the regulatory provisions.

Like the July 2008 final rule, the MDIA requires creditors to make the early disclosures even when the loan is not for the purpose of financing the purchase or initial construction of the consumer's principal dwelling and prohibits the collection of fees before the consumer receives the disclosures, other than a fee for obtaining a consumer's credit report. However, the MDIA applies these provisions to loans secured by a dwelling even when it is not the consumer's principal dwelling. Moreover, the MDIA imposes additional requirements not contained in the July 2008 final rule. Under the MDIA, for loans secured by a consumer's dwelling, creditors must deliver or mail the early disclosures at least seven business days before consummation. If the APR contained in the early disclosures becomes inaccurate (for example, due to a change in the loan terms), creditors must ''redisclose'' and provide corrected disclosures that the consumer must receive at least three business days before consummation. The disclosures also must inform consumers that they are not obligated to complete the transaction simply because disclosures were provided or because a consumer has applied for a loan. The MDIA imposes different requirements for early disclosure in closed-end mortgage transactions that are secured by a consumer's interest in a timeshare plan. These provisions of the MDIA, including the fee collection restriction, will become effective on July 30, 2009, which is about two months earlier than the effective date of the July 2008 final rule.

At this time, the Board is only conforming Regulation Z, as amended on July 30, 2008, to the MDIA provisions that become effective on July 30, 2009. The MDIA also contains additional disclosure requirements for variable-rate transactions that are not addressed in this rulemaking. Those provisions of the MDIA will not become effective until January 30, 2011, or any earlier compliance date ultimately established by the Board. This final rule does not address those disclosures. The Board anticipates issuing proposed amendments to Regulation Z to implement those provisions of the MDIA later during 2009, in connection with the Board's comprehensive review of closed-end mortgage disclosures that is currently underway.

As discussed above, the MDIA contains several provisions that mirror the July 2008 final rule. These provisions are not discussed below because they are explained in detail in the supplementary information portion of the July 2008 final rule. (*See* 73 FR at 44590–44594; July 30, 2008). To conform to the MDIA, certain regulatory changes that the Board adopted in July 2008 will become effective on July 30, 2009 (and not on October 1, 2009 as originally provided in the July 2008 final rule). These regulatory changes are: the requirement that early disclosures be given for all dwelling-secured mortgage loans rather than only for ''residential mortgage transactions'' to finance the purchase or initial construction of the dwelling (in §§ 226.17(f) and 226.19(a)(1)(i) and associated commentary) and that early disclosures be given before consumers pay any fee except a fee for obtaining the consumer's credit history (in § 226.19(a)(1)(ii) and (iii) and associated commentary). The final rule the Board is publishing today further revises Regulation Z, also effective July 30, 2009. These revisions will apply only if a consumer's application for a covered transaction is received on or after July 30, 2009.

Minor conforming and technical amendments to Regulation Z also are made in this final rule.

II. Overview of Comments Received

On December 10, 2008, the Board published a proposed rule that would amend Regulation Z's rules for the timing and content of disclosures for dwelling-secured mortgage loans. 73 FR 74989. The Board received fifty-one public comment letters. Several financial institutions and financial services trade associations stated that they support efforts to improve the disclosure of credit terms to consumers and recognize that the Board's proposal is intended to conform Regulation Z to TILA, as amended by the MDIA. These commenters generally stated that the Board should make timing requirements as flexible as is possible. Several other financial institutions stated that the costs of the new waiting periods required by the MDIA outweigh any benefits and that consumers would object to delays in consummating a mortgage transaction. By contrast, consumer advocacy organizations generally supported the MDIA's goal of providing accurate disclosure of credit to consumers terms in a timely manner. Consumer advocates further stated that the MDIA provisions allowing consumers to waive the waiting period between disclosure and consummation should be narrowly circumscribed. Comments are discussed in detail below in part III of the **SUPPLEMENTARY INFORMATION**.

III. The Board's Final Rule

A. Coverage of § 226.19(a)

Proposed Rule

TILA Section 128(a), 15 U.S.C. 1638(a), requires creditors to disclose certain information for closed-end consumer credit transactions, including, for example, the amount financed and the APR. TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), requires creditors to make good faith estimates of these disclosures within three business days of receiving the consumer's application, or before consummation if that occurs earlier. Until the recent enactment of the MDIA, TILA Section 128(b)(2) applied only to a ''residential mortgage transaction'' subject to the Real Estate Settlement Procedures Act (RESPA). *See* 15 U.S.C. 1602(w). A residential mortgage transaction is defined in TILA as a loan to finance the purchase or initial construction of a consumer's dwelling. Regulation Z limits the definition to transactions secured by the consumer's principal dwelling. *See* § 226.2(a)(24).

The MDIA extends the early disclosure requirement in TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), to additional types of loans. Under the MDIA, early disclosures are required for ''any extension of credit secured by the dwelling of a consumer.'' Thus, as amended, the statute requires early disclosures for home refinance loans and home equity loans. This is consistent with revisions made by the Board's July 2008 final rule. To implement the MDIA, the Board proposed to also apply the early disclosure requirements to loans secured by dwellings other than the consumer's principal dwelling. Accordingly, the Board proposed, under § 226.19(a)(1)(i), to require creditors to give consumers early disclosures in connection with a dwelling-secured mortgage loan (if also subject to RESPA), whether or not the loan is for the purpose of financing the purchase or initial construction of the consumer's

[1] The MDIA is contained in Sections 2501 through 2503 of the Housing and Economic Recovery Act of 2008 (HERA), Public Law 110–289, enacted on July 30, 2008. The MDIA was amended by the Emergency Economic Stabilization Act of 2008, Public Law 110–343, enacted on October 3, 2008.

principal dwelling. The Board's proposal did not apply to home equity lines of credit (HELOCs), which are subject to the rules for open-end credit in § 226.5b. The July 2008 final rule also did not apply to HELOCs.

TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), as amended by the MDIA, applies to dwelling-secured mortgage loans if they also are subject to RESPA. The U.S. Department of Housing and Urban Development's (HUD) Regulation X implements RESPA. *See* 12 U.S.C. 2601 *et seq.;* 24 CFR 3500.1 *et seq.* In March 2008, HUD published a proposal to revise Regulation X. (*See* 73 FR 14030; Mar. 14, 2008). In November 2008, HUD published final rules amending Regulation X. (*See* 73 FR 68204; Nov. 17, 2008). The Board believes that Regulation Z's timing requirements for early disclosures, as amended by this final rule, remain consistent with timing requirements for the initial good faith estimates of settlement costs required under Regulation X, as recently amended by HUD. Consistency between Regulation Z and Regulation X are discussed in detail below.

Public Comment

The Board received few comments that addressed the coverage of proposed § 226.19(a). A few financial institutions and financial services trade associations stated that the early disclosure requirements should only apply to loans secured by a consumer's principal dwelling. A financial institution stated that consumers who own more than one dwelling usually are more sophisticated financially and will not benefit from the early disclosures. One financial services trade association supported the extension of coverage to mortgage transactions that are secured by dwellings that are not a consumer's principal dwelling. A few commenters stated that the Board should clarify whether the MDIA's timing requirements apply when the person obligated on the loan does not occupy the dwelling that secures the loan.

Final Rule

As proposed, the final rule applies the early disclosure requirements to loans secured by dwellings other than the consumer's principal dwelling. Under § 226.19(a)(1)(i), creditors must give consumers early disclosures in connection with a dwelling-secured mortgage loan that is subject to RESPA, whether or not the loan is for the purpose of financing the purchase or initial construction of the consumer's principal dwelling. The final rule does not revise the disclosure requirements for home equity lines of credit (HELOCs). The Board is currently reviewing the disclosure rules for real estate-secured loans, including HELOCs, and will consider the need for earlier disclosures in connection with that proposed rulemaking.

A few commenters requested guidance on whether the early disclosure rules apply to a loan secured by a dwelling that is not occupied by the person who is obligated on the loan. If the transaction is a dwelling-secured extension of *consumer* credit, early disclosures would be required regardless of who occupies the dwelling. However, TILA and Regulation Z do not apply to credit extensions that are primarily for *business* purposes. 15 U.S.C. 1603(l); 12 CFR 226.3(a)(1). Existing guidance in comment 3(a)–2 provides that creditors should determine whether a credit extension is business or consumer credit based on the factors stated in the comment. Further, comment 3(a)–3 states that credit extended to acquire, improve, or maintain rental property that is not owner-occupied (that is, in which the owner does not expect to live for more than fourteen days during the coming year) is deemed to be for business purposes. The Board believes this guidance is sufficient to determine whether a transaction is subject to TILA.

B. Timing of Delivery of Early Disclosures—§ 226.19(a)(1)(i)

Proposed Rule

Currently under Regulation Z, creditors must provide the early disclosures within three business days after receiving the consumer's written application or before consummation, whichever is earlier. The MDIA amends TILA to require creditors to deliver or mail the early disclosures at least seven business days before consummation. The Board proposed to further amend § 226.19(a)(1)(i), as published in the July 2008 final rule, to reflect this change. The Board proposed to add comment 19(a)(1)(i)–6 to clarify that consummation may occur any time on the seventh business day following delivery or mailing; the proposed comment provided examples to facilitate compliance. The proposal would have required creditors to calculate the seven-business-day waiting period using the general definition of ''business day'' (a calendar day on which the creditor's offices are open to the public for carrying on substantially all of its business functions).

Public Comment

Many of the comments the Board received on the requirements for early disclosures discussed the definition of ''business day'' that should apply for purposes of those requirements. Those comments are discussed in detail below, in part III.D of this **SUPPLEMENTARY INFORMATION**.

Final Rule

Consistent with the MDIA, the final rule adopts the requirement that a creditor deliver or mail the early disclosures for all dwelling-secured mortgage loans no later than three business days after the creditor receives a consumer's application. Also as proposed, the general definition of ''business day'' (days on which a creditor's offices are open to the public for carrying on substantially all of its business functions) applies for this purpose.

Under the July 2008 final rule, the early disclosures also must be provided for non-purchase closed-end loans secured by the consumer's principal dwelling (such as a refinance loan). The July 2008 final rule also required these disclosures to be given before the consumer pays any fee, other than a *bona fide* and reasonable fee for obtaining the consumer's credit history. This final rule expands these requirements to apply to mortgage transactions secured by a dwelling other than the consumer's principal dwelling (such as a second home) and makes them effective for covered loans for which the creditor receives an application on or after July 30, 2009, consistent with the MDIA.

The requirement for a creditor to deliver or place in the mail the early disclosures no later than the seventh business day before consummation has been moved to § 226.19(a)(2) and modified, as discussed below in part III.C of the **SUPPLEMENTARY INFORMATION**. In addition, under the final rule, the more precise definition of ''business day'' will apply for purposes of calculating the seven-business-day waiting period, as discussed in detail in part III.D of the **SUPPLEMENTARY INFORMATION**. The Board is revising comment 19(a)(1)(i)–4 to clarify that if a consumer withdraws a loan application within three business days after a creditor receives it, the creditor need not make the early disclosures. This is consistent with comment 5b(b)–5, regarding denial or withdrawal of an application for an open-end home equity plan.

C. Waiting Periods After Early Disclosures and Corrected Disclosures—§ 226.19(a)(2)

Proposed Rule

Currently, when a creditor provides early TILA disclosures and the APR subsequently changes beyond the specified tolerance, the creditor must redisclose the APR and other changed terms no later than consummation or settlement. The MDIA amends TILA Section 128(b)(2), 15 U.S.C. 1638(b)(2), to require that in such cases creditors make corrected disclosures so that consumers receive them not later than the third business day before consummation. The MDIA removes the reference to ''settlement'' for purposes of this requirement. The Board proposed to amend § 226.19(a)(2) to reflect these changes to TILA. The Board also proposed that consummation could occur any time on the third business day after the consumer receives the corrected disclosure.

In addition, under the proposed rule, if the corrected disclosures are mailed, the consumer is considered to receive the disclosures three business days after mailing. This is consistent with the presumption the Board adopted in the July 2008 final rule in § 226.19(a)(1)(ii) for determining when fees may be imposed on the consumer. The MDIA subsequently codified that presumption. In this rulemaking, the Board proposed to apply the same presumption for purposes of the rule that a consumer must receive corrected disclosures no later than the third business day before consummation. The Board also proposed to revise comment 19(a)(2)–1 to provide examples illustrating the effect of the three-business-day waiting period and when consummation may occur.

The Board proposed to revise comment 19(a)(2)–3 to clarify that the three-business-day waiting period before consummation begins when the disclosures are received by the consumer and not when they are mailed. This is consistent with the MDIA and is also consistent with the rules for certain high-cost loans and reverse mortgage transactions, which also require a creditor to make disclosures at least three business days before consummation. *See* § 226.31(c) and comment 31(c)–1.

Public Comment

Several financial institutions and financial services trade associations stated that the Board's rules should specifically address the timing requirements for the early disclosures when a creditor provides electronic disclosures or uses overnight courier or other delivery methods. Also, many financial institutions and financial services trade associations stated that a three-business-day waiting period before consummation is not warranted if corrected disclosures state an APR that is *lower than* the APR stated in the early disclosures, because the change benefits consumers. One financial institution stated that there should be no three-business-day waiting period before consummation when corrected disclosures are provided if the consumer has three business days to rescind the loan after consummation under § 226.23(a).

A financial services trade association and a financial institution requested guidance for situations where a creditor makes corrected disclosures and thereafter the APR becomes inaccurate again. These commenters stated that, to determine whether the new APR is within the tolerance specified in § 226.22, creditors should be permitted to compare what the APR will be at consummation to the APR stated in the most recent corrected disclosures, not the initial early disclosures. One financial institution stated that the three-business-day waiting period should begin on the date the corrected disclosures are delivered or placed in the mail and not when received.

Final Rule

The Board is adopting § 226.19(a)(2) as proposed; however, the requirement to deliver or mail the early disclosures to the consumer not later than the seventh business day before consummation has been moved to § 226.19(a)(2). (In the proposal, the seven-business-day waiting period was in § 226.19(a)(1)(i).) Under the final rule, when creditors provide corrected disclosures under § 226.19(a)(2), the disclosures must state an accurate APR and all changed terms. Existing comment 19(a)(2)–2 has been redesignated as comment 19(a)(2)(ii)–2.

The final rule also applies the more precise definition of ''business day'' (all calendar days except Sundays and specified legal public holidays) to the seven-business-day waiting period. This is a change from the proposal, which would have applied the general definition of ''business day'' to this provision. This change has been made so that the same ''business day'' definition will be used for purposes of both the seven-business-day waiting period and the three-business-day waiting period, which will make compliance easier, as discussed in detail in part III.D of the **SUPPLEMENTARY INFORMATION**. The final rule also applies the more precise definition to the three-business-day waiting period, as proposed. Under the proposal, commentary on the applicable ''business day'' definition was contained in proposed comment 19(a)(2)–3; under the final rule, commentary on the applicable ''business day'' definition appears in comment 19(a)(2)–1. Further, a new comment 19(a)(2)–2 clarifies that where corrected disclosures are required consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired.

Seven-business-day waiting period for early disclosures. The final rule (like the proposal) provides that the seven-business-day waiting period begins when the creditor delivers or places the early disclosures in the mail—not when the consumer receives or is deemed to receive the early disclosures. *See* comment 19(a)(2)(i)–1. This is consistent with the statutory language of the MDIA. The final rule applies the more precise definition of ''business day'' to the seven-business-day waiting period. Proposed comment 19(a)(1)(i)–6 clarified that consummation may occur any time on the seventh business day following delivery or mailing and provided examples to facilitate compliance. That commentary has been revised to reflect the use of the more precise definition of ''business day'' and redesignated as new comment 19(a)(2)(i)–1.

Three-business-day waiting period for corrected disclosures. As proposed, the final rule provides that consummation may not occur until three business days after the consumer receives corrected disclosures required by § 226.19(a)(2)(ii). This is consistent with the MDIA and is also consistent with the three-business-day waiting period in § 226.31(c)(1) for high-cost mortgages described in § 226.32(a) (HOEPA loans). The final rule applies the more precise definition of ''business day'' (all calendar days except Sundays and specified legal public holidays) to the three-business-day waiting period, as discussed below in part III.D of the **SUPPLEMENTARY INFORMATION**.

Also as proposed, the final rule provides that if a creditor places corrected disclosures in the mail, the consumer is deemed to receive the corrected disclosures three business days after they are mailed. Comment 19(a)(2)(ii)–3 clarifies that if the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the

three-business-day waiting period required under § 226.19(a)(2)(ii) begins. The comment also clarifies that creditors that use e-mail or a courier other than the postal service may also follow this approach. For example, if a creditor provides disclosures through a courier service, the creditor may presume that the consumer receives the disclosures three business days after they are deposited with the courier service, for purposes of determining when the three-business-day waiting period required by § 226.19(a)(2)(ii) begins. The Board is not adopting separate rules or presumptions regarding the delivery of disclosures by overnight courier, electronic transmission, or other means. Although these methods may be faster than delivery by regular mail, the Board believes that, in light of the variety of delivery methods and options offered by service providers, it is not feasible to define with sufficient clarity what may be considered acceptable ''overnight delivery'' or to delineate a separate time period for presumption of receipt for each available delivery method, as previously stated in the supplementary information to the Board's July 2008 final rule (*see* 73 FR at 44593; July 30, 2008).

A creditor is not required to use the presumption of receipt to determine when the waiting period required by § 226.19(a)(2)(ii) begins. Thus, if a creditor delivers corrected disclosures electronically consistent with the E–Sign Act or delivers disclosures by overnight courier, the creditor may rely on evidence of actual delivery (such as documentation that the mortgage loan disclosure was delivered by certified mail or overnight delivery or e-mail (if similar documentation is available)) to determine when the three-business-day waiting period begins.

The rules for corrected disclosures are contained in new § 226.19(a)(2)(ii). Therefore, comments 19(a)(2)–1 through 19(a)(2)–4 have been redesignated (as revised) as comments 19(a)(2)(ii)–1 through 19(a)(2)(ii)–4.

APR accuracy for corrected disclosures. New comment 19(a)(2)–4 has been added to address commenters' request for guidance in cases where corrected disclosures have been given and the APR subsequently changes. The new comment clarifies that in such cases, the creditor should compare the APR at consummation with the APR in the most recently provided corrected disclosures (not the first set of disclosures provided) to determine whether the creditor must provide another set of corrected disclosures.

Commenters requested guidance on whether corrected disclosures are required if the APR initially disclosed under § 226.19(a)(1)(i) overstates the actual APR. Comment 19(a)(2)(ii)–1 provides that corrected disclosures are not required when the APR previously disclosed is considered accurate under the tolerances in § 226.22.

D. Definition of ''Business Day''—§ 226.2(a)(6)

Proposed Rule

The MDIA provides that if the early disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed for purposes of the prohibition on collecting fees before the consumer receives the early disclosures. This is consistent with the July 2008 final rule (*see* 73 FR at 44600–44601; July 30, 2008). In the rulemaking to implement the MDIA, the Board proposed to adopt that same presumption for purposes of the requirement that consumers receive corrected disclosures, if necessary, not later than the third business day before consummation, as discussed above in part III.C of the **SUPPLEMENTARY INFORMATION.** In the July 2008 final rule, the Board also clarified how creditors should count weekends and Federal legal public holidays in determining when mailed disclosures are presumed to be received and how long the restriction on fees applies under § 226.19(a)(1)(ii) (*see* 73 FR at 44599; July 30, 2008). In this rulemaking, the Board proposed to further clarify that creditors should count ''business days'' the same way for purposes of the presumption in § 226.19(a)(2) that consumers receive corrected disclosures three business days after they are mailed.

Currently, § 226.2(a)(6) contains two definitions of ''business day.'' Under the general definition, a ''business day'' is a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for some purposes a more precise definition applies; ''business day'' means all calendar days except Sundays and specified Federal legal public holidays, for purposes of §§ 226.15(a), 226.23(a), and 226.31(c)(1) and (2). The July 2008 final rule adopted the more precise definition for use in determining when mailed disclosures are presumed to be received under § 226.19(a)(1)(ii). The Board also proposed to apply this definition for purposes of determining when disclosures are presumed to be received for purposes of the three-business-day waiting period in § 226.19(a)(2). As explained below, this approach is being adopted in this final rule.

Under the MDIA, creditors must deliver the early disclosures, or place them in the mail, no later than three business days after receiving a consumer's application for a dwelling-secured mortgage loan; the delivery or mailing also must occur not later than the seventh business day before consummation. The Board proposed to use the general definition of ''business day'' for purposes of satisfying these timing requirements, both of which were contained in proposed § 226.19(a)(1)(i). This approach was consistent with RESPA's requirement that creditors provide good faith estimates of settlement costs not later than three business days after the creditor receives the consumer's application for a Federally related mortgage loan. *See* 24 CFR 3500.2(b) and 3500.7. To simplify the rule, the Board proposed that the general definition of ''business day'' also would be used for determining when the seven-business-day waiting period expires and consummation may occur. The Board requested comment, however, on whether the more precise definition of business day should be used to facilitate compliance with the seven-business-day waiting period requirement.

Public Comment

Many commenters addressed which definition of ''business day'' should apply for purposes of determining when the seven-business-day waiting period expires and consummation may occur. Most of these commenters stated that the more precise definition of ''business day'' under § 226.2(a)(6)—all calendar days except Sunday and specified legal public holidays—should be used for this purpose.

Several consumer advocacy organizations stated that using the more precise definition for *all* purposes under § 226.19(a) would allow creditors and supervisory agencies to determine easily whether timing requirements have been satisfied. A financial services trade association and a financial institution stated that the general definition creates uncertainty for a creditor if it has many offices, branches, and operation centers and only some of them are open on Saturdays.

Several commenters supported using the general definition of ''business day'' for purposes of the requirement that creditors deliver or mail the early disclosures within three business days after receiving the consumer's application, to maintain consistency

with the RESPA rules. However, these commenters supported using the more precise definition for all other timing requirements.

A financial services trade association supported using the more precise definition of ''business day'' for purposes of the seven-business-day waiting period so that the timing requirement would apply uniformly to all creditors, regardless of when their offices are open. A few commenters stated that using the general definition would disadvantage institutions whose offices are open only five days per week, including many community banks.

One financial institution and a realtors' trade association asserted, however, that the general definition of ''business day'' should be used for purposes of the seven-business-day waiting period. The realtors' trade association stated that the general definition should be used for all timing requirements to ensure consistency with RESPA, facilitate compliance, and reduce confusion for consumers. Two credit union trade associations and a financial institution stated that a single definition should be used for all timing requirements, but these commenters did not state a preference for one definition over the other.

Final Rule

As the Board proposed, the final rule requires that creditors use the general definition of ''business day'' to calculate the three-business-day period for providing the early disclosures. Both TILA and RESPA require creditors to provide disclosures within three business days after the creditor receives the consumer's application. Using the general definition of ''business day'' (a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions) will maintain consistency between the TILA and RESPA requirements.

Under the final rule, the more precise definition of ''business day'' (all calendar days except Sundays and specified Federal legal public holidays) is used for purposes of the requirements that creditors deliver or mail the early disclosures no later than the seventh business day before consummation and that consumers receive corrected disclosures (if applicable) no later than the third business day before consummation. The more precise definition of ''business day'' also is used for purposes of the rule prohibiting the collection of a fee (other than a fee for obtaining a consumer's credit history) before the consumer receives the early disclosures, under the final rule published on July 30, 2008. This is consistent with HUD's Regulation X (24 CFR 3500.7(a)(4) and 3500.7(b)(4)), which provides that if a creditor or broker mails good faith estimates of settlement costs, a consumer is considered to receive them three calendar days after they are mailed, not including Sundays and specified legal public holidays.

The Board believes that it is appropriate to use the more precise definition of ''business day'' for purposes of both the seven-business-day waiting period and the three-business-day waiting period, for several reasons. It is easier for a creditor to determine how to meet timing requirements using the more precise definition, especially a creditor with multiple offices that are not open on the same days. Using the more precise definition also will mean that the standard for determining when a waiting period ends is the same for all creditors. Moreover, whether a creditor's offices are open or closed does not affect the time that a consumer has to receive and review disclosures.

E. Consumer's Waiver of Waiting Period Before Consummation—§ 226.19(a)(3)

Proposed Rule

Under the MDIA, to expedite consummation of a mortgage transaction, a consumer may modify or waive the timing requirements for the early disclosures when the consumer determines that the credit extension is needed to meet a *bona fide* personal financial emergency. However, the consumer must receive the disclosures required by TILA Section 128(a), 15 U.S.C. 1638(a), at or before the time of the consumer's modification or waiver.

To implement this provision, the Board proposed to permit a consumer to shorten or waive either the seven-business-day period required by § 226.19(a)(1)(i) or the three-business-day waiting period required by § 226.19(a)(2), provided the consumer has received accurate TILA disclosures reflecting the mortgage transaction's final costs and terms. Thus, under the proposed rule, if the consumer waives the seven-business-day waiting period after receiving the early disclosures and a change occurs that makes the APR inaccurate (as determined under § 226.22), the consumer would have to receive corrected disclosures with all changed terms not later than the third business day before consummation. In such cases, the consumer could waive the three-business-day waiting period in § 226.19(a)(2) after receiving the corrected disclosures. Proposed comment 19(a)(3)–2 provided examples to facilitate compliance.

Under proposed § 226.19(a)(3), the consumer would have to give the creditor a dated written statement describing the emergency and specifically modifying or waiving the waiting period(s). The use of pre-printed forms for this purpose would be prohibited and all consumers entitled to receive the disclosures would have to sign the statement. The proposal's procedures for waiving the waiting periods were substantially similar to the existing rules for waiving the three-business-day rescission period for certain home-secured loans and the three-business-day waiting period before consummating certain high-cost mortgage loans. *See* §§ 226.15(e), 226.23(e), and 226.31(c)(1)(iii). The Board solicited comment on whether the proposed rule should be more or less flexible than the existing procedures.

The Board proposed comment 19(a)(3)–1 to clarify that a consumer may modify or waive the required waiting period(s) only if the consumer has a *bona fide* personal financial emergency that must be met before the end of the waiting period(s). This proposed comment was designed to be consistent with the commentary on waiving the rescission period and the pre-consummation waiting period required for certain high-cost mortgage loans. *See* comments 15(e)–1, 23(e)–1, and 31(c)(1)(iii)–1. The proposed comment explained that whether a *bona fide* personal financial emergency exists would be determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure during the three-business-day waiting period was provided as an example, and the Board solicited comment on whether there are other circumstances that should be expressly recognized in the final rule.

Public Comment

Consumer advocacy organizations generally stated that modification or waiver of a waiting period should be permitted only in narrow circumstances, such as an imminent foreclosure, tax, or condemnation sale. Many financial institutions and financial services trade associations stated that much flexibility is needed to accommodate consumers who want to expedite consummation. A credit union association stated that the ''financial emergency'' exception should be available only in unusual and unforeseeable financial circumstances, however.

Waiver of either waiting period. Consumer advocacy organizations stated that the final rule should permit consumers to waive or modify only the seven-business-day waiting period and asserted that the MDIA does not allow consumers to waive or modify the three-business-day waiting period. They asserted that a *bona fide* personal financial emergency seldom would arise unexpectedly after the creditor makes early disclosures and before consummation. Consumer advocates also stated that even if waiver of the three-business-day waiting period is permitted in some circumstances, it should not be permitted when the consumer already has waived the seven-business-day waiting period. They noted that consumers must receive ''final disclosures'' before waiving the seven-business-day waiting period and stated that the Board should interpret the MDIA to prohibit changes in APR after a creditor provides these disclosures and obtains the consumer's signed waiver. Thus, under their interpretation of the statute, corrected disclosures and a new three-business-day waiting period would be unnecessary.

Few of the financial institutions and financial services trade associations specifically discussed waiver of the three-business-day waiting period after a consumer receives corrected disclosures, but those that did address the issue supported allowing such waiver. A financial institution stated that, in cases where the creditor provides corrected disclosures, the consumer's previous waiver of the seven-business-day waiting period under § 226.19(a)(3) automatically should waive the three-business-day waiting period as well.

Waiver procedures and conditions. Consumer advocacy organizations supported the waiver procedures as proposed and stated that the waiver should be handwritten, to prevent consumers from unwittingly signing a creditor's pre-printed waiver forms. On the other hand, two financial institutions stated that waiver using pre-printed forms should be permitted. One financial institution recommended clarifying whether each consumer primarily liable on the obligation should sign the written waiver, even though under § 226.17(d) a creditor need only provide the disclosures to one of the consumers who is primarily liable on the obligation. A consumer advocacy organization urged the Board to require creditors to give early disclosures to all of the consumers who will be obligated on a mortgage transaction. By contrast, a financial services trade association stated that creditors should be allowed to accept a waiver from one consumer, even where multiple consumers will be obligated on the loan.

Most financial institutions and financial services trade associations stated that the final rule should specify that creditors do not have to investigate a consumer's determination that the credit extension is needed to meet a *bona fide* personal financial emergency. Two financial institutions stated that the Board should allow consumers to waive a waiting period even when a *bona fide* personal financial emergency does not have to be met during the waiting period. A credit union stated that the Board should allow consumers to waive a waiting period where a *bona fide* personal financial emergency must be satisfied within a few days after the waiting period, for example, where a consumer facing imminent foreclosure must make payments before the actual date of a foreclosure sale. Most consumer advocacy organizations opposed allowing waiver unless a *bona fide* personal financial emergency must be met during the waiting period.

Examples of a bona fide personal financial emergency. Proposed comment 19(a)(3)–1 states that the imminent sale of a consumer's home at foreclosure during the waiting period is an example of a *bona fide* personal financial emergency. This example is consistent with commentary on waiving a pre-consummation waiting period that is required for HOEPA loans under § 226.31(c)(1)(iii). Most of the financial institutions and financial services trade associations that discussed this commentary stated that the Board should provide additional guidance on when waiver is permitted and how it may be accomplished. Several of these commenters stated that without such guidance, creditors will rarely, if ever, allow a consumer to waive a waiting period. Most of these commenters stated that the final rule should provide additional examples of circumstances that are considered to be a *bona fide* personal financial emergency. Two financial services trade associations stated that the Board should clarify that any examples are merely illustrative and that a *bona fide* personal financial emergency may exist in other circumstances. Two financial services trade associations stated that the final rule should permit a consumer to waive a waiting period to avoid a foreclosure on a dwelling occupied by tenants.

Several financial institutions and financial services trade associations stated that consumers should be able to waive a waiting period if they plan to use the loan proceeds to pay a tuition expense. On the other hand, a credit union association stated that tuition expenses should not be considered to be a *bona fide* personal financial emergency, especially if the payment deadline was known well in advance. Other circumstances that commenters stated should be considered as a *bona fide* personal financial emergency included cases where a borrower needs to: pay an emergency medical expense; consummate a transaction before an upcoming increase in a land transfer tax; make repairs after a natural disaster to prevent additional property damage; obtain a refinance loan before a payment increase on an adjustable-rate mortgage; and avoid paying a late charge on an existing obligation.

Final Rule

The Board is adopting § 226.19(a)(3) substantially as proposed, which is consistent with Regulation Z's existing provisions for waiving the three-business-day right of rescission for certain mortgage transactions. Under the final rule, if a consumer determines that an extension of credit is needed to meet a *bona fide* personal financial emergency, the consumer may shorten or waive the seven business-day waiting period or the three-business-day waiting period required by § 226.19(a)(2) after the consumer receives accurate TILA disclosures that reflect the final costs and terms. To shorten or waive a waiting period, the consumer must give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who will be primarily liable on the legal obligation. Creditors may not use pre-printed forms for this purpose.

Waiver of either waiting period. The final rule permits consumers to waive either the seven-business-day or the three-business-day waiting period and thus recognizes that a *bona fide* personal financial emergency could occur at any time, including after the consumer receives the initial early disclosures. For example, a consumer might receive the initial early disclosures with the expectation of closing the loan within 60 days. However, the consumer's financial circumstances might change in the interim, creating a need to consummate the loan immediately. Under the final rule, if the APR stated in the early disclosures is no longer accurate, after receiving a corrected disclosure the consumer can provide a signed statement describing the financial emergency in order to waive the three-business-day waiting period and close

the loan. New comment 19(a)(3)–3 illustrates the case where a consumer does not modify or waive the seven-business-day waiting period but modifies the three-business-day waiting period, after receiving a corrected disclosure.

Consumer advocates asserted that the MDIA does not provide for waiver of the three-business-day waiting period. The Board disagrees with that interpretation of the statute. Under the MDIA, consumers may waive or modify the timing requirements (and thus the waiting periods) for the disclosures required under TILA Section 128(b)(2)(A). The Board interprets this provision in the MDIA to apply to the ''good faith estimates'' provided under section 128(b)(2)(A)—whether they are the creditor's initial early disclosures or a corrected version provided subsequently. The requirement in TILA Section 128(b)(2)(D) for a creditor to provide a corrected disclosure is essentially a requirement for the creditor to provide an additional set of the early disclosures required by TILA Section 128(b)(2)(A).

Consumer advocates further asserted that even if the Board determines that the three-business-day waiting period can be waived in some circumstances, consumers should not be permitted to waive the three-business-day waiting period if they have previously waived the seven-business-day waiting period. In their view, once a consumer receives the initial early disclosures and waives the seven-business-day waiting period, the APR may not be changed, even though the transaction has not been consummated. The consumer advocates note that under the MDIA consumers can waive the seven-business-day waiting period only after they receive ''final'' TILA disclosures. The Board does not agree with the consumer advocates' interpretation of the statute. The MDIA seeks to ensure that a consumer's decision to waive the waiting period and immediately consummate the loan is informed by an accurate ''final'' TILA disclosure. There is no indication, however, that the Congress intended to make the rate or other terms stated in the disclosures binding on the parties. Although creditors must provide an accurate ''final'' disclosure before the consumer waives the seven-business-day waiting period and consummates the loan, providing such a disclosure by itself does not assure that the APR (or other loan terms) cannot change. Thus, if the APR subsequently increases by more that the specified tolerance, the consumer's previous waiver is no longer effective and a new ''final'' disclosure must be given. After receiving the new ''final'' disclosure, a consumer may decide whether to provide another signed waiver statement.

Waiver procedures and conditions. The final rule requires that waivers be written, not pre-printed, consistent with regulatory requirements for waiver of a rescission period or of the waiting period before consummation of a HOEPA loan. The Board is revising comment 19(a)(3)–1 to clarify that each consumer who will be primarily liable on the legal obligation must sign the written statement, in order for a waiver to be effective. The MDIA states that a waiver statement ''shall bear the signature of all consumers entitled to receive the disclosures required by'' TILA Section 128(b), 15 U.S.C. 1638(b), and proposed comment 19(a)(3)–1 contained similar language. However, in a transaction where multiple consumers are primarily liable on the legal obligation, a creditor may provide disclosures to one of those consumers rather than to all of them. TILA Section 121(a), 15 U.S.C. 1631(a); 12 CFR 226.17(d). To avoid confusion, the Board has revised comment 19(a)(3)–1 to provide that a statement that shortens or waives a pre-consummation waiting period must be signed by each consumer who is primarily liable on the legal obligation. This is consistent with, yet more specific than, comment 23(e), which states that a waiver statement must be signed by each consumer entitled to rescind, and comment 31(c)(iii)–1, which states that a waiver statement must be signed by each consumer entitled to the waiting period for HOEPA loans.

Some commenters requested that the Board adopt a comment stating that the existence of a consumer's waiver insulates a creditor from liability in connection with such waiver. The Board is not adopting such commentary. Comments 15(e)–1 and 23(e)–1 state that the existence of a consumer's waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission. The Board expects to consider Regulation Z's modification and waiver rules for the MDIA, rescission, and HOEPA in connection with its broader review of regulations for closed-end consumer credit.

Some commenters suggested that consumers may need to obtain the loan proceeds during the waiting period to prevent an emergency, such as foreclosure, that will not occur until after the waiting period. For example, if a foreclosure sale is scheduled to occur a few days after a waiting period ends, a consumer may need to obtain funds within the waiting period to reinstate the mortgage before the date of the scheduled foreclosure sale. However, the longer the period before an adverse event will occur, the less likely it is that consummation actually needs to occur during the waiting period to avoid the adverse event.

Example of a bona fide personal financial emergency. Comment 19(a)(3)–1 has been revised to clarify that consumers who need to obtain the funds during the waiting period may execute the waiver in such cases. The example stated in comment 19(a)(3)–1 is merely illustrative; a consumer may determine that a credit extension is necessary to meet a *bona fide* personal financial emergency in circumstances other than foreclosure. The Board believes that it is not necessary to state additional examples of a *bona fide* personal financial emergency at this time. Whether credit must be extended before a waiting period expires, in order to meet a *bona fide* personal financial emergency, is determined based on the facts associated with individual situations, as comment 19(a)(3)–1 states. The Board believes waivers should not be used routinely to expedite consummation for reasons of convenience. As the MDIA requires, under the final rule a waiver statement must be written by the consumer. As proposed, the final rule prohibits the use of pre-printed forms to further protect against routine modification or waiver of the waiting periods.

F. Notice—§ 226.19(a)(4)

Proposed Rule

The MDIA requires that the early disclosures contain a clear and conspicuous notice containing the following statement: ''You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'' The Board proposed to implement this requirement in a new § 226.19(a)(4), for the early disclosures required by § 226.19(a)(1)(i), as well as any corrected disclosures required by § 226.19(a)(2). The Board solicited comment on the costs and benefits of the proposed rule. The Board also solicited comment on the language used in the disclosures and whether other language might be easier for consumers to understand.

Public Comment

Consumer advocacy organizations stated that the Board should not alter the statutory language without a compelling reason. These commenters noted that the statutory text for the

notice is almost identical to the statutory text for the notice required for HOEPA loans. Two financial services trade associations and a financial institution stated that using the phrase ''this agreement'' in the required statement would mislead consumers, because the disclosures are not in fact an agreement. Several industry commenters recommended that the Board publish model forms or clarify how creditors can make the disclosure in ''conspicuous type size and format.'' A credit union trade association stated that the MDIA's notice requirements would not benefit consumers but would increase financial institutions' costs considerably.

A financial institution stated that many creditors routinely provide new disclosures under § 226.18 to the consumer on the day of consummation, even where the creditor is not required to provide corrected disclosures. The bank stated that such ''final'' disclosures should be permitted to contain the statement required by § 226.19(a)(4) so that creditors may use a single form.

Final Rule

The Board is adopting § 226.19(a)(4) as proposed using the text contained in the statute. The statement required by § 226.19(a)(4) must be grouped together with the other disclosures required by § 226.19(a)(1) and § 226.19(a)(2). Most creditors provide TILA disclosures at consummation, even if the early disclosures remain accurate and corrected disclosures are not required. To facilitate compliance for creditors that use the same form for the initial disclosures and final disclosures, new comment 17(a)(1)–5(xvi) clarifies that creditors may also include the notice described in § 226.19(a)(4) on the disclosures provided at consummation and may group the notice together with the disclosures required by § 226.18.

The Board believes that the reference to an ''agreement'' is sufficiently clear as a reference to the loan agreement that the disclosures summarize. The Board is not proposing new model disclosures at this time because the Board anticipates proposing new model disclosure forms and clauses during 2009, in connection with consumer testing and the comprehensive review of closed-end mortgage disclosures that currently is underway.

G. Timeshare Transactions—§ 226.19(a)(5)

Proposed Rule

The Board proposed a new § 226.19(a)(5) containing the early disclosure requirements for mortgage loans secured by a consumer's interest in a ''timeshare plan'' (timeshare transactions), as defined in the bankruptcy laws (*see* 11 U.S.C. 101(53D)). Pursuant to amendments in the Stabilization Act, the disclosure timing requirements and the fee restriction added by the MDIA are not applicable to timeshare transactions, which instead are subject to the same disclosure timing requirements that applied to ''residential mortgage transactions'' under TILA Section 128(b)(2), 15 U.S.C. 1638(b), before the MDIA was enacted. Accordingly, for timeshare transactions, proposed § 226.19(a)(5) required that creditors make good faith estimates of the disclosures required by § 226.18 that must be delivered or placed in the mail within three business days after the creditor receives the consumer's application or before the credit is extended, whichever is earlier. The seven-business-day waiting period and three-business-day waiting period before consummation contained in § 226.19(a)(2) do not apply to timeshare transactions.

For timeshare transactions, if the APR stated in the early disclosures changes beyond the specified tolerance, under proposed § 226.19(a)(5)(iii), creditors would have to disclose all the changed terms no later than consummation or settlement of the transaction, consistent with the existing rules for residential mortgage transactions in § 226.19(a)(2). Currently, comment 19(a)(2)–3 states that ''consummation'' is defined in § 226.2(a), and ''date of settlement'' is defined in HUD's Regulation X (24 CFR 3500.2(a)). As discussed above, for transactions other than timeshare transactions, the MDIA amends TILA to remove reference to ''settlement'' from TILA's provisions requiring creditors to make corrected disclosures.

The Board solicited comment on the costs and benefits of basing the timing for corrected disclosures on the time of consummation or settlement for timeshare transactions but solely on the time of consummation for other mortgage loans. The Board asked whether Regulation Z's timing requirements for corrected disclosures should be made consistent for all closed-end mortgage transactions by requiring creditors to make corrected disclosures at the time of consummation for timeshare transactions. The Board also asked, in the alternative, whether Regulation Z should require creditors to make corrected disclosures three business days before consummation or settlement, whichever is later, for closed-end mortgage loans other than timeshare transactions.

Public Comment

Most consumer advocacy organizations stated that corrected disclosures for all mortgage loans other than timeshare transactions should be provided before consummation, which marks the time when the consumer's legal obligation begins. These commenters stated that allowing corrected disclosures to be given at the time of settlement would be less advantageous for consumers, because they would be obligated on the transaction before they received the corrected disclosures. They recommended that the same rules should apply to timeshare transactions as well. A community bank trade association stated that the disclosure timing requirements for timeshare transactions should be the same as for other closed-end mortgage transactions, to facilitate compliance with Regulation Z.

Final Rule

The Board is adopting § 226.19(a)(5) as proposed. The final rule, like the proposed rule, tracks the MDIA's requirements for timeshare transactions in TILA Section 128(b)(2)(G), as amended. In particular, under § 226.19(a)(5)(iii), if the APR stated in the early disclosures becomes inaccurate, the creditor must disclose all the changed terms no later than consummation *or* settlement. By contrast, for loans other than timeshare transactions, the creditor must make corrected disclosures (if required) not later than the third business day before consummation, which conforms with TILA Section 128(b)(2)(D), as added by the MDIA.

For timeshare transactions, the general definition of ''business day'' (days the creditor's offices are open to the public for carrying on substantially all of its business functions) is used for purposes of § 226.19(a)(5)(ii), as proposed. This is consistent with the rules for providing early disclosures for other types of mortgage transactions. Also, the commentary accompanying § 226.19(a)(5) has been revised for clarity.

H. Solicitation of Comments on Timing of Disclosures for Home Equity Lines of Credit

The MDIA applies only to closed-end loans secured by a consumer's dwelling and does not affect the disclosure requirements for open-end credit plans secured by a dwelling (home equity lines of credit, or HELOCs). In connection with the Board's comprehensive review of Regulation Z,

the Board's staff is currently reviewing the content and format of HELOC disclosures and subjecting them to consumer testing. To aid in this review, the Board sought comment on whether it is necessary or appropriate to change the timing of HELOC disclosures and, if so, what changes should be made. The Board is considering the comments received and anticipates issuing a proposal to improve the disclosures later in 2009.

I. Effective Date

This final rule becomes effective on July 30, 2009, consistent with the requirements of the MDIA. The provisions in TILA Section 105(d), 15 U.S.C. 1604(d), regarding the effective date of new disclosure requirements is superseded by the effective date of the MDIA.

Many financial institutions and financial services trade associations stated that the final rules implementing the MDIA should apply only to mortgage transactions for which creditors receive the consumer's application on or after July 30, 2009. The final rule adopts this approach, which is consistent with comment 1(d)(5)–1, contained in the July 2008 final rule.

The Board is adopting new comment 1(d)(3)–1 to facilitate compliance by specifying which provisions of the July 2008 final rule will become effective on July 30, 2009 as revised by this final rule. Compliance with those provisions, as revised, is mandatory for covered loans for which the creditor receives an application on or after July 30, 2009. The specific amended subsections are §§ 226.2(a)(6), 226.17(b) and (f), and 226.19(a)(1) through (a)(5). Covered loans include refinance loans and assumptions that are considered to be new transactions under § 226.20(a) or (b).

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this final rule is found in 12 CFR part 226. The Board may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100–0199.

This information collection is required to provide benefits for consumers and is mandatory (15 U.S.C. 1601 *et seq.*). Since the Board does not collect any information, no issue of confidentiality arises. The respondents/recordkeepers are creditors and other entities subject to Regulation Z, including for-profit financial institutions and small businesses.

TILA and Regulation Z are intended to ensure effective disclosure of the costs and terms of credit to consumers. For closed-end loans, such as mortgage and installment loans, cost disclosures are required to be provided prior to consummation. Special disclosures are required in connection with certain products, such as reverse mortgages, certain variable-rate loans, and certain mortgages with rates and fees above specified thresholds. TILA and Regulation Z also contain rules concerning credit advertising. Creditors are required to retain evidence of compliance for twenty-four months (§ 226.25), but Regulation Z does not specify the types of records that must be retained.

Under the PRA, the Board accounts for the paperwork burden associated with Regulation Z for the state member banks and other creditors supervised by the Board that engage in lending covered by Regulation Z and, therefore, are respondents under the PRA. Appendix I of Regulation Z defines the institutions supervised by the Federal Reserve System as: state member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other Federal agencies account for the paperwork burden imposed on the entities for which they have administrative enforcement authority under TILA. To ease the burden and cost of complying with Regulation Z (particularly for small entities), the Board provides model forms, which are appended to the regulation.

As discussed above, on December 10, 2008, the Board published in the **Federal Register** a notice of proposed rulemaking to implement the MDIA (73 FR 74989). The comment period for this notice expired February 9, 2009. The Board received two comment letters from banks that specifically addressed paperwork burden. The commenters asserted that the hourly estimate of the cost of compliance should be considerably higher than the Board projected. The commenters noted that, in addition to updating their systems and internal procedure manuals, compliance would require additional staff training but did not provide specific estimates of additional burden hours that would result from the proposal. In response to those comments, the Board is increasing the burden estimate attributable to additional staff training and updates to internal procedures.

Based on this adjustment to the estimate published in the proposed rule the Board estimates that each of the 1,138 respondents supervised by the Federal Reserve System would take, on average, 40 hours (one business week) to update their systems, provide additional staff training, and update internal procedures to comply with the proposed disclosure requirements in §§ 226.17 and 226.19. This one-time revision would increase the burden for the respondents supervised by the Federal Reserve System by 45,520 hours from 688,607 hours to 734,127 hours.

The total estimated burden increase represents averages for all respondents supervised by the Federal Reserve System. The Board expects that the amount of time required to implement each of the changes for a given institution may vary based on the size and complexity of the respondent.

The other Federal financial institution supervisory agencies (the Office of the Comptroller of the Currency (OCC), the Office of Thrift Supervision (OTS), the Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA)) are responsible for estimating and reporting to OMB the total paperwork burden for the domestically chartered commercial banks, thrifts, and Federal credit unions and U.S. branches and agencies of foreign banks for which they have primary administrative enforcement jurisdiction under TILA Section 108(a), 15 U.S.C. 1607(a). These agencies may, but are not required to, use the Board's burden estimation methodology. Using the Board's method, the total current estimated annual burden for the approximately 17,200 domestically chartered commercial banks, thrifts, and Federal credit unions and U.S. branches and agencies of foreign banks supervised by the Board, OCC, OTS, FDIC, and NCUA under TILA would be approximately 13,568,725 hours. The final rule will impose a one-time increase in the estimated annual burden for such institutions by 688,000 hours to 14,256,725 hours. The above estimates represent an average across all respondents and reflect variations between institutions based on their size, complexity, and practices.

The Board has a continuing interest in the public's opinions of its collections of information. At any time, comments

regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100–0199), Washington, DC 20503.

V. Final Regulatory Flexibility Analysis

In accordance with section 4 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, the Board is publishing a final regulatory flexibility analysis for the proposed amendments to Regulation Z. The RFA generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.[2] However, under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities and states the factual basis for such certification. The Board continues to believe that this final rule will not have a significant economic impact on a substantial number of small entities. The final amendments to Regulation Z are narrowly designed to implement the revisions to TILA made by the MDIA. Creditors must comply with the MDIA's requirements when they become effective on July 30, 2009, whether or not the Board amends Regulation Z to conform the regulation to the statute. The Board's final rule is intended to facilitate compliance by eliminating inconsistencies between Regulation Z's existing requirements and the statutory requirements imposed by the MDIA starting July 30, 2009.

A. Statement of the Need for, and Objectives of, the Final Rule

Congress enacted the TILA based on findings that economic stability would be enhanced and competition among consumer credit providers would be strengthened by the informed use of credit resulting from consumers' awareness of the cost of credit. One of the stated purposes of TILA is to provide a meaningful disclosure of credit terms to enable consumers to compare credit terms available in the marketplace more readily and avoid the uninformed use of credit. TILA also contains procedural and substantive protections for consumers. TILA directs the Board to prescribe regulations to carry out the purposes of the statute. The Board's Regulation Z implements TILA.

Congress enacted the MDIA in 2008 as an amendment to TILA. The MDIA amends TILA's disclosure requirements for closed-end mortgage transactions that are secured by a consumer's dwelling and subject to the Real Estate Settlement Procedures Act (RESPA). In July 2008, the Board revised Regulation Z to expand the number of transactions in which creditors must give a good faith estimate of the required disclosures (early disclosures). Previously, early disclosures were required only for loans made to finance the purchase or initial construction of a consumer's principal dwelling. Under the July 2008 final rule, creditors must provide early disclosures for any mortgage loan secured by the consumer's principal dwelling, such as a home refinance loan or home equity loan. The MDIA amends TILA to require early disclosures for consumer loans secured by any dwelling, even if it is not the consumer's principal dwelling. As explained in parts I and III of the **SUPPLEMENTARY INFORMATION**, the MDIA and the Board's final rule require creditors to delay consummating a loan for seven business days after the creditor makes early disclosures, and three business days after the consumer receives any required corrected disclosures.

B. Summary of Issues Raised by Comments in Response to the Initial Regulatory Flexibility Analysis

Parts I and III of the **SUPPLEMENTARY INFORMATION** contain a detailed discussion of the objectives and legal basis for this final rulemaking. In summary, the amendments to Regulation Z are designed to implement changes that the MDIA makes to TILA. The legal basis for the final rule is in Section 105(a) of TILA.

In connection with the proposed rule to implement the MDIA, the Board sought information and comment on any costs, compliance requirements, or changes in operating procedures arising from the application of the rule to small institutions. The Board received several comments from small banks and trade associations that represent small banks. The commenters asserted that compliance with a final rule to implement the MDIA would increase costs and delay consummation of loans secured by a consumer's dwelling and subject to RESPA. However, these comments did not contain specific information about costs that will be incurred or changes in operating procedures that will be required to comply with the final rule. In general, the comments discussed the impact of statutory requirements rather than any impact that the Board's proposed rule itself would generate. The Board continues to believe that this final rule will not have a significant impact on a substantial number of small entities.

C. Description and Estimate of Small Entities to Which the Final Rule Will Apply

The final regulations will apply to all institutions and entities that engage in closed-end, dwelling-secured lending that is for consumer purposes and subject to RESPA. TILA and Regulation Z have broad applicability to individuals and businesses that originate even small numbers of home-secured loans. *See* § 226.1(c)(1). As discussed in the initial Regulatory Flexibility Analysis, through data from Reports of Condition and Income (Call Reports) of depository institutions and certain subsidiaries of banks and bank holding companies, as well as data reported under the Home Mortgage Disclosure Act (HMDA),[3] the Board can estimate the approximate number of small depository institutions that would be subject to the rules. For the majority of HMDA respondents that are not depository institutions, exact asset size information is not available, although the Board has estimates based on self-reporting from approximately five percent of the non-depository respondents.

Based on the best information available, the Board makes the following estimate of small entities that would be affected by this final rule: According to December 2008 Call Report data, approximately 9,418 small depository institutions would be subject to the rule. Approximately 16,648 depository institutions in the United States filed Call Report data, approximately 12,034 of which had total domestic assets of

[2] Under standards the U.S. Small Business Administration sets (SBA), an entity is considered ''small'' if it has $175 million or less in assets for banks and other depository institutions; and $6.5 million or less in revenues for non-bank mortgage lenders, mortgage brokers, and loan servicers. U.S. Small Business Administration, Table of Small Business Size Standards Matched to North American Industry Classification System Codes, *available at http://www.sba.gov/idc/groups/public/documents/sba_homepage/serv_sstd_tablepdf.pdf.*

[3] HMDA requires lenders to report information annually to their federal supervisory agencies for each application and loan acted on during the calendar year. *See* 12 U.S.C. 2801 *et seq.* The loans reported are estimated to represent about 80 percent of all home lending nationwide and therefore are likely to be broadly representative of home lending in the United States. Robert B. Avery, Kenneth P. Brevoort, and Glenn B. Canner, *The 2007 HMDA Data,* 84 Federal Reserve Bulletin A107, A107 (Dec. 2008) (*2007 HMDA Data), http://www.federalreserve.gov/pubs/bulletin/2008/pdf/hmda07final.pdf.*

$175 million or less and thus were considered small entities for purposes of the RFA. Of the 4,230 banks, 564 thrifts, 7,111 credit unions, and 129 branches of foreign banks that filed Call Report data and were considered small entities, 4,090 banks, 529 thrifts, 4,796 credit unions, and 3 branches of foreign banks, totaling 9,418 institutions, extended mortgage credit. For purposes of this Call Report analysis, thrifts include savings banks, savings and loan entities, co-operative banks and industrial banks. Further, 1,752 non-depository institutions (independent mortgage companies, subsidiaries of a depository institution, or affiliates of a bank holding company) filed HMDA reports in 2008 for 2007 lending activities.[4] Based on the small volume of lending activity reported by these institutions, most are likely to be small entities.

D. Reporting, Recordkeeping, and Other Compliance Requirements

The compliance requirements of the final rule are described in parts I and III of the **SUPPLEMENTARY INFORMATION**. To comply with the revised rules, many small entities will be required to modify their procedures for making credit disclosures for dwelling-secured mortgage loans. The precise costs to small entities of updating their systems and disclosures are difficult to predict. These costs will depend on a number of unknown factors, including, among other things, the specifications of the current systems used by such entities to prepare and provide disclosures.

E. Steps Taken To Minimize the Economic Impact on Small Entities

As discussed in part III of the **SUPPLEMENTARY INFORMATION**, TILA and RESPA both require disclosures for dwelling-secured loans that must be given within three business days of application. Under Regulation Z, the Board has interpreted TILA's timing requirement to be consistent with the timing of RESPA disclosures. Thus, where possible, the Board has made terms and definitions used in Regulation Z consistent with those terms as they are used in HUD's Regulation X. For example, Regulation Z provides that creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a ''written application'' has been received. As a further example, the definition of ''business day'' that is used under the Board's final rule for purposes of requirements for a creditor to deliver or mail good faith estimates of loan terms (also known as the ''early disclosures'') within three business days after the creditor receives a consumer's application is consistent with the ''business day'' definition used under Regulation X for purposes of requirements for creditors to provide good faith estimates of settlement charges within three business days after the creditor receives the consumer's application. Many creditors send the good faith estimates required by Regulation Z and Regulation X together; these creditors may continue to send these disclosures together, under the Board's final rule. Moreover, under both Regulation Z and Regulation X, creditors count all calendar days except Sundays and specified legal holidays to determine when a consumer is considered to have received disclosures provided by means other than delivery in person. Using common definitions for terms that apply under both Regulation Z and Regulation X reduces the impact of the MDIA on all creditors, including small creditors.

The Board has made one change in the final rule that further reduces the impact of the MDIA's amendments to TILA on small creditors and other creditors. The MDIA adds two pre-consummation waiting periods—one of seven business days after the creditor delivers the early disclosures, and the other of three business days after a consumer receives corrected disclosures, if any are required—to TILA's requirements. Under the Board's final rule, the same definition of ''business day'' is used for purposes of each waiting period. Further, the definition of ''business day'' that will apply for purposes of determining when a waiting period expires and consummation may occur is an objective definition: all calendar days except Sundays and specified legal public holidays. The Board is not adopting its proposal to apply Regulation Z's general definition of ''business day'' (days on which the creditor's offices are open to the public for carrying on substantially all of its business functions), for purposes of this requirement. Under the Board's proposal, creditors whose offices are open seven days per week would be able to consummate mortgage transactions that are subject to the MDIA sooner than creditors whose offices are open fewer days per week. This will not be the case under the final rule. To the extent that small creditors' offices are less likely than large creditors' offices to be open on Saturday or Sunday, the final rule creates parity between small and large entities by applying the more precise definition of ''business day'' for purposes of determining when the seven-business-day waiting period expires and consummation may occur.

This regulatory flexibility analysis does not discuss alternatives to the final rule because the Board is revising Regulation Z for the narrow purpose of carrying out its statutory mandate to implement statutory amendments to TILA.

List of Subjects in 12 CFR Part 226

Advertising, Consumer protection, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

Authority and Issuance

For the reasons set forth in the preamble, the effective date for the amendments to 12 CFR 226.2(a)(6), 226.17(b) and (f), and 226.19(a)(1), and, in Supplement I (Official Staff Interpretations) to part 226, under *Section 226.1 Authority, Purpose, Coverage, Organization, Enforcement and Liability,* under *Section 226.2 Definitions and Rules of Construction,* under *Section 226.17 General Disclosure Requirements,* and under *Section 226.19 Certain Residential Mortgage and Variable-Rate Transactions,* published on July 30, 2008 (73 FR 44600), previously October 1, 2009, is now July 30, 2009; and the Board amends Regulation Z, 12 CFR part 226 further, as set forth below:

PART 226—TRUTH IN LENDING (REGULATION Z)

■ 1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604, and 1637(c)(5).

Subpart A—General

■ 2. Section 226.2 is amended by revising paragraph (a)(6) to read as follows:

§ 226.2 Definitions and rules of construction.

(a) * * *

(6) *Business Day* means a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. However, for purposes of rescission under §§ 226.15 and 226.23, and for purposes of § 226.19(a)(1)(ii), § 226.19(a)(2), and § 226.31, the term means all calendar days except Sundays and the legal public holidays specified in 5 U.S.C. 6103(a), such as New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day,

[4] *2007 HMDA Data* at A109 and tbl. 2.

Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.
* * * * *

Subpart C—Closed-End Credit

■ 3. Section 226.17 is amended by revising paragraph (f) to read as follows:

§ 226.17 General disclosure requirements.

* * * * *

(f) *Early disclosures.* If disclosures required by this subpart are given before the date of consummation of a transaction and a subsequent event makes them inaccurate, the creditor shall disclose before consummation (subject to the provisions of § 226.19(a)(2) and § 226.19(a)(5)(iii)): [39]

(1) Any changed term unless the term was based on an estimate in accordance with § 226.17(c)(2) and was labelled an estimate;

(2) All changed terms, if the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed earlier by more than ⅛ of 1 percentage point in a regular transaction, or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 226.22(a).

* * * * *

■ 4. Section 226.19 is amended by revising paragraph (a) to read as follows:

§ 226.19 Certain mortgage and variable-rate transactions.

(a) *Mortgage transactions subject to RESPA—(1)(i) Time of disclosures.* In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by the consumer's dwelling, other than a home equity line of credit subject to § 226.5b or mortgage transaction subject to paragraph (a)(5) of this section, the creditor shall make good faith estimates of the disclosures required by § 226.18 and shall deliver or place them in the mail not later than the third business day after the creditor receives the consumer's written application.

(ii) *Imposition of fees.* Except as provided in paragraph (a)(1)(iii) of this section, neither a creditor nor any other person may impose a fee on a consumer in connection with the consumer's application for a mortgage transaction subject to paragraph (a)(1)(i) of this section before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section. If the disclosures are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

[39] [Reserved.]

(iii) *Exception to fee restriction.* A creditor or other person may impose a fee for obtaining the consumer's credit history before the consumer has received the disclosures required by paragraph (a)(1)(i) of this section, provided the fee is *bona fide* and reasonable in amount.

(2) *Waiting periods for early disclosures and corrected disclosures.* (i) The creditor shall deliver or place in the mail the good faith estimates required by paragraph (a)(1)(i) of this section not later than the seventh business day before consummation of the transaction.

(ii) If the annual percentage rate disclosed under paragraph (a)(1)(i) of this section becomes inaccurate, as defined in § 226.22, the creditor shall provide corrected disclosures with all changed terms. The consumer must receive the corrected disclosures no later than three business days before consummation. If the corrected disclosures are mailed to the consumer or delivered to the consumer by means other than delivery in person, the consumer is deemed to have received the corrected disclosures three business days after they are mailed or delivered.

(3) *Consumer's waiver of waiting period before consummation.* If the consumer determines that the extension of credit is needed to meet a *bona fide* personal financial emergency, the consumer may modify or waive the seven-business-day waiting period or the three-business-day waiting period required by paragraph (a)(2) of this section, after receiving the disclosures required by § 226.18. To modify or waive a waiting period, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the waiting period, and bears the signature of all the consumers who are primarily liable on the legal obligation. Printed forms for this purpose are prohibited.

(4) *Notice.* Disclosures made pursuant to paragraph (a)(1) or paragraph (a)(2) of this section shall contain the following statement: ''You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'' The disclosure required by this paragraph shall be grouped together with the disclosures required by paragraphs (a)(1) or (a)(2) of this section.

(5) *Timeshare plans.* In a mortgage transaction subject to the Real Estate Settlement Procedures Act (12 U.S.C. 2601 *et seq.*) that is secured by a consumer's interest in a timeshare plan described in 11 U.S.C. 101(53(D)):

(i) The requirements of paragraphs (a)(1) through (a)(4) of this section do not apply;

(ii) The creditor shall make good faith estimates of the disclosures required by § 226.18 before consummation, or shall deliver or place them in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier; and

(iii) If the annual percentage rate at the time of consummation varies from the annual percentage rate disclosed under paragraph (a)(5)(ii) of this section by more than ⅛ of 1 percentage point in a regular transaction or more than ¼ of 1 percentage point in an irregular transaction, as defined in § 226.22, the creditor shall disclose all the changed terms no later than consummation or settlement.

* * * * *

■ 5. In Supplement I to Part 226, under *Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability:*

(A) Heading *1(d) Organization* is republished;

(B) New *Paragraph 1(d)(1)* through *Paragraph 1(d)(4)* are added;

(C) Under *Paragraph 1(d)(5),* paragraph 1(d)(5)–1 is revised; and

(D) New *Paragraph 1(d)(6)* is added.

Supplement I to Part 226—Official Staff Interpretations

* * * * *

Subpart A—General

§ 226.1 Authority, Purpose, Coverage, Organization, Enforcement and Liability.

* * * * *

1(d) Organization.

Paragraph 1(d)(1)

1. [Reserved.]

Paragraph 1(d)(2)

1. [Reserved.]

Paragraph 1(d)(3)

1. *Effective date.* The Board's amendments to Regulation Z published on May 19, 2009 apply to covered loans (including refinance loans and assumptions considered new transactions under § 226.20) for which the creditor receives an application on or after July 30, 2009.

Paragraph 1(d)(4)

1. [Reserved.]

Paragraph 1(d)(5)

1. *Effective dates.* The Board's revisions published on July 30, 2008 (the ''final rules'') apply to covered loans (including refinance loans and

assumptions considered new transactions under § 226.20) for which the creditor receives an application on or after October 1, 2009, except for the final rules on advertising, escrows, and loan servicing. *But see* comment 1(d)(3)–1. The final rules on escrow in § 226.35(b)(3) are effective for covered loans (including refinancings and assumptions in § 226.20) for which the creditor receives an application on or after April 1, 2010; but for such loans secured by manufactured housing on or after October 1, 2010. The final rules applicable to servicers in § 226.36(c) apply to all covered loans serviced on or after October 1, 2009. The final rules on advertising apply to advertisements occurring on or after October 1, 2009. For example, a radio ad occurs on the date it is first broadcast; a solicitation occurs on the date it is mailed to the consumer. The following examples illustrate the application of the effective dates for the final rules.

i. *General.* A refinancing or assumption as defined in § 226.20(a) or (b) is a new transaction and is covered by a provision of the final rules if the creditor receives an application for the transaction on or after that provision's effective date. For example, if a creditor receives an application for a refinance loan covered by § 226.35(a) on or after October 1, 2009, and the refinance loan is consummated on October 15, 2009, the provision restricting prepayment penalties in § 226.35(b)(2) applies. However, if the transaction were a modification of an existing obligation's terms that does not constitute a refinance loan under § 226.20(a), the final rules, including for example the restriction on prepayment penalties, would not apply.

ii. *Escrows.* Assume a consumer applies for a refinance loan to be secured by a dwelling (that is not a manufactured home) on March 15, 2010, and the loan is consummated on April 2, 2010. The escrow rule in § 226.35(b)(3) does not apply.

iii. *Servicing.* Assume that a consumer applies for a new loan on August 1, 2009. The loan is consummated on September 1, 2009. The servicing rules in § 226.36(c) apply to the servicing of that loan as of October 1, 2009.

Paragraph 1(d)(6)

1. [Reserved.]

■ 6. In Supplement I to Part 226, under *Section 226.2—Definitions and Rules of Construction, 2(a) Definitions, 2(a)(6) Business day,* paragraph 2(a)(6)–2 is revised to read as follows:

§ 226.2 Definitions and Rules of Construction.

2(a) Definitions.

* * * * *

2(a)(6) Business day.

* * * * *

2. *Rule for rescission and disclosures for certain mortgage transactions.* A more precise rule for what is a business day (all calendar days except Sundays and the Federal legal holidays specified in 5 U.S.C. 6103(a)) applies when the right of rescission or the receipt of disclosures for certain dwelling-secured mortgage transactions under §§ 226.19(a)(1)(ii), 226.19(a)(2), or 226.31(c) is involved. Four Federal legal holidays are identified in 5 U.S.C. 6103(a) by a specific date: New Year's Day, January 1; Independence Day, July 4; Veterans Day, November 11; and Christmas Day, December 25. When one of these holidays (July 4, for example) falls on a Saturday, Federal offices and other entities might observe the holiday on the preceding Friday (July 3). In cases where the more precise rule applies, the observed holiday (in the example, July 3) is a business day.

* * * * *

■ 7. In Supplement I to Part 226, under *Section 226.17—General Disclosure Requirements, 17(a)(1) Form of disclosures,* new paragraph 17(a)(1)–5(xvi) is added, to read as follows:

Subpart C—Closed-End Credit

§ 226.17 General Disclosure Requirements.

17(a) Form of disclosures.

Paragraph 17(a)(1)

* * * * *

5. * * *

xvi. The notice set forth in § 226.19(a)(4), in a closed-end transaction not subject to § 226.19(a)(1)(i). In a mortgage transaction subject to § 226.19(a)(1)(i), the creditor must disclose the notice contained in § 226.19(a)(4) grouped together with the disclosures made under § 226.18. *See* comment 19(a)(4)–1.

* * * * *

■ 8. In Supplement I to Part 226, under *Section 226.19—Certain Mortgage and Variable-Rate Transactions:*

(A) Under *19(a)(1)(i) Time of disclosure,* paragraphs 19(a)(1)(i)–1 through 19(a)(1)(i)–5 are revised;

(B) *Paragraph 19(a)(2) Rediscloure required* is revised;

(C) *Paragraph 19(a)(3) Consumer's waiver of waiting period before consummation* through *Paragraph 19(a)(5)(iii) Redisclosure for timeshare plans* are added.

§ 226.19 Certain Mortgage and Variable-Rate Transactions.

19(a)(1)(i) Time of disclosure.

1. *Coverage.* This section requires early disclosure of credit terms in mortgage transactions that are secured by a consumer's dwelling (other than home equity lines of credit subject to § 226.5b or mortgage transactions secured by an interest in a timeshare plan) that are also subject to the Real Estate Settlement Procedures Act (RESPA) and its implementing Regulation X, administered by the Department of Housing and Urban Development (HUD). To be covered by § 226.19, a transaction must be a Federally related mortgage loan under RESPA. ''Federally related mortgage loan'' is defined under RESPA (12 U.S.C. 2602) and Regulation X (24 CFR 3500.2), and is subject to any interpretations by HUD.

2. *Timing and use of estimates.* The disclosures required by § 226.19(a)(1)(i) must be delivered or mailed not later than three business days after the creditor receives the consumer's written application. The general definition of ''business day'' in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for substantially all of its business functions—is used for purposes of § 226.19(a)(1)(i). *See* comment 2(a)(6)–1. This general definition is consistent with the definition of ''business day'' in HUD's Regulation X—a day on which the creditor's offices are open to the public for carrying on substantially all of its business functions. *See* 24 CFR 3500.2. Accordingly, the three-business-day period in § 226.19(a)(1)(i) for making early disclosures coincides with the time period within which creditors subject to RESPA must provide good faith estimates of settlement costs. If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as ''all numerical disclosures except the late-payment disclosure are estimates'') instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1).

3. *Written application.* Creditors may rely on RESPA and Regulation X (including any interpretations issued by HUD) in deciding whether a ''written application'' has been received. In general, Regulation X defines ''application'' to mean the submission of a borrower's financial information in anticipation of a credit decision relating to a Federally related mortgage loan. *See* 24 CFR 3500.2(b). An application is received when it reaches the creditor in any of the ways applications are normally transmitted—by mail, hand delivery, or through an intermediary agent or broker. (*See* comment 19(b)–3 for guidance in determining whether or not the transaction involves an intermediary agent or broker.) If an application reaches the creditor through an intermediary agent or broker, the application is received when it reaches the creditor, rather than when it reaches the agent or broker.

4. *Denied or withdrawn applications.* The creditor may determine within the three-business-day period that the application will not or cannot be approved on the terms requested, as, for example, when a consumer applies for a type or amount of credit that the creditor does not offer, or the consumer's application cannot be approved for some other reason. In that case, or if the consumer withdraws the application within the three-business-day period, the creditor need not make the disclosures under this section. If the creditor fails to provide early disclosures and the transaction is later consummated on the original terms, the creditor will be in violation of this provision. If, however, the consumer amends the application because of the creditor's unwillingness to approve it on its original terms, no violation occurs for not providing disclosures based on the original terms. But the amended application is a new application subject to § 226.19(a)(1)(i).

5. *Itemization of amount financed.* In many mortgage transactions, the itemization of the amount financed required by § 226.18(c) will contain items, such as origination fees or points, that also must be disclosed as part of the good faith estimates of settlement costs required under RESPA. Creditors furnishing the RESPA good faith estimates need not give consumers any itemization of the amount financed.

* * * * *

19(a)(2) Waiting period(s) required.

1. *Business day definition.* For purposes of § 226.19(a)(2), ''business day'' means all calendar days except Sundays and the legal public holidays referred to in § 226.2(a)(6). *See* comment 2(a)(6)–2.

2. *Consummation after both waiting periods expire.* Consummation may not occur until both the seven-business-day waiting period and the three-business-day waiting period have expired. For example, assume a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, and the creditor then delivers corrected disclosures in person to the consumer on Wednesday, June 3. Although Saturday, June 6 is the third business day after the consumer received the corrected disclosures, consummation may not occur before Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

19(a)(2)(i) Seven-business-day waiting period.

1. *Timing.* The disclosures required by § 226.19(a)(1)(i) must be delivered or placed in the mail no later than the seventh business day before consummation. The seven-business-day waiting period begins when the creditor delivers the early disclosures or places them in the mail, not when the consumer receives or is deemed to have received the early disclosures. For example, if a creditor delivers the early disclosures to the consumer in person or places them in the mail on Monday, June 1, consummation may occur on or after Tuesday, June 9, the seventh business day following delivery or mailing of the early disclosures.

19(a)(2)(ii) Three-business-day waiting period.

1. *Conditions for redisclosure.* If, at the time of consummation, the annual percentage rate disclosed is accurate under § 226.22, the creditor does not have to make corrected disclosures under § 226.19(a)(2). If, on the other hand, the annual percentage rate disclosed is not accurate under § 226.22, the creditor must make corrected disclosures of all changed terms (including the annual percentage rate) so that the consumer receives them not later than the third business day before consummation. For example, assume consummation is scheduled for Thursday, June 11 and the early disclosures for a regular mortgage transaction disclose an annual percentage rate of 7.00%:

i. On Thursday, June 11, the annual percentage rate will be 7.10%. The creditor is not required to make corrected disclosures under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.15%. The creditor must make corrected disclosures so that the consumer receives them on or before Monday, June 8.

2. *Content of new disclosures.* If redisclosure is required, the creditor may provide a complete set of new disclosures, or may redisclose only the changed terms. If the creditor chooses to provide a complete set of new disclosures, the creditor may but need not highlight the new terms, provided that the disclosures comply with the format requirements of § 226.17(a). If the creditor chooses to disclose only the new terms, all the new terms must be disclosed. For example, a different annual percentage rate will almost always produce a different finance charge, and often a new schedule of payments; all of these changes would have to be disclosed. If, in addition, unrelated terms such as the amount financed or prepayment penalty vary from those originally disclosed, the accurate terms must be disclosed. However, no new disclosures are required if the only inaccuracies involve estimates other than the annual percentage rate, and no variable rate feature has been added. For a discussion of the requirement to redisclose when a variable-rate feature is added, *see* comment 17(f)–2. For a discussion of redisclosure requirements in general, *see* the commentary on § 226.17(f).

3. *Timing.* When redisclosures are necessary because the annual percentage rate has become inaccurate, they must be received by the consumer no later than the third business day before consummation. (For redisclosures triggered by other events, the creditor must provide corrected disclosures before consummation. *See* § 226.17(f).) If the creditor delivers the corrected disclosures to the consumer in person, consummation may occur any time on the third business day following delivery. If the creditor provides the corrected disclosures by mail, the consumer is considered to have received them three business days after they are placed in the mail, for purposes of determining when the three-business-day waiting period required under § 226.19(a)(2)(ii) begins. Creditors that use electronic mail or a courier other than the postal service may also follow this approach.

4. *Basis for annual percentage rate comparison.* To determine whether a creditor must make corrected disclosures under § 226.22, a creditor compares (a) what the annual percentage rate will be at consummation to (b) the annual percentage rate stated in the most recent disclosures the creditor made to the consumer. For

example, assume consummation for a regular mortgage transaction is scheduled for Thursday, June 11, the early disclosures provided in May stated an annual percentage rate of 7.00%, and corrected disclosures received by the consumer on Friday, June 5 stated an annual percentage rate of 7.15%:

i. On Thursday, June 11, the annual percentage rate will be 7.25%, which exceeds the most recently disclosed annual percentage rate by less than the applicable tolerance. The creditor is not required to make additional corrected disclosures or wait an additional three business days under § 226.19(a)(2).

ii. On Thursday, June 11, the annual percentage rate will be 7.30%, which exceeds the most recently disclosed annual percentage rate by more than the applicable tolerance. The creditor must make corrected disclosures such that the consumer receives them on or before Monday, June 8.

19(a)(3) Consumer's waiver of waiting period before consummation.

1. *Modification or waiver.* A consumer may modify or waive the right to a waiting period required by § 226.19(a)(2) only after the creditor makes the disclosures required by § 226.18. The consumer must have a *bona fide* personal financial emergency that necessitates consummating the credit transaction before the end of the waiting period. Whether these conditions are met is determined by the facts surrounding individual situations. The imminent sale of the consumer's home at foreclosure, where the foreclosure sale will proceed unless loan proceeds are made available to the consumer during the waiting period, is one example of a *bona fide* personal financial emergency. Each consumer who is primarily liable on the legal obligation must sign the written statement for the waiver to be effective.

2. *Examples of waivers within the seven-business-day waiting period.* Assume the early disclosures are delivered to the consumer in person on Monday, June 1, and at that time the consumer executes a waiver of the seven-business-day waiting period (which would end on Tuesday, June 9) so that the loan can be consummated on Friday, June 5:

i. If the annual percentage rate on the early disclosures is inaccurate under § 226.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in § 226.19(a)(2)(ii). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 5.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on June 5 without the consumer giving the creditor an additional modification or waiver.

3. *Examples of waivers made after the seven-business-day waiting period.* Assume the early disclosures are delivered to the consumer in person on Monday, June 1 and consummation is scheduled for Friday, June 19. On Wednesday, June 17, a change to the annual percentage rate occurs:

i. If the annual percentage rate on the early disclosures is inaccurate under § 226.22, the creditor must provide a corrected disclosure to the consumer before consummation, which triggers the three-business-day waiting period in § 226.19(a)(2). After the consumer receives the corrected disclosure, the consumer must execute a waiver of the three-business-day waiting period in order to consummate the transaction on Friday, June 19.

ii. If a change occurs that does not render the annual percentage rate on the early disclosures inaccurate under § 226.22, the creditor must disclose the changed terms before consummation, consistent with § 226.17(f). Disclosure of the changed terms does not trigger an additional waiting period, and the transaction may be consummated on Friday, June 19 without the consumer giving the creditor an additional modification or waiver.

19(a)(4) Notice.

1. *Inclusion in other disclosures.* The notice required by § 226.19(a)(4) must be grouped together with the disclosures required by § 226.19(a)(1)(i) or § 226.19(a)(2). *See* comment 17(a)(1)–2 for a discussion of the rules for segregating disclosures. In other cases, the notice set forth in § 226.19(a)(4) may be disclosed together with or separately from the disclosures required under § 226.18. *See* comment 17(a)(1)–5(xvi).

19(a)(5)(ii) Time of disclosures for timeshare plans.

1. *Timing.* A mortgage transaction secured by a consumer's interest in a ''timeshare plan,'' as defined in 11 U.S.C. 101(53D), that is also a Federally related mortgage loan under RESPA is subject to the requirements of § 226.19(a)(5) instead of the requirements of § 226.19(a)(1) through § 226.19(a)(4). *See* comment 19(a)(1)(i)–1. Early disclosures for transactions subject to § 226.19(a)(5) must be given (a) before consummation or (b) within three business days after the creditor receives the consumer's written application, whichever is earlier. The general definition of ''business day'' in § 226.2(a)(6)—a day on which the creditor's offices are open to the public for substantially all of its business functions—applies for purposes of § 226.19(a)(5)(ii). *See* comment 2(a)(6)–1. These timing requirements are different from the timing requirements under § 226.19(a)(1)(i). Timeshare transactions covered by § 226.19(a)(5) may be consummated any time after the disclosures required by § 226.19(a)(5)(ii) are provided.

2. *Use of estimates.* If the creditor does not know the precise credit terms, the creditor must base the disclosures on the best information reasonably available and indicate that the disclosures are estimates under § 226.17(c)(2). If many of the disclosures are estimates, the creditor may include a statement to that effect (such as ''all numerical disclosures except the late-payment disclosure are estimates'') instead of separately labelling each estimate. In the alternative, the creditor may label as an estimate only the items primarily affected by unknown information. (*See* the commentary to § 226.17(c)(2).) The creditor may provide explanatory material concerning the estimates and the contingencies that may affect the actual terms, in accordance with the commentary to § 226.17(a)(1).

3. *Written application.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–3 in determining whether a ''written application'' has been received.

4. *Denied or withdrawn applications.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–4 in determining that disclosures are not required by § 226.19(a)(5)(ii) because the consumer's application will not or cannot be approved on the terms requested or the consumer has withdrawn the application.

5. *Itemization of amount financed.* For timeshare transactions, creditors may rely on comment 19(a)(1)(i)–5 in determining whether providing the good faith estimates of settlement costs required by RESPA satisfies the requirement of § 226.18(c) to provide an itemization of the amount financed.

19(a)(5)(iii) Redisclosure for timeshare plans.

1. *Consummation or settlement.* For extensions of credit secured by a consumer's timeshare plan, when corrected disclosures are required, they

must be given no later than ''consummation or settlement.'' ''Consummation'' is defined in § 226.2(a). ''Settlement'' is defined in Regulation X (24 CFR 3500.2(b)) and is subject to any interpretations issued by HUD. In some cases, a creditor may delay redisclosure until settlement, which may be at a time later than consummation. If a creditor chooses to redisclose at settlement, disclosures may be based on the terms in effect at settlement, rather than at consummation. For example, in a variable-rate transaction, a creditor may choose to base disclosures on the terms in effect at settlement, despite the general rule in comment 17(c)(1)–8 that variable-rate disclosures should be based on the terms in effect at consummation.

2. *Content of new disclosures.* Creditors may rely on comment 19(a)(2)(ii)–2 in determining the content of corrected disclosures required under § 226.19(a)(5)(iii).

■ 9. In Supplement I to Part 226, under *Section 226.31—General Rules,* heading *Paragraph 31(c)(2) Disclosures for reverse mortgages* and paragraph 31(c)(2)–1 are revised, to read as follows:

Subpart E—Special Rules for Certain Home Mortgage Transactions

§ 226.31 General Rules

* * * * *

31(c)(2) Disclosures for reverse mortgages.

1. *Business days.* For purposes of providing reverse mortgage disclosures, ''business day'' has the same meaning as in comment 31(c)(1)–1—all calendar days except Sundays and the Federal legal holidays listed in 5 U.S.C. 6103(a). This means if disclosures are provided on a Friday, consummation could occur any time on Tuesday, the third business day following receipt of the disclosures.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 13, 2009.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. E9–11567 Filed 5–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1245; Directorate Identifier 2008–NE–27–AD; Amendment 39–15912; AD 2009–11–02]

RIN 2120–AA64

Airworthiness Directives; CFM International S.A. Model CFM56 Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for CFM International S.A. CFM56–2, CFM56–3, CFM56–5A, CFM56–5B, CFM56–5C, and CFM56–7B series turbofan engines with certain part number (P/N) and serial number (SN) high-pressure compressor (HPC) 4–9 spools installed. This AD requires removing certain HPC 4–9 spools listed by P/N and SN in this AD. This AD results from reports of certain HPC 4–9 spools that Propulsion Technology LLC (PTLLC) improperly repaired and returned to service. We are issuing this AD to prevent cracking of the HPC 4–9 spool, which could result in possible uncontained failure of the spool and damage to the airplane.

DATES: This AD becomes effective June 23, 2009.

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

FOR FURTHER INFORMATION CONTACT: Stephen K. Sheely, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; e-mail: *stephen.k.sheely@faa.gov;* telephone (781) 238–7750; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA proposed to amend 14 CFR part 39 with a proposed AD. The proposed AD applies to CFM International S.A. CFM56–2, CFM56–3, CFM56–5A, CFM56–5B, CFM56–5C, and CFM56–7B series turbofan engines with certain P/N and SN HPC 4–9 spools installed. We published the proposed AD in the **Federal Register** on November 26, 2008 (73 FR 71951). That action proposed to require removing certain HPC 4–9 spools that have a P/N and SN listed in Table 1 of this AD before accumulating 8,900 cycles since repair at PTLLC or within 1,100 cycles from the effective date of this AD, whichever occurs later.

Examining the AD Docket

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

Comments

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

Incorrect SN in Table 1 of the Proposed AD

Three commenters, the Air Transport Association (ATA), United Airlines, and CFM International, point out a typographical error in the SN for a 4–9 spool, P/N 1590M29G01. They state that the Special Airworthiness Information Bulletin (SAIB) NE–08–17 shows SN GWNFY924 for that P/N and the proposed rule shows SN GWNFY824 for the same P/N.

We agree. Serial number GWNFY924 is the correct SN. We changed Table 1, P/N 1590M29G01 SN ''GWNFY824,'' to ''GWNFY924'' in this AD.

Request To Clarify the Relationship Between SAIB NE–08–17 and the Proposed AD

One commenter, the ATA, suggests the proposed AD doesn't show a clear relationship between its requirements and those contained in SAIB NE–08–17. The ATA suggests we provide a clarification and a better understanding of why we wrote SAIB NE–08–17 and the proposed rule. The ATA also asks if the recommendations or the hardware listed in SAIB NE–08–17 is still in effect.

We partially agree. The proposed AD specifies the same twenty-six 4–9 spools as SAIB NE–08–17. Special Airworthiness Information Bulletin NE–08–17 still provides recommendations for dispositioning other parts listed in that SAIB. However, we don't require removing the hardware listed in SAIB NE–08–17, other than the 4–9 spools. We didn't change the AD.

Request To Delete ''Seal Tooth Plasma Overspray'' Statement From Discussion

One commenter, CFM International, asks us to delete ''Seal tooth plasma overspray between the seal teeth, which is not permitted by the engine overhaul manual, and'' from the Discussion Section. CFM International states that the overhaul manual does allow plasma overspray between the seal teeth.

We agree that the overhaul manual allows plasma overspray between the seal teeth. However, the Discussion Section is not included in the AD. We didn't change the AD.

Request To Include Instructions for Dispositioning the Removed 4–9 Spool

One commenter, Japan Airlines, states that we include a prohibition for installing the affected 4–9 spools, but we don't specify what to do with the 4–9 spools removed as specified in the proposed AD. They ask us to provide instructions to disposition the removed 4–9 spools.

We don't agree. The proposed rule requires removing from service, certain 4–9 spools, which removes the unsafe condition. The included installation prohibition resolves our remaining regulatory concerns. How operators recycle metal is beyond the scope of an AD, so long as the excluded part doesn't find its way back into service. We didn't change the AD.

Request To Clarify the Compliance Times

One commenter, the Boeing Company, asks us to clarify the compliance times for removing the affected 4–9 spools. Boeing suggests that, as written, the compliance times of ''before accumulating 8,900 cycles-since-repair at PTLLC or within 1,100 cycles after the effective date of this AD,'' could allow up to 10,000 cycles to accumulate on an engine before an operator has to take corrective action.

We agree. That is what we intended. We didn't change the AD.

Conclusion

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

Costs of Compliance

We estimate that this AD will affect 26 engines installed on airplanes of U.S. registry. We also estimate that it will take about 410 work-hours per engine to perform the required actions, and that the average labor rate is $80 per work-hour. Required parts will cost about $227,500 per engine. Based on these figures, we estimate the total cost of the AD to U.S. operators to be $6,767,800.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–11–02 CFM International S.A.: Amendment 39–15912. Docket No. FAA–2008–1245; Directorate Identifier 2008–NE–27–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective June 23, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to CFM International S.A. CFM56–2, CFM56–3, CFM56–5A, CFM56–5B, CFM56–5C, and CFM56–7B series turbofan engines with a high-pressure compressor (HPC) 4–9 spool that has a part number (P/N) and serial number (SN) specified in Table 1 of this AD, installed. These engines are installed on, but not limited to, Airbus A319, A320, and A340 airplanes and Boeing 737 airplanes.

TABLE 1—HPC 4–9 SPOOLS BY P/N AND SN

HPC 4–9 spool P/N	HPC 4–9 spool SN
9513M93G08	MPON1641
1590M29G01	GWN0087D
1590M29G01	GWN00MG2
1590M29G01	GWN011LG
1590M29G01	GWN01285
1590M29G01	GWN021JC
1590M29G01	GWNFY923
1590M29G01	GWNFY924
1590M29G01	GWNPA756
1590M29G01	GWNPG015
1590M29G01	GWNWC515
1590M29G01	GWNWR523
1590M29G01	GWNWT631
1590M29G01	GWNYC495
1588M89G03	GWN03K1R
1588M89G03	GWN03N61
1588M89G03	GWN03N6C
1588M89G03	GWN040L9
1588M89G03	GWN0468N
1588M89G03	GWN05AMO
1277M97G02	GWNE1298
1277M97G02	GWNE1564
1277M97G02	GWNJ7891
1277M97G02	GWNT4187
9513M93G11	GWNB3373
1358M94G01	GWNU0169

Unsafe Condition

(d) This AD results from reports of certain HPC 4–9 spools that Propulsion Technology LLC (PTLLC) improperly repaired and returned to service. We are issuing this AD to prevent cracking of the HPC 4–9 spool, which could result in possible uncontained

failure of the spool and damage to the airplane.

Compliance

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

Removing the HPC 4–9 Spool

(f) Remove HPC 4–9 spools from service that have a P/N and S/N listed in Table 1 of this AD before accumulating 8,900 cycles-since-repair at PTLLC or within 1,100 cycles from the effective date of this AD, which ever occurs later.

Installation Prohibition

(g) After the effective date of this AD, do not install any engine with an HPC 4–9 spool that has a P/N and SN specified in Table 1 of this AD.

Alternative Methods of Compliance

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

Related Information

(i) Contact Stephen K. Sheely, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; *e-mail: stephen.k.sheely@faa.gov*; telephone (781) 238–7750; fax (781) 238–7199, for more information about this AD.

Material Incorporated by Reference

(j) None.

Issued in Burlington, Massachusetts, on May 13, 2009.

Peter A. White,

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

[FR Doc. E9–11554 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 50

[EPA–HQ–OAR–2005–0159; FRL–8907–1]

RIN 2060–AP56

The Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule): Revised Exceptional Event Data Flagging Submittal and Documentation Schedule for Monitoring Data Used in Designations for the 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing amendments to the Exceptional Events Rule to provide a revised exceptional event data flagging and documentation schedule for ozone data that may be used for designations under the 2008 ozone National Ambient Air Quality Standards (NAAQS). The Exceptional Events Rule states that when EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, EPA may revise or set a new schedule for flagging data for those NAAQS. EPA recently revised the primary and secondary ozone NAAQS to protect public health and welfare; the revised standards became effective May 27, 2008. Consistent with the process envisioned in the Exceptional Events Rule, this final rule revises the dates for flagging data and submitting documentation regarding exceptional events under the revised ozone NAAQS. This revised schedule allows EPA to fully consider State requests for exceptional event concurrence prior to EPA making final designations.

DATES: This final rule is effective June 18, 2009.

ADDRESSES: EPA has established a docket for this rulemaking under Docket ID number EPA–HQ–OAR–2005–0159. All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *http://www.regulations.gov* or in hard copy at 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 legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the EPA Docket Center is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Thomas E. Link, Air Quality Planning Division, Office of Air Quality Planning and Standards, Mail Code C539–04, Environmental Protection Agency, Research Triangle Park, North Carolina 27711; *telephone number:* 919–541–5456; *fax number:* 919–541–0824; *e-mail address: link.tom@epa.gov.*

SUPPLEMENTARY INFORMATION:

Outline

I. Why Is EPA Issuing This Final Rule?
II. Does This Action Apply to Me?
III. What Is the Background for This Action?
IV. Public Comment and Agency Response
V. What Are the Amendments Included in the Final Rule?
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A. Executive Order 12866: Regulatory Planning and Review
B. Paperwork Reduction Act
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D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
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H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Congressional Review Act
L. Judicial Review

I. Why Is EPA Issuing This Final Rule?

This final action provides for a revised schedule to flag data and submit documentation related to exceptional events that influence ozone data which may affect designations under the recently revised ozone NAAQS. This action creates no additional regulatory requirements compared to those already promulgated in the Exceptional Events Rule.

II. Does This Action Apply to Me?

States are responsible for identifying air quality data that they believe warrant special consideration, including data affected by exceptional events. States identify such data by flagging (making a notation in a designated field in the electronic data record) specific values in the Air Quality System (AQS) database. States must flag the data and submit a justification that the data are affected by exceptional events if they wish EPA to consider excluding the data in determining whether or not an area is attaining the revised ozone NAAQS.

All States that include areas that could exceed the ozone NAAQS and could therefore be designated as nonattainment for the ozone NAAQS have the potential to be affected by this rulemaking. Therefore, this action applies to all States; to local air quality agencies to which a State has delegated relevant responsibilities for air quality management including air quality monitoring and data analysis; and, to Tribal air quality agencies where appropriate. The Exceptional Events Rule describes in greater detail to whom the Rule applies in 72 FR 13562–13563 (March 22, 2007).

III. What Is the Background for This Action?

CAA Section 319(b)(2) authorizes EPA to promulgate regulations that govern the review and handling of air quality monitoring data influenced by exceptional events. Under this authority, EPA promulgated the Exceptional Events Rule (Treatment of Data Influenced by Exceptional Events) (72 FR 13560, March 22, 2007) which sets a schedule for States to flag monitored data affected by exceptional events in AQS and for them to submit documentation to demonstrate that the flagged data were impacted by an exceptional event. Under this schedule, a State must initially notify EPA that data have been affected by an exceptional event by July 1 of the year after the data are collected; this is accomplished by flagging the data in AQS. The State must also include an initial description of the event when flagging the data. In addition, the State is required to submit a full demonstration to justify exclusion of such data within three years after the quarter in which the data were collected, or if a regulatory decision based on the data (such as a designation action) is anticipated, the demonstration must be submitted to EPA no later than one year before the decision is to be made.

The rule also authorizes EPA to revise data flagging and documentation schedules for the initial designation of areas under a new or revised NAAQS. This generic schedule, while appropriate for the period after initial designations have been made under a NAAQS, may need adjustment when a new or revised NAAQS is promulgated because until the level and form of the NAAQS have been promulgated a State would not have complete knowledge of the criteria for excluding data. In these cases the generic schedule may preclude States from submitting timely flags and associated documentation for otherwise approvable exceptional events. This could, if not modified, result in some areas receiving a nonattainment designation when the NAAQS violations were legitimately due to exceptional events.

For example, EPA finalized new standards for ozone of 0.075 parts per million (ppm) on March 12, 2008 with an effective date of May 27, 2008. In accordance with Clean Air Act (CAA) Section 107(b), State Governors must provide their recommendations to EPA by March 12, 2009 on designating areas as attainment, nonattainment, or unclassifiable with the new standards. States are to base their recommendations on the three most recent years of complete, certified air quality data, which we expect would be ozone data collected for calendar years 2006–2008 or 2005–2007. EPA must complete final area designations for these new standards by March 12, 2010. EPA will base its designations decisions on the three most recent years of complete certified air quality data available for each area. This could be ozone data collected during calendar years 2007–2009 where States have submitted complete, certified ozone data for 2009 more quickly than is required. However, in some cases the most recent complete, certified data may cover 2006–2008 or 2005–2007. For these data years, the generic exceptional event flagging deadline for 2005 and 2006 data has already passed and the flagging deadline for exceptional events that occurred in 2007 would be July 1, 2008—approximately 33 days after the effective date of the revised NAAQS. In addition, the generic schedule would require States to submit demonstrations for 2009 data influenced by exceptional events no later than March 12, 2009, one year before the final designation decisions. This is clearly not possible for air quality data collected from March 13, 2009 to December 31, 2009.

EPA is, therefore, using the authority provided in CAA section 319(b)(2) and in the Exceptional Events Rule at 40 CFR 50.14(c)(2)(vi), to modify the schedule for data flagging and submission of demonstrations for exceptional events data considered for initial designations under the 2008 revised ozone NAAQS.

IV. Public Comment and Agency Response

On November 20, 2008, the Natural Resources Defense Council (NRDC) provided comments to EPA on a Direct Final Action and the concurrent proposal for this rule. The direct final rule was subsequently withdrawn. A summary of NRDC's comments and the Agency's responses to its comments are shown below.

Comment: NRDC asserts that the Exceptional Events Rule (EER) does not authorize EPA to change the schedule for submission of demonstrations and that EPA lacks statutory authority to revise the flagging and documentation deadlines in the Exceptional Events Rule. [Comment Letter from NRDC to EPA Docket ID No. EPA–HQ–OAR–2005–0159; Public Comment on EPA Direct Final Rule and Proposed Rule, dated November 20, 2008, at p. 2, para 2.] NRDC notes that although the EER includes provisions for revising the schedule for flagging data, it does not include a similar provision for the submission of demonstrations. Therefore, the commenter concludes that EPA's actions to revise the schedules for flagging and submitting documentation for exceptional events are unlawful. The commenter also cites to certain principles enumerated in the rule that use the word 'timely' as a reason for not revising the schedules for flagging and submission of data. An additional argument that the commenter puts forward for not changing the schedules is that the commenter notes that the EER schedule provides EPA ample time to evaluate exceptional events data before authorizing waiver of the data.

Response: EPA disagrees with the commenter. CAA section 319(b)(2) expressly authorizes EPA to promulgate regulations ''governing the review and handling of air quality monitoring data influenced by exceptional events.'' Pursuant to this authority, EPA promulgated ''The Treatment of Data Influenced by Exceptional Events (Exceptional Event Rule)'' [72 FR 13562–13563 (March 22, 2007)] which sets out the process and substance of EPA's review and handling of the data impacted by exceptional events. For the review process in the EER, EPA included schedules for flagging, public comment, and submission of documentation related to exceptional events. 40 CFR 50.14(c). As the commenter notes, EPA included a provision stating that it ''may revise or set a new schedule for flagging data'' when a new or revised NAAQS was promulgated. 40 CFR 50.14 (c)(2)(vi).[1] From this, the commenter concludes that just because EPA did not expressly include a similar provision for the submission of documentation, it no longer has the authority to revise its own rule. An agency may revise or amend its rules or interpretations provided it follows the appropriate procedures such as notice and comment rulemaking. EPA explained that the reason for amending the schedules was to provide States with time to evaluate their data under the new NAAQS and determine whether such data should be flagged for consideration as an exceptional event. Under the older, less stringent NAAQS, States may have determined that, for purposes of efficiency and resource management, even where exceptional events had occurred, the State would not flag that data because it would not have affected

[1] The original rule provision was numbered as (c)(2)(v) and is now renumbered to (c)(2)(vi) since the publication of the new Pb NAAQS in October 2008.

their designation status under the older NAAQS. If however, under the revised NAAQS, certain exceptional events that were not flagged or for which documentation was not submitted, would be relevant to designation under the new NAAQS, EPA believes that these should not be precluded from consideration. In response to the commenter's references to the principles in section 319 that EPA must promulgate regulations that provide 'timely' information to the public when air quality is unhealthy and provide for all ambient air quality data to be included in a timely manner in the air quality database, EPA notes that all the past data are already in the database and States must continue to submit all their data on a timely basis to the database. During the review of the data for purposes of designations, EPA is permitting States a limited time to flag the data and to submit documentation. As noted elsewhere, the public will receive timely information about such flagging and documentation when States provide the public an opportunity to comment before they submit the documentation to EPA. In addition, 40 CFR 51.930 contains provisions for notifying the public when the air is unhealthy. While EPA appreciates the commenter's concern that the Agency should have ample time to evaluate the exceptional events claim, EPA believes that the revised schedule is a realistic and practical one that balances the Agency's needs with the needs of the States.

Comment: The commenter states that the ''updated ozone NAAQS and Exceptional Rule'' should not be applied retroactively. According to the commenter, EPA's revision to the schedule suggests that EPA intends to permit retroactive application of the ''new ozone NAAQS and new Exceptional Event Rule'' to ''old monitoring data and to re-brand previous data as NAAQS violations that are excludable from attainment designations * * *'' NRDC Letter at p. 5. The commenter claims that the amendment to the schedule is unlawful for four reasons. First, according to the commenter because section 319 includes a provision that explicitly keeps in place then-existing guidance until the effective date of the rule (May 21, 2007), the policies would apply to any data generated before that date. The commenter's second point repeats the first proposition that the regulatory text and EPA's construal of that text cannot be applied to events before May 21, 2007. The commenter's third point is that because EPA's pre-existing exceptional events policies applied to data before May 21, 2007, amending the EER is not a proper or lawful vehicle for revising the deadlines submitted pursuant to previous guidance. And finally, the commenter contends that data indicating concentrations above the updated ozone NAAQS, but not of the then-existing standard, cannot constitute an exceptional event. The commenter cites to the EER which permits States to request EPA to exclude data showing ''exceedances or violations'' of the NAAQS and citing to the definition of an ''exceedance'' at 40 CFR 50.1 to support their argument that an exceedance for data before May 27, 2008 (the effective date of the revised ozone NAAQS) means concentrations that exceed the concentration levels of the previous standard. The commenter argues that an air monitoring concentration that exceeds the new standard but did not exceed the then-applicable standard cannot constitute an ''exceedance'' under the EER for designations under the revised NAAQS. The commenter also contends that although EPA provided some explanation for its actions, it did not amount to a sufficient explanation for its actions. In various footnotes, the commenter notes the differences between the general schedule in the EER and the revised flagging and submission of documentation schedules for ozone, noting that the flagging and submissions would be ''barred'' under the EER. The commenter also enumerates certain policy reasons for not revising the schedule such as it would provide local air control authorities an opportunity to ''cook the books'' and adopt a ''revisionist'' approach that led to ''creat[ing]'' exceptional events.

Response: EPA is not applying either the revised ozone NAAQS or the Exceptional Events Rule retroactively to ''old air monitoring data'' as the commenter contends. The commenter's statements regarding the revised NAAQS and the applicability of the old NAAQS mischaracterizes the process of designating areas as attainment or nonattainment. EPA promulgated the revised ozone NAAQS on March 12, 2008 and under CAA section 107 States must submit their initial recommendations for designating areas by March 12, 2009. EPA will issue final designations by March 12, 2010 unless it has insufficient information to issue such designations. In such cases, EPA must make its final designations by March 2011. State recommendations are based on whether the 3-year average of the annual fourth-highest daily maximum 8-hour average O3 concentration is less than or equal to 0.075 ppm. The 3-year average is computed by using the three most recent consecutive calendar years of monitoring data that meet the monitoring completeness and other requirements of 40 CFR Part 50, Appendix P. Therefore, when States submit their recommended designations to EPA in March 2009 for the revised ozone NAAQS based on the three most recent consecutive calendar years of complete, certified monitoring date they will generally be using data from the 2005–2007 or 2006–2008 periods. When EPA issues final designations in March 2010, States could possibly have complete, certified data for 2009 so that EPA may base its determination on 2007–2009 data years. Thus, EPA is not looking at ''old monitoring data'' with a view to ''re-branding'' NAAQS violations as meeting the standard; instead, EPA is evaluating the three most recent years of complete, certified data that exist at the time of the designations, which are the relevant data years as required by 40 CFR Part 50, App. P.

Section 319's interim provision kept in place certain specific pre-existing guidance and rules regarding exceptional events through the rulemaking period but only until the effective date of the EER. The EER became effective on May 21, 2007 and is applicable to regulatory decisions made after that date including decisions regarding exceptional events for the relevant data years that form the basis for such decisions. The designation of an area as attainment or non-attainment is based on the revised ozone NAAQS (not the older NAAQS) which was promulgated on March 12, 2008—a year after the promulgation of the EER. The commenter's argument that the EER is not applicable to regulatory decisions under the revised March 2008 ozone NAAQS because it would be a retroactive application of the rule is thus without any basis.

The commenter's claim that for a measured concentration to qualify as an exceedance under the revised ozone NAAQS, it must have been at a concentration level greater than the older NAAQS which is not applicable or relevant to the present designation is clearly erroneous. The current designation determinations are based on the levels established by the revised ozone NAAQS, an ''exceedance'' in this instance is therefore clearly a concentration that exceeds the revised NAAQS. *See* 40 CFR 50.1 (''Exceedance with respect to a [NAAQS] means one occurrence of a measured or modeled concentration that exceeds the specified

concentration level of such standard for the averaging period specified by the standard''). Thus, the commenter's policy rationales (such as encouraging local authorities to cook the books) for not amending the schedules are also not persuasive because as explained above, EPA is permitting States to evaluate data under an amended schedule for the purposes of designations under the revised ozone NAAQS.

EPA believes it provided sufficient and appropriate explanation for its action including the explanations that the commenter quotes regarding how a State might not have known the criteria for excluding the data until the level and form of the NAAQS were promulgated. *See* NRDC Letter at pp.3–4. As for the comments regarding how certain submissions would not be timely under the EER, EPA notes that those reasons further support revising the schedule.

Comment: The commenter states that the revised schedule would unlawfully limit public participation for two reasons. First, the petitioner claims that flagging and submission of detailed documentation cannot have the same deadline because that would not allow for 30-day comment period by States before they submit their documentation. Second, if an event were to occur on December 31, 2009, a 30-day comment period would push the deadline to no earlier than January 31, 2010.

Response: In response to the commenter's second point EPA has modified the proposed deadline for 2009 and is now requiring that for exceptional events claims for 2009 data to be considered, States must submit their completed documentation within 60 days of the end of a calendar quarter in which the exceptional event occurred or by February 5, 2010 whichever is earlier. This would provide sufficient time for a public comment period and provide EPA sufficient time to review data prior to making designations. As for commenter's first point, EPA anticipates that States generally will flag data before they submit documentation on an exceptional event. However, if a State has put its exceptional events documentation together, notified the public of its intent to flag the data and seek exclusion of the data and provided an opportunity for the public to comment on the demonstration, EPA believes it is not necessary in such instances to preclude consideration of such submissions because the data has not been flagged in the air quality database until the deadline. The more significant issue is whether the State has put together an adequate demonstration and provided an opportunity for public comment and included those comments in the submission to EPA. EPA concludes that the schedule as revised will provide adequate time for all of these steps.

Comment: The commenter notes that the EER has been challenged and that the United States Court of Appeals for the DC Circuit heard oral argument in *NRDC* v. *EPA,* Nos. 07–1151 & 08–1057 (consolidated) on October 10, 2008 and an opinion is still pending. The commenter states that given that there is a possibility that certain portions of the rule may be vacated and/or remanded to the Agency, the agency must delay finalizing its proposed amendment to the rule until after the DC Circuit announces its decision.

Response: The challenges to the rule cited by the commenter did not raise any issues relating to deadlines for flagging or submissions of documentation relating to exceptional events. The commenter has not brought to EPA's attention any support for its assertion that EPA ''must'' delay modifying the EER in the manner proposed by the commenter, and EPA is unaware of any such restriction. Therefore, EPA believes that its limited revision of the rule specifically only to address the deadlines related to flagging and submission of documentation is not at odds with and should not interfere with the Court's review of the challenge to the rule on other grounds.

V. What Are the Amendments Included in the Final Rule?

This final rule amends the Exceptional Events Rule by providing a revised exceptional event data flagging and documentation schedule regarding claimed exceptional events affecting ozone monitoring data that will be compared to the 2008 revised ozone NAAQS for the purpose of initial ozone designations. In some cases, EPA is extending the otherwise applicable deadline for States to flag data and submit documentation. In other cases, EPA is shortening the otherwise applicable schedule to assure that the exceptional events claims can be fully considered by EPA in the designations decisions.

For air quality data collected in the years 2005 through 2007, this revised schedule extends the generic schedule for flagging data (and providing a brief initial description of the event) from July 1 of the year following the year the data are collected, to June 18, 2009. For data collected in 2008, the revised schedule accelerates the generic schedule for flagging data and providing a brief initial description of the event to June 18, 2009. The deadline for submitting to EPA a detailed demonstration to justify exclusion of data collected in 2005 through 2008 is also being set to June 18, 2009. The deadline for submitting to EPA flagged data with initial descriptions and a detailed demonstration to justify exclusion of data collected in 2009 is being set to 60 days after the end of the calendar quarter in which the exceptional event occurred or February 5, 2010, whichever date occurs first. For data collected in 2008 and 2009 this would give a State less time, but EPA believes still sufficient time, to decide what 2008 and 2009 data to flag and to submit documentation relating to exceptional events, and would allow EPA to have access to the flags and supporting data in time for EPA to evaluate the States recommendation and issue final designations. While the new deadlines for submission of a State's demonstration for data collected in 2009 is less than a year before the designation decisions would be made, EPA believes it is a reasonable approach between giving States a reasonable period to prepare the justifications, and EPA a reasonable period to consider the information submitted by the State. With this final rule EPA amends § 50.14 (c)(2)(vi) to add a tabular schedule of data submittal deadlines, by pollutant, for new or revised NAAQS standards. ($PM_{2.5}$ data submittal schedules revised in March 2007 and presented in this table are for informational purposes only. EPA is not taking further comment on the $PM_{2.5}$ data submittal schedule published in 72 FR 13560, March 22, 2007.) EPA anticipates providing amendments to the following table to add flagging and data submission schedules for new or revised NAAQS standards in the future.

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/ standard/(level)/ promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
$PM_{2.5}$ 24-Hr Standard (35 μg/m^3) Promulgated October 17, 2006.	2004–2006	October 1, 2007 [a]	April 15, 2008.[a]
Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008.	2005–2007	June 18, 2009 [b]	June 18, 2009.[b]
	2008	June 18, 2009 [b]	June 18, 2009.[b]
	2009	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first[b].	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first.[b]

[a] These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.
[b] Indicates change from general schedule in 40 CFR 50.14.
Note: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review

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

B. Paperwork Reduction Act

This action does not impose an information collection burden under the provisions of the *Paperwork Reduction Act,* 44 U.S.C. 3501 *et seq.* Burden is defined at 5 CFR 1320.3(b). This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any State, local or Tribal governments or the private sector. Therefore, it does not impose an information collection burden.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of this rule on small entities, small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any State, local or Tribal governments or the private sector. Thus, it does not impose any requirements on small entities.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or Tribal governments or the private sector. This action imposes no enforceable duty on any State local or Tribal governments or the private sector. This action modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any State, local or Tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 and 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any small governments.

E. Executive Order 13132: Federalism

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

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any State, local or Tribal governments or the private sector. Thus, Executive Order 13132 does not apply to this rule.

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

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or

enforceable duties on Tribal governments. Thus, Executive Order 13175 does not apply to this rule.

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

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because the Agency does not believe the environmental health risks or safety risks addressed by this action present a disproportionate risk to children. This action is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

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

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

I. National Technology Transfer Advancement Act

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

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

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

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

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it will not affect the level of protection provided to human health or the environment. This rule modifies previously established deadlines under the Exceptional Events Rule and does not impose any new obligations or enforceable duties on any State, local or Tribal governments or the private sector. It will neither increase nor decrease environmental protection.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.,* as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This rule will be effective June 18, 2009.

L. Judicial Review

Under CAA section 307(b), judicial review of this final action is available only by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit on or before July 20, 2009. Under CAA section 307(d)(7)(B), only those objections to the final rule that were raised with specificity during the period for public comment may be raised during judicial review. Moreover, under CAA section 307(b)(2), the requirements established by this final rule may not be challenged separately in any civil or criminal proceedings brought by EPA to enforce these requirements.

List of Subjects in 40 CFR Part 50

Environmental protection, Air pollution control, Carbon monoxide, Lead, Nitrogen dioxide, Ozone Particulate Matter, Sulfur oxides.

Dated: May 13, 2009.

Lisa P. Jackson,

Administrator.

For the reasons set forth in the preamble, part 50 of chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 50—[AMENDED]

■ 1. The authority citation for part 50 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 50.14 is amended by revising paragraph (c)(2)(vi) to read as follows:

§ 50.14 Treatment of air quality monitoring data influenced by exceptional events.

* * * * *

(c) * * *

(2) * * *

(vi) When EPA sets a NAAQS for a new pollutant or revises the NAAQS for an existing pollutant, it may revise or set a new schedule for flagging exceptional event data, providing initial data descriptions and providing detailed data documentation in AQS for the initial designations of areas for those NAAQS: Table 1 provides the schedule for submission of flags with initial descriptions in AQS and detailed documentation and the schedule shall apply for those data which will or may influence the initial designation of areas for those NAAQS. EPA anticipates revising Table 1 as necessary to accommodate revised data submission schedules for new or revised NAAQS.

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS

NAAQS pollutant/ standard/(level)/ promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
$PM_{2.5}$/24-Hr Standard (35 μg/m^3) Promulgated October 17, 2006.	2004–2006	October 1, 2007[a]	April 15, 2008.[a]

TABLE 1—SCHEDULE FOR EXCEPTIONAL EVENT FLAGGING AND DOCUMENTATION SUBMISSION FOR DATA TO BE USED IN DESIGNATIONS DECISIONS FOR NEW OR REVISED NAAQS—Continued

NAAQS pollutant/ standard/(level)/ promulgation date	Air quality data collected for calendar year	Event flagging & initial description deadline	Detailed documentation submission deadline
Ozone/8-Hr Standard (0.075 ppm) Promulgated March 12, 2008.	2005–2007	June 18, 2009[b]	June 18, 2009.[b]
	2008	June 18, 2009[b]	June 18, 2009.[b]
	2009	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first.[b].	60 Days after the end of the calendar quarter in which the event occurred or February 5, 2010, whichever date occurs first.[b]

[a] These dates are unchanged from those published in the original rulemaking, and are shown in this table for informational purposes.
[b] Indicates change from general schedule in 40 CFR 50.14.
Note: EPA notes that the table of revised deadlines *only* applies to data EPA will use to establish the final initial designations for new or revised NAAQS. The general schedule applies for all other purposes, most notably, for data used by EPA for redesignations to attainment.

* * * * *

[FR Doc. E9–11642 Filed 5–18–09; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[EPA–R09–OAR–2008–0860; FRL–8905–8]

Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for the States of Arizona, California, Hawaii, and Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is finalizing updates to the Code of Federal Regulations (CFR) delegation tables to reflect the current delegation status of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) in Arizona, California, Hawaii, and Nevada.

DATES: This rule is effective on July 20, 2009 without further notice, unless EPA receives adverse comments by June 18, 2009. If the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2008–0860], by one of the following methods:

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

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *http://www.regulations.gov* or e-mail. *http://www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

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

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

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

Table of Contents

I. Background
II. EPA Action
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I. Background

Today's action will update the delegations tables in 40 CFR parts 60 and 61, to allow easier access by the public to the status of delegations in various state or local jurisdictions. The updated delegation tables include the delegations approved in response to recent requests, as well as those previously granted. Those tables are shown at the end of this document.

Recent requests for delegations that will be incorporated into the CFR tables are identified below. Each individual submittal identifies the specific NSPS and NESHAP for which delegation was requested. All of these requests have already been approved by letter and simply need to be included in the CFR tables.

Agency	Date of request
Arizona Department of Environmental Quality	April 17, 2008.
Maricopa County Air Quality Department	April 21, 2006.
Pima County Department of Environmental Quality	May 23, 2008.
Kern County Air Pollution Control District	January 11, 2007.
San Diego County Air Pollution Control District	October 31, 2007.
South Coast Air Quality Management District	October 17, 2006, and July 25, 2007.

Agency	Date of request
Ventura County Air Pollution Control District	December 28, 2005.
Hawaii Department of Health	January 25, 2006, and October 24, 2004.
Nevada Division of Environmental Protection	April 4, 2006, November 1, 2007, and September 29, 2008.

II. EPA Action

Today's document serves to notify the public of the delegation of NSPS and NESHAP to Arizona, California, Hawaii, and Nevada. Today's action will codify these delegations into the CFR tables.

Sections 111(c)(1) and 112(l) of the Clean Air Act, as amended in 1990, authorize the Administrator to delegate his or her authority for implementing and enforcing standards in 40 CFR Parts 60 and 61.

Delegation grants a state or local agency the primary authority to implement and enforce federal standards. All required notifications and reports should be sent to the delegated state or local agency, as appropriate, with a copy to EPA Region IX. Acceptance of delegation constitutes agreement by the state or local agency to follow 40 CFR Parts 60 and 61, and EPA's test methods and continuous monitoring procedures.

In general, EPA does not delegate to state or local agencies the authority to make decisions that are likely to be nationally significant, or alter the stringency of the underlying standards. For a more detailed description of the authorities in 40 CFR Parts 60 and 61 that are retained by EPA, please see the proposed rule published on January 14, 2002 (67 FR 1676).

As additional assurance of national consistency, state and local agencies must send to EPA Region IX Air Division's Enforcement Office Chief a copy of any written decisions made pursuant to the following delegated authorities:

- Applicability determinations that state a source is not subject to a rule or requirement;
- Approvals or determination of construction, reconstruction or modification;
- Minor or intermediate site-specific changes to test methods or monitoring requirements; or
- Site-specific changes or waivers of performance testing requirements.

For decisions that require EPA review and approval (for example, major changes to monitoring requirements), EPA intends to make determinations in a timely manner.

In some cases, the standards themselves specify that specific provisions cannot be delegated. State and local agencies should review each individual standard for this information.

EPA retains independent authority to enforce the standards and regulations of 40 CFR Parts 60 and 61.

III. Statutory and Executive Order Reviews

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

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely updates the list of already-approved delegations, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it approves a state or local rule implementing a federal standard.

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 20, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (see Section 307(b)(2) of the Clean Air Act).

List of Subjects in 40 CFR Parts 60 and 61

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

Authority: This section is issued under the authority of Sections 111 and 112 of the Clean Air Act, as amended (42 U.S.C. 7411 and 7412)

Dated: April 17, 2009.

Allyn Stern,

Acting Director, Air Division, Region IX.

■ For the reasons set out in the preamble, Title 40, Chapter I, Parts 60 and 61 of the Code of Federal Regulations is amended as follows:

PART 60—[AMENDED]

■ 1. The authority citation for Part 60 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 60.4 is amended by revising paragraphs (d)(1), (d)(2)(vii), (viii) and (ix), (d)(3) and (d)(4) to read as follows:

§ 60.4 Address.

(d) * * *

(1) *Arizona.* The following table identifies delegations for Arizona:

Delegation Status for New Source Performance Standards for Arizona

	Subpart	Air Pollution Control Agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X	X	X	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc	Small Industrial Steam Generating Units	X	X	X	X
E	Incinerators	X	X	X	X
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	X	X	X	X
Eb	Municipal Waste Combustors Constructed After September 20, 1994	X	X	X	.....
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	X	X	X	.....
F	Portland Cement Plants	X	X	X	X
G	Nitric Acid Plants	X	X	X	X
H	Sulfuric Acid Plant	X	X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries	X	X	X	X
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.	.....	.....	.....	.....
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters	X	X	X	X
M	Secondary Brass and Bronze Production Plants	X	X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	X	X	X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters	X	X	X	X
Q	Primary Zinc Smelters	X	X	X	X
R	Primary Lead Smelters	X	X	X	X
S	Primary Aluminum Reduction Plants	X	X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X	X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X	X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X	X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X	X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	X	X	X
Y	Coal Preparation Plants	X	X	X	X
Z	Ferroalloy Production Facilities	X	X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	X	X	X
BB	Kraft Pulp Mills	X	X	X	X
CC	Glass Manufacturing Plants	X	X	X	X
DD	Grain Elevators	X	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X	X
FF	(Reserved)	.....	.....	.....	.....

	Subpart	Air Pollution Control Agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
GG	Stationary Gas Turbines	X	X	X	X
HH	Lime Manufacturing Plants	X	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X	X
NN	Phosphate Rock Plants	X	X	X	X
PP	Ammonium Sulfate Manufacture	X	X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X	X	X	X
SS	Industrial Surface Coating: Large Appliances	X	X	X	X
TT	Metal Coil Surface Coating	X	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X	X	X	X
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	.....	.....	X	.....
WW	Beverage Can Surface Coating Industry	X	X	X	X
XX	Bulk Gasoline Terminals	X	X	X	X
AAA	New Residential Wool Heaters	X	X	X	X
BBB	Rubber Tire Manufacturing Industry	X	X	X	X
CCC	(Reserved)	.....	.....	.....	.....
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	X	X	X
EEE	(Reserved)	.....	.....	.....	.....
FFF	Flexible Vinyl and Urethane Coating and Printing	X	X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X	X	X	X
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	.....	.....	X	.....
HHH	Synthetic Fiber Production Facilities	X	X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X	X	X	X
JJJ	Petroleum Dry Cleaners	X	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.	X	X	X	X
LLL	Onshore Natural Gas Processing: SO_2 Emissions	X	X	X	X
MMM	(Reserved)	.....	.....	.....	.....
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	X	X	X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X	X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X	X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	.....	X	X	.....
SSS	Magnetic Tape Coating Facilities	X	X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X	X	X	X
UUU	Calciners and Dryers in Mineral Industries	X	X	X	.....
VVV	Polymeric Coating of Supporting Substrates Facilities	X	X	X	X
WWW	Municipal Solid Waste Landfills	X	X	X	.....
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commended After June 6, 2001.	X	X	X	.....
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	X	X	X	.....
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	X	.....	X	.....
IIII	Stationary Compression Ignition Internal Combustion Engines	.....	.....	X	.....
JJJJ	Stationary Spark Ignition Internal Combustion Engines	.....	.....	.....	.....
KKKK	Stationary Combustion Turbines	.....	.....	X	.....
GGGG	(Reserved)	.....	.....	.....	.....

(2) * * *

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(vii) Delegations for San Diego County Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, San Luis Obispo County Air Pollution Control District, and Santa Barbara County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air Pollution Control Agency			
		San Diego County APCD	San Joaquin Valley Unified APCD	San Luis Obispo County APCD	Santa Barbara County APCD
A	General Provisions	X	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.	X	X	X	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X	X	X	X
Dc	Small Industrial Steam Generating Units	X	X		X
E	Incinerators	X	X	X	X
Ea	Municipal Waste Combustors Constructed After December 20, 1989, and On or Before September 20, 1994.		X	X	X
Eb	Municipal Waste Combustors Constructed After September 20, 1994	X		X	
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	X			
F	Portland Cement Plants		X	X	X
G	Nitric Acid Plants		X	X	X
H	Sulfuric Acid Plants		X	X	X
I	Hot Mix Asphalt Facilities	X	X	X	X
J	Petroleum Refineries	X	X	X	X
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.				
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	X	X	X
L	Secondary Lead Smelters	X	X	X	X
M	Secondary Brass and Bronze Production Plants	X	X	X	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	X	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X	X	X
O	Sewage Treatment Plants	X	X	X	X
P	Primary Copper Smelters		X	X	X
Q	Primary Zinc Smelters		X	X	X
R	Primary Lead Smelters		X	X	X
S	Primary Aluminum Reduction Plants		X	X	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X	X	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X	X	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X	X	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X	X	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X	X	X
Y	Coal Preparation Plants		X	X	X
Z	Ferroalloy Production Facilities		X	X	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.		X	X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	X	X
BB	Kraft pulp Mills		X	X	X
CC	Glass Manufacturing Plants	X	X	X	X
DD	Grain Elevators	X	X	X	X
EE	Surface Coating of Metal Furniture		X	X	X
FF	(Reserved)				
GG	Stationary Gas Turbines	X	X	X	X
HH	Lime Manufacturing Plants		X	X	X
KK	Lead-Acid Battery Manufacturing Plants		X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SAN DIEGO COUNTY AIR POLLUTION CONTROL DISTRICT, SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, SAN LUIS OBISPO COUNTY AIR POLLUTION CONTROL DISTRICT, AND SANTA BARBARA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air Pollution Control Agency			
		San Diego County APCD	San Joaquin Valley Unified APCD	San Luis Obispo County APCD	Santa Barbara County APCD
LL	Metallic Mineral Processing Plants		X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations		X	X	X
NN	Phosphate Rock Plants		X	X	X
PP	Ammonium Sulfate Manufacture		X	X	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X	X	X
SS	Industrial Surface Coating: Large Appliances		X	X	X
TT	Metal Coil Surface Coating		X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.		X	X	X
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.				
WW	Beverage Can Surface Coating Industry		X	X	X
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters	X	X	X	X
BBB	Rubber Tire Manufacturing Industry		X	X	X
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X		X
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing		X	X	X
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	X	X
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.				
HHH	Synthetic Fiber Production Facilities		X	X	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X		X
JJJ	Petroleum Dry Cleaners		X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.		X	X	X
LLL	Onshore Natural Gas Processing: SO2 Emissions		X	X	X
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X		X
OOO	Nonmetallic Mineral Processing Plants	X	X	X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	X	X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	X	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	X	X
SSS	Magnetic Tape Coating Facilities		X	X	X
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X	X	X
UUU	Calciners and Dryers in Mineral Industries	X	X	X	X
VVV	Polymeric Coating of Supporting Substrates Facilities	X	X	X	X
WWW	Municipal Solid Waste Landfills	X	X	X	X
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999, or for Which Modification or Reconstruction is Commenced After June 6, 2001.	X			
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999, or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	X			
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	X			
GGGG	(Reserved)				
IIII	Stationary Compression Ignition Internal Combustion Engines				
JJJJ	Stationary Spark Ignition Internal Combustion Engines				
KKKK	Stationary Combustion Turbines				

(viii) Delegations for Shasta County Air Quality Management District, Siskiyou County Air Pollution Control District, South Coast Air Quality Management District, and Tehama County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT

	Subpart	Air Pollution Control Agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
A	General Provisions	X	X	X	
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971.	X		X	
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978.			X	
Db	Industrial-Commercial-Institutional Steam Generating Units			X	
Dc	Small Industrial Steam Generating Units			X	
E	Incinerators	X		X	
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.			X	
Eb	Municipal Waste Combustors Constructed After September 20, 1994			X	
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.			X	
F	Portland Cement Plants	X		X	
G	Nitric Acid Plants	X		X	
H	Sulfuric Acid Plants	X		X	
I	Hot Mix Asphalt Facilities	X		X	
J	Petroleum Refineries	X		X	
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.				
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X		X	
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.			X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.			X	
L	Secondary Lead Smelters	X		X	
M	Secondary Brass and Bronze Production Plants	X		X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X		X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.			X	
O	Sewage Treatment Plants	X		X	
P	Primary Copper Smelters	X		X	
Q	Primary Zinc Smelters	X		X	
R	Primary Lead Smelters	X		X	
S	Primary Aluminum Reduction Plants	X		X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X		X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X		X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X		X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X		X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X		X	
Y	Coal Preparation Plants	X		X	
Z	Ferroalloy Production Facilities	X		X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X		X	
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.			X	
BB	Kraft pulp Mills	X		X	
CC	Glass Manufacturing Plants			X	
DD	Grain Elevators	X		X	
EE	Surface Coating of Metal Furniture			X	
FF	(Reserved)				
GG	Stationary Gas Turbines			X	
HH	Lime Manufacturing Plants	X		X	
KK	Lead-Acid Battery Manufacturing Plants			X	
LL	Metallic Mineral Processing Plants			X	
MM	Automobile and Light Duty Trucks Surface Coating Operations			X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR SHASTA COUNTY AIR QUALITY MANAGEMENT DISTRICT, SISKIYOU COUNTY AIR POLLUTION CONTROL DISTRICT, SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT, AND TEHAMA COUNTY AIR POLLUTION CONTROL DISTRICT—Continued

	Subpart	Air Pollution Control Agency			
		Shasta County AQMD	Siskiyou County APCD	South Coast AQMD	Tehama County APCD
NN	Phosphate Rock Plants			X	
PP	Ammonium Sulfate Manufacture			X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing			X	
RR	Pressure Sensitive Tape and Label Surface Coating Operations			X	
SS	Industrial Surface Coating: Large Appliances			X	
TT	Metal Coil Surface Coating			X	
UU	Asphalt Processing and Asphalt Roofing Manufacture			X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.			X	
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.				
WW	Beverage Can Surface Coating Industry			X	
XX	Bulk Gasoline Terminals				
AAA	New Residential Wool Heaters		X	X	
BBB	Rubber Tire Manufacturing Industry		X	X	
CCC	(Reserved)				
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.			X	
EEE	(Reserved)				
FFF	Flexible Vinyl and Urethane Coating and Printing			X	
GGG	Equipment Leaks of VOC in Petroleum Refineries			X	
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.				
HHH	Synthetic Fiber Production Facilities			X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.			X	
JJJ	Petroleum Dry Cleaners			X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants.			X	
LLL	Onshore Natural Gas Processing: SO_2 Emissions			X	
MMM	(Reserved)				
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.			X	
OOO	Nonmetallic Mineral Processing Plants			X	
PPP	Wool Fiberglass Insulation Manufacturing Plants			X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.			X	
SSS	Magnetic Tape Coating Facilities		X	X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X	X	
UUU	Calciners and Dryers in Mineral Industries			X	
VVV	Polymeric Coating of Supporting Substrates Facilities			X	
WWW	Municipal Solid Waste Landfills			X	
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commended After June 6, 2001.	X	X	X	
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.			X	
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.			X	
GGGG	(Reserved)				
IIII	Stationary Compression Ignition Internal Combustion Engines			X	
JJJJ	Stationary Spark Ignition Internal Combustion Engines				
KKKK	Stationary Combustion Turbines			X	

(ix) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air Pollution Control Agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions		X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971		X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978		X	
Db	Industrial-Commercial-Institutional Steam Generating Units		X	X
Dc	Small Industrial Steam Generating Units		X	
E	Incinerators		X	
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.		X	
Eb	Municipal Waste Combustors Constructed After September 20, 1994		X	
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.		X	
F	Portland Cement Plants		X	
G	Nitric Acid Plants		X	
H	Sulfuric Acid Plants		X	
I	Hot Mix Asphalt Facilities		X	X
J	Petroleum Refineries		X	X
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.			
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.		X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.		X	
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.		X	
L	Secondary Lead Smelters		X	
M	Secondary Brass and Bronze Production Plants		X	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.		X	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.		X	
O	Sewage Treatment Plants		X	
P	Primary Copper Smelters		X	
Q	Primary Zinc Smelters		X	
R	Primary Lead Smelters		X	
S	Primary Aluminum Reduction Plants		X	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants		X	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants		X	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants		X	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants		X	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.		X	
Y	Coal Preparation Plants		X	
Z	Ferroalloy Production Facilities		X	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.		X	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.		X	
BB	Kraft pulp Mills		X	
CC	Glass Manufacturing Plants		X	
DD	Grain Elevators		X	
EE	Surface Coating of Metal Furniture		X	
FF	(Reserved)			
GG	Stationary Gas Turbines		X	
HH	Lime Manufacturing Plants		X	
KK	Lead-Acid Battery Manufacturing Plants		X	
LL	Metallic Mineral Processing Plants		X	
MM	Automobile and Light Duty Trucks Surface Coating Operations		X	
NN	Phosphate Rock Plants		X	
PP	Ammonium Sulfate Manufacture		X	
QQ	Graphic Arts Industry: Publication Rotogravure Printing		X	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT—Continued

	Subpart	Air Pollution Control Agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
RR	Pressure Sensitive Tape and Label Surface Coating Operations		X	
SS	Industrial Surface Coating: Large Appliances		X	
TT	Metal Coil Surface Coating		X	
UU	Asphalt Processing and Asphalt Roofing Manufacture		X	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.		X	
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.			
WW	Beverage Can Surface Coating Industry		X	
XX	Bulk Gasoline Terminals			
AAA	New Residential Wood Heaters		X	
BBB	Rubber Tire Manufacturing Industry		X	
CCC	(Reserved)			
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.		X	
EEE	(Reserved)			
FFF	Flexible Vinyl and Urethane Coating and Printing		X	
GGG	Equipment Leaks of VOC in Petroleum Refineries		X	
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.			
HHH	Synthetic Fiber Production Facilities		X	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.		X	
JJJ	Petroleum Dry Cleaners		X	
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants		X	
LLL	Onshore Natural Gas Processing: SO2 Emissions		X	
MMM	(Reserved)			
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.		X	
OOO	Nonmetallic Mineral Processing Plants		X	X
PPP	Wool Fiberglass Insulation Manufacturing Plants		X	
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems		X	
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.		X	
SSS	Magnetic Tape Coating Facilities		X	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.		X	
UUU	Calciners and Dryers in Mineral Industries		X	
VVV	Polymeric Coating of Supporting Substrates Facilities		X	
WWW	Municipal Solid Waste Landfills		X	X
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.		X	
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.		X	
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.			
GGGG	(Reserved)			
IIII	Stationary Compression Ignition Internal Combustion Engines			
JJJJ	Stationary Spark Ignition Internal Combustion Engines			
KKKK	Stationary Combustion Turbines			

(3) *Hawaii.* The following table identifies delegations for Hawaii:

Delegation Status for New Source Performance Standards for Hawaii:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII

	Subpart	Hawaii
A	General Provisions	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X
Db	Industrial-Commercial-Institutional Steam Generating Units	X
Dc	Small Industrial Steam Generating Units	X
E	Incinerators	X
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	X
Eb	Municipal Waste Combustors Constructed After September 20, 1994	X
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	X
F	Portland Cement Plants	X
G	Nitric Acid Plants	
H	Sulfuric Acid Plants	
I	Hot Mix Asphalt Facilities	X
J	Petroleum Refineries	X
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.	
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X
L	Secondary Lead Smelters	
M	Secondary Brass and Bronze Production Plants	
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	
O	Sewage Treatment Plants	X
P	Primary Copper Smelters	
Q	Primary Zinc Smelters	
R	Primary Lead Smelters	
S	Primary Aluminum Reduction Plants	
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities	
Y	Coal Preparation Plants	X
Z	Ferroalloy Production Facilities	
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X
BB	Kraft pulp Mills	
CC	Glass Manufacturing Plants	
DD	Grain Elevators	
EE	Surface Coating of Metal Furniture	
FF	(Reserved)	
GG	Stationary Gas Turbines	X
HH	Lime Manufacturing Plants	
KK	Lead-Acid Battery Manufacturing Plants	
LL	Metallic Mineral Processing Plants	
MM	Automobile and Light Duty Trucks Surface Coating Operations	
NN	Phosphate Rock Plants	
PP	Ammonium Sulfate Manufacture	
QQ	Graphic Arts Industry: Publication Rotogravure Printing	
RR	Pressure Sensitive Tape and Label Surface Coating Operations	
SS	Industrial Surface Coating: Large Appliances	
TT	Metal Coil Surface Coating	
UU	Asphalt Processing and Asphalt Roofing Manufacture	
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry	X
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	
WW	Beverage Can Surface Coating Industry	X
XX	Bulk Gasoline Terminals	X
AAA	New Residential Wool Heaters	
BBB	Rubber Tire Manufacturing Industry	
CCC	(Reserved)	
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry	
EEE	(Reserved)	

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR HAWAII—Continued

	Subpart	Hawaii
FFF	Flexible Vinyl and Urethane Coating and Printing	
GGG	Equipment Leaks of VOC in Petroleum Refineries	X
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	
HHH	Synthetic Fiber Production Facilities	
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	
JJJ	Petroleum Dry Cleaners	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	
LLL	Onshore Natural Gas Processing: SO2 Emissions	
MMM	(Reserved)	
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X
OOO	Nonmetallic Mineral Processing Plants	X
PPP	Wool Fiberglass Insulation Manufacturing Plants	
QQQ	VOC Emissions From Petroleum Refinery Wastewater	X
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	
SSS	Magnetic Tape Coating Facilities	
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines	
UUU	Calciners and Dryers in Mineral Industries	X
VVV	Polymeric Coating of Supporting Substrates Facilities	X
WWW	Municipal Solid Waste Landfills	X
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commenced After June 6, 2001.	X
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	X
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	
GGGG	(Reserved)	
IIII	Stationary Compression Ignition Internal Combustion Engines	
JJJJ	Stationary Spark Ignition Internal Combustion Engines	
KKKK	Stationary Combustion Turbines	

(4) *Nevada.* The following table identifies delegations for Nevada:

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA

	Subpart	Air Pollution Control Agency		
		Nevada DEP	Clark County	Washoe County
A	General Provisions	X	X	X
D	Fossil-Fuel Fired Steam Generators Constructed After August 17, 1971	X	X	X
Da	Electric Utility Steam Generating Units Constructed After September 18, 1978	X		
Db	Industrial-Commercial-Institutional Steam Generating Units	X		
Dc	Small Industrial Steam Generating Units	X		
E	Incinerators	X	X	X
Ea	Municipal Waste Combustors Constructed After December 20, 1989 and On or Before September 20, 1994.	X		
Eb	Municipal Waste Combustors Constructed After September 20, 1994	X		
Ec	Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996.	X		
F	Portland Cement Plants	X	X	X
G	Nitric Acid Plants	X		X
H	Sulfuric Acid Plants	X		X
I	Hot Mix Asphalt Facilities	X	X	X
J	Petroleum Refineries	X		X
Ja	Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After May 14, 2007.			
K	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.	X	X	X
Ka	Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.	X	X	X

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

	Subpart	Air Pollution Control Agency		
		Nevada DEP	Clark County	Washoe County
Kb	Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced After July 23, 1984.	X	.....	.....
L	Secondary Lead Smelters	X	X	X
M	Secondary Brass and Bronze Production Plants	X	.....	X
N	Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.	X	.....	X
Na	Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.	X	.....	.....
O	Sewage Treatment Plants	X	X	X
P	Primary Copper Smelters	X	X	X
Q	Primary Zinc Smelters	X	X	X
R	Primary Lead Smelters	X	X	X
S	Primary Aluminum Reduction Plants	X	.....	X
T	Phosphate Fertilizer Industry: Wet Process Phosphoric Acid Plants	X	.....	X
U	Phosphate Fertilizer Industry: Superphosphoric Acid Plants	X	.....	X
V	Phosphate Fertilizer Industry: Diammonium Phosphate Plants	X	.....	X
W	Phosphate Fertilizer Industry: Triple Superphosphate Plants	X	.....	X
X	Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.	X	.....	X
Y	Coal Preparation Plants	X	X	X
Z	Ferroalloy Production Facilities	X	.....	X
AA	Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974 and On or Before August 17, 1983.	X	.....	X
AAa	Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.	X	.....	.....
BB	Kraft pulp Mills	X	.....	X
CC	Glass Manufacturing Plants	X	.....	X
DD	Grain Elevators	X	X	X
EE	Surface Coating of Metal Furniture	X	X	X
FF	(Reserved)	.....	.....	.....
GG	Stationary Gas Turbines	X	X	X
HH	Lime Manufacturing Plants	X	X	X
KK	Lead-Acid Battery Manufacturing Plants	X	X	X
LL	Metallic Mineral Processing Plants	X	X	X
MM	Automobile and Light Duty Trucks Surface Coating Operations	X	X	X
NN	Phosphate Rock Plants	X	X	X
PP	Ammonium Sulfate Manufacture	X	.....	X
QQ	Graphic Arts Industry: Publication Rotogravure Printing	X	X	X
RR	Pressure Sensitive Tape and Label Surface Coating Operations	X	.....	X
SS	Industrial Surface Coating: Large Appliances	X	X	X
TT	Metal Coil Surface Coating	X	X	X
UU	Asphalt Processing and Asphalt Roofing Manufacture	X	X	X
VV	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.	X	X	X
VVa	Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	.....	.....	.....
WW	Beverage Can Surface Coating Industry	X	.....	X
XX	Bulk Gasoline Terminals	X	.....	X
AAA	New Residential Wool Heaters	.....	.....	.....
BBB	Rubber Tire Manufacturing Industry	X	.....	.....
CCC	(Reserved)	.....	.....	.....
DDD	Volatile Organic Compounds (VOC) Emissions from the Polymer Manufacturing Industry.	X	.....	.....
EEE	(Reserved)	.....	.....	.....
FFF	Flexible Vinyl and Urethane Coating and Printing	X	.....	X
GGG	Equipment Leaks of VOC in Petroleum Refineries	X	.....	X
GGGa	Equipment Leaks of VOC in Petroleum Refineries for Which Construction, Reconstruction, or Modification Commenced After November 7, 2006.	.....	.....	.....
HHH	Synthetic Fiber Production Facilities	X	.....	X
III	Volatile Organic Compound (VOC) Emissions From the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.	X	.....	.....
JJJ	Petroleum Dry Cleaners	X	X	X
KKK	Equipment Leaks of VOC From Onshore Natural Gas Processing Plants	X	.....	.....
LLL	Onshore Natural Gas Processing: SO2 Emissions	X	.....	.....
MMM	(Reserved)	.....	.....	.....
NNN	Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.	X	.....	.....

DELEGATION STATUS FOR NEW SOURCE PERFORMANCE STANDARDS FOR NEVADA—Continued

	Subpart	Air Pollution Control Agency		
		Nevada DEP	Clark County	Washoe County
OOO	Nonmetallic Mineral Processing Plants	X		X
PPP	Wool Fiberglass Insulation Manufacturing Plants	X		X
QQQ	VOC Emissions From Petroleum Refinery Wastewater Systems	X		
RRR	Volatile Organic Compound Emissions from Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.	X		
SSS	Magnetic Tape Coating Facilities	X		
TTT	Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.	X		
UUU	Calciners and Dryers in Mineral Industries	X		
VVV	Polymeric Coating of Supporting Substrates Facilities	X		
WWW	Municipal Solid Waste Landfills	X		
AAAA	Small Municipal Waste Combustion Units for Which Construction is Commenced After August 30, 1999 or for Which Modification or Reconstruction is Commended After June 6, 2001.	X		
CCCC	Commercial and Industrial Solid Waste Incineration Units for Which Construction Is Commenced After November 30, 1999 or for Which Modification or Reconstruction Is Commenced on or After June 1, 2001.	X		
EEEE	Other Solid Waste Incineration Units for Which Construction is Commenced After December 9, 2004, or for Which Modification or Reconstruction is Commenced on or After June 16, 2006.	X		
GGGG	(Reserved)			
IIII	Stationary Compression Ignition Internal Combustion Engines	X		
JJJJ	Stationary Spark Ignition Internal Combustion Engines	X		
KKKK	Stationary Combustion Turbines	X		

PART 61—[AMENDED]

■ 1. The authority citation for Part 61 continues to read as follows:

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

Subpart A—General Provisions

■ 2. Section 61.04 is amended by revising paragraphs (c)(9)(i), (c)(9)(ii) introductory text, (c)(9)(ii)(C), and (c)(9)(ii)(I) to read as follows:

§ 61.04 Address.

* * * * *

(c) * * *

(9) * * *

(i) *Arizona.* The following table identifies delegations for Arizona:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR ARIZONA

	Subpart	Air Pollution Control Agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
A	General Provisions	X	X	X	X
B	Radon Emissions From Underground Uranium				
C	Beryllium	X	X	X	X
D	Beryllium Rocket Motor Firing	X	X	X	X
E	Mercury	X	X	X	X
F	Vinyl Chloride	X	X	X	X
G	(Reserved)				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene	X	X	X	X
K	Radionuclide Emissions From Elemental Phosphorus Plants				
L	Benzene Emissions from Coke By-Product Recovery Plants	X	X	X	X
M	Asbestos	X	X	X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants	X	X		X
O	Inorganic Arsenic Emissions From Primary Copper Smelters	X	X		X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.	X	X		
Q	Radon Emissions From Department of Energy Facilities				
R	Radon Emissions From Phosphogypsum Stacks				
S	(Reserved)				
T	Radon Emissions From the Disposal of Uranium Mill Tailings				
U	(Reserved)				
V	Equipment Leaks (Fugitive Emission Sources)	X	X	X	X
W	Radon Emissions From Operating Mill Tailings				
X	(Reserved)				
Y	Benzene Emissions From Benzene Storage Vessels	X	X	X	X

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR ARIZONA—Continued

	Subpart	Air Pollution Control Agency			
		Arizona DEQ	Maricopa County	Pima County	Pinal County
Z–AA	(Reserved)				
BB	Benzene Emissions From Benzene Transfer Operations	X	X	X	X
CC–EE	(Reserved)				
FF	Benzene Waste Operations	X	X	X	X

(ii) *California.* The following tables identify delegations for California:

* * * * *

(C) Delegations for Glenn County Air Pollution Control District, Great Basin Unified Air Pollution Control District, Imperial County Air Pollution Control District, and Kern County Air Pollution Control District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR GLENN COUNTY APCD, GREAT BASIN UNIFIED APCD, IMPERIAL COUNTY APCD, AND KERN COUNTY APCD

	Subpart	Air Pollution Control Agency			
		Glenn County APCD	Great Basin Unified APCD	Imperial County APCD	Kern County APCD
A	General Provisions		X		X
B	Radon Emissions From Underground Uranium				
C	Beryllium		X		X
D	Beryllium Rocket Motor Firing		X		X
E	Mercury		X		X
F	Vinyl Chloride				X
G	(Reserved)				
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.				
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.				
J	Equipment Leaks (Fugitive Emission Sources) of Benzene				X
K	Radionuclide Emissions From Elemental Phosphorus Plants				
L	Benzene Emissions from Coke By-Product Recovery Plants				X
M	Asbestos		X		X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants				X
O	Inorganic Arsenic Emissions From Primary Copper Smelters				X
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.				X
Q	Radon Emissions From Department of Energy Facilities				
R	Radon Emissions From Phosphogypsum Stacks				
S	(Reserved)				
T	Radon Emissions From the Disposal of Uranium Mill Tailings				
U	(Reserved)				
V	Equipment Leaks (Fugitive Emission Sources)				X
W	Radon Emissions From Operating Mill Tailings				
X	(Reserved)		.		
Y	Benzene Emissions From Benzene Storage Vessels				X
Z–AA	(Reserved)				
BB	Benzene Emissions From Benzene Transfer Operations				X
CC–EE	(Reserved)				
FF	Benzene Waste Operations				X

* * * * *

(I) Delegations for Tuolumne County Air Pollution Control District, Ventura County Air Pollution Control District, and Yolo-Solano Air Quality Management District are shown in the following table:

DELEGATION STATUS FOR NATIONAL EMISSIONS STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR TUOLUMNE COUNTY AIR POLLUTION CONTROL DISTRICT, VENTURA COUNTY AIR POLLUTION CONTROL DISTRICT, AND YOLO-SOLANO AIR QUALITY MANAGEMENT DISTRICT

	Subpart	Air Pollution Control Agency		
		Tuolumne County APCD	Ventura County APCD	Yolo-Solano AQMD
A	General Provisions		X	
B	Radon Emissions From Underground Uranium			
C	Beryllium		X	
D	Beryllium Rocket Motor Firing		X	
E	Mercury		X	X
F	Vinyl Chloride		X	
G	(Reserved)			
H	Emissions of Radionuclides Other Than Radon From Department of Energy Facilities.			
I	Radionuclide Emissions From Federal Facilities Other Than Nuclear Regulatory Commission Licensees and Not Covered by Subpart H.			
J	Equipment Leaks (Fugitive Emission Sources) of Benzene		X	
K	Radionuclide Emissions From Elemental Phosphorus Plants			
L	Benzene Emissions from Coke By-Product Recovery Plants		X	
M	Asbestos		X	X
N	Inorganic Arsenic Emissions From Glass Manufacturing Plants		X	
O	Inorganic Arsenic Emissions From Primary Copper Smelters		X	
P	Inorganic Arsenic Emissions From Arsenic Trioxide and Metallic Arsenic Production Facilities.		X	
Q	Radon Emissions From Department of Energy Facilities			
R	Radon Emissions From Phosphogypsum Stacks			
S	(Reserved)			
T	Radon Emissions From the Disposal of Uranium Mill Tailings			
U	(Reserved)			
V	Equipment Leaks (Fugitive Emission Sources)		X	
W	Radon Emissions From Operating Mill Tailings			
X	(Reserved)			
Y	Benzene Emissions From Benzene Storage Vessels		X	
Z–AA	(Reserved)			
BB	Benzene Emissions From Benzene Transfer Operations		X	
CC–EE	(Reserved)			
FF	Benzene Waste Operations		X	

* * * * *

[FR Doc. E9–11526 Filed 5–18–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2009–0196; FRL–8906–8]

Pennsylvania: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule: Correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of April 29, 2009 (74 FR 19453), a document concerning Pennsylvania's Final Authorization of State Hazardous Waste Management Program Revisions. This document corrects the Docket Number.

FOR FURTHER INFORMATION CONTACT: Charles Bentley, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, *Phone number:* (215) 814–3379.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 29, 2009 in FR Doc. E9–9792, on page 19453, the following corrections are made:

1. In the Heading of the document, the Docket Number is corrected to read ''EPA–R03–RCRA–2009–0196''.

2. In the sentence following **ADDRESSES:** in the second column, the Docket Number is corrected to read ''EPA–R03–RCRA–2009–0196''.

3. In the sentence following ''*Instructions:''* in the third column, the Docket Number is corrected to read ''EPA–R03–RCRA–2009–0196''.

Dated: May 7, 2009.

William C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. E9–11650 Filed 5–18–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 08–65, FCC 09–21]

Assessment and Collection of Regulatory Fees for Fiscal Year 2008

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: In this document the Federal Communications Commission corrects an inadvertent typographical error regarding the effective date that was published in the **Federal Register** on May 12, 2009. The correct effective date

should have read July 15, 2009 instead of July 13, 2009.

DATES: Effective May 19, 2009.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a correction in the effective date of the Order FCC 09–21 that was published in the **Federal Register** on May 12, 2009 (74 FR 22104). Accordingly, this document corrects the effective date as indicated below.

In rule FR Doc. E9–10987 published on May 12, 2009, 74 FR 22104 make the following correction. On page 22104, in the second column, correct the **DATES** section to read:

DATES: Effective July 15, 2009, which pursuant to section 9(b)(3) of the Communications Act, is 90 days from date of notification to Congress.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. E9–11582 Filed 5–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 80

[WT Docket No. 04–344; FCC 08–208]

Maritime Communications

AGENCY: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission (Commission) announces that a certain rule adopted in its Automatic Identification Systems (AIS) proceeding in WT Docket No. 04–344 published in the **Federal Register** of January 29, 2009, to the extent it contained an information collection requirement that required approval by the Office of Management and Budget (OMB) was approved, April 8, 2009.

DATES: The amendment adding § 80.231, published January 29, 2009 (74 FR 5117) is effective May 19, 2009.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th St., SW., Washington, DC 20554 at (202) 418–0620.

SUPPLEMENTARY INFORMATION:

1. On January 29, 2009 at 74 FR 5117, the Commission published in the **Federal Register**, the summary of a Second Report and Order (*2nd R&O*) in WT Docket No. 04–344; FCC 08–208. In that *2nd R&O,* the Commission stated that, upon OMB approval, it would publish in the **Federal Register** a document announcing the effective date of 47 CFR 80.231.

2. On April 8, 2009, OMB approved the public information collection associated with this rule change under OMB Control No. 3060–1124.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

[FR Doc. E9–11647 Filed 5–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[DA 09–621; WT Docket No. 04–344; FCC 08–208]

Maritime Communications

AGENCY: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of January 29, 2009, a document in the Automatic Identification Systems (AIS) proceeding, WT Docket No. 04–344, which included a Final Rules Appendix that reflected the amendments adopted of certain rules. This document corrects the amendment of one of those sections as set forth below.

DATES: May 19, 2009.

FOR FURTHER INFORMATION CONTACT: Jeffrey Tobias, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th St. SW., Washington, DC 20554 at (202) 418–0620.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission published a document in the **Federal Register** of January 29, 2009 (74 FR 5117) regarding the adoption of changes to rules relating to AIS, an advanced marine vessel tracking and navigation technology that can significantly enhance our Nation's homeland security as well as maritime safety. The document amended a number of FCC rules governing the public safety pool. This document, released on March 18, 2009; DA 09–621, corrects a certain rule in the document published in the **Federal Register** of January 29, 2009 (74 FR 5117). This document does not change any of the other rule amendments set forth in the document published in the **Federal Register** of January 29, 2009 (74 FR 5117).

List of Subjects in 47 CFR 90

Communications equipment, radio.

Marlene H. Dortch,

Secretary, Federal Communications Commission.

Rules Changes

■ For the reasons discussed in the preamble, the Federal Communications Commission corrects 47 CFR part 90 as follows:

■ 1. The authority citation for part 90 continues to read as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

Authority: Secs. 4(i), 11, 303(g), 303(r) and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(r), and 332(c)(7).

■ 2. In § 90.20, revise the Table C heading in paragraph (g)(3)(iv) to read as follows:

§ 90.20 Public Safety Pool.

* * * * *

(g) * * *

(3) * * *

(iv) * * *

Table C—Required Separation in Kilometers (Miles) of Base Station From Public Coast Stations

* * * * *

[FR Doc. E9–11640 Filed 5–18–09; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 209 and 211

[Docket No. FRA–2009–0006; Notice No. 1]

RIN 2130–AC02

Miscellaneous Revisions to the Procedures for Handling Petitions for Emergency Waiver of Safety Regulations and the Procedures for Disqualifying Individuals From Performing Safety-Sensitive Functions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Direct final rule.

SUMMARY: This direct final rule makes miscellaneous revisions to the procedures for obtaining waivers from a safety rule, regulation, or standard during an emergency situation or an emergency event, and the procedures for disqualifying individuals from performing safety-sensitive functions. FRA's purpose in revising these

procedures is to make them consistent with sections 305 and 308 of the Rail Safety Improvement Act of 2008 (the ''Act''), Public Law 110–432, Division A, which was signed into law on October 16, 2008. Interested parties may submit written adverse comments or may request an oral hearing on these miscellaneous revisions during the thirty (30) day period following publication of this rule. FRA anticipates no adverse comments.

DATES: *Effective Date:* Unless FRA receives a written adverse comment or a request for an oral hearing on this direct final rule within the specified comment period, the effective date will be July 20, 2009.

Written Comments: Comments or a request for an oral hearing must be received by June 18, 2009.

ADDRESSES: Comments, identified by Docket Number FRA–2009–0006, may be submitted by any of the following methods:

- *Fax:* 1–202–493–2251.
- *Mail:* DOT Docket Management Facility; W12–140, West Building, 1200 New Jersey Ave., SE., Washington, DC 20590.
- *Hand Delivery:* W12–140 on the ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.
- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information. Please see the Privacy Act heading later in this document for more information.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to W12–140 on the ground level of the West Building, 1200 New Jersey Ave., SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Grady C. Cothen, Jr., Deputy Associate Administrator for Safety Standards and Program Development, FRA, 1200 New Jersey Ave., SE., RRS–2, Mail Stop 25, Washington, DC 20590 (Telephone 202–493–6302), or Zeb Schorr, Trial Attorney, Office of Chief Counsel, FRA, 1200 New Jersey Ave., SE., Mail Stop 10, Washington, DC 20590 (Telephone 202–493–6072).

SUPPLEMENTARY INFORMATION:

Background

Individual Disqualification Procedures

Section 305 of the Rail Safety Improvement Act of 2008 expanded the scope of 49 U.S.C. 20111(c), which concerns disqualifying individuals from performing safety-sensitive functions. Specifically, section 305 provides, in part, that an individual who has violated the Transportation of Hazardous Materials laws (49 U.S.C. Chapt. 51) or a regulation or order prescribed under those laws may be prohibited from performing safety-sensitive functions in the railroad industry for a specified period of time or until specified conditions are met, if it is shown that the violation makes the individual unfit for safety-sensitive functions. Based on section 305 of the Act, FRA is revising its existing procedures that govern the process that the agency uses to disqualify individuals from performing safety-sensitive functions. These procedures are intended to assure the prompt and efficient conduct of disqualification proceedings, while affording administrative due process to those against whom such proceedings are initiated.

Emergency Waiver Procedures

Section 308 of the Act includes specific procedures for obtaining waivers from a safety rule, regulation, or standard during an emergency situation or an emergency event. Based on the modifications contained in the Act, FRA is revising the existing emergency waiver procedures that it adopted in 2007 to expeditiously handle waiver requests that are directly related to an emergency situation or an emergency event. These revisions will make the existing procedures consistent with the Act and will permit FRA to provide railroads necessary operational relief during emergencies while at the same time maintaining public safety.

Due to the catastrophic and devastating damage inflicted on the southern portion of the United States in the aftermath of Hurricane Katrina, FRA published a notice in the **Federal Register** establishing a temporary means for handling petitions for waiver from the Federal rail safety regulations that were directly related to the effects of the hurricane or were necessary to effectively address the relief efforts being undertaken in the area. *See* 70 FR 53413 (September 8, 2005). FRA recognized that these types of petitions had to be afforded special consideration and had to be handled expeditiously in order to ensure that the emergency operational needs of the railroads were addressed while at the same time ensuring the safety of the public, including railroad employees. Such emergency waivers would help ensure that routine safety regulations would not stand in the way of the railroads' efforts to cope with the emergency and to provide timely relief and recovery efforts. FRA subsequently issued an interim final rule, and then a final rule, codifying those interim procedures. *See* 72 FR 17438 (April 7, 2007). FRA is issuing this direct final rule revising these existing procedures so that they are consistent with the Act.

Section-by-Section Analysis

Disqualification Procedures—49 CFR Part 209

Section 209.301(a). This paragraph discusses the scope of the rules of practice for disqualification proceedings of railroad employees and agents from safety-sensitive functions in the rail industry. A technical amendment is made to this paragraph so that it refers to the Federal railroad safety laws at 49 U.S.C. 20111(c) rather than the laws' previous incorporation at title 45 of the United States Code.

Section 209.303(a). This paragraph makes clear that railroad employees who are assigned to perform service subject to the Hours of Service Act during a duty tour are subject to the disqualification procedures. A technical amendment is made so that this paragraph refers to 49 U.S.C. Chapt. 211 rather than the old hours of service statutory citation at title 45 of the United States Code.

Section 209.303(b). This paragraph identifies the railroad employees or agents that are subject to the disqualification procedures. These include railroad employees or agents who: (1) Inspect, install, repair, or maintain track and roadbed; (2) inspect, repair or maintain, locomotives, passenger cars, and freight cars; (3) conduct training and testing of employees when the training or testing is required by the FRA's safety regulations; and (4) perform service subject to the Transportation of Hazardous Materials laws (49 U.S.C. Chapt. 51), or any regulation prescribed thereunder. This paragraph is amended to identify railroad employees and agents who perform service subject to 49 U.S.C. Chapt. 51, and any regulation or order prescribed thereunder, in order to remain consistent with the Act.

Section 209.303(c). This paragraph identifies the following railroad managers, supervisors, or agents as subject to the disqualification procedures. These include railroad managers, supervisors, or agents who: (1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section; (2) supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or (3) are in a position to direct the commission of violations of any of the requirements of parts 213 through 241 of this title, or of any of the requirements of the Transportation of Hazardous Materials Laws (49 U.S.C. Chapt. 51), or any regulation or order prescribed thereunder. A technical amendment is made to this paragraph so that it refers to parts 213 through 241 of title 49 of the Code of Federal Regulations. The existing provision only refers to parts 213 through 236. Because parts 238 through 241 have been added to the Code of Federal Regulations since the last amendment of this provision, it is necessary to make this technical amendment for accuracy and clarity. As indicated above, this paragraph is also amended to identify railroad managers, supervisors, and agents who perform, supervise, or direct service in violation of 49 U.S.C. Chapt. 51, and any regulation or order prescribed thereunder, in order to remain consistent with the Act.

Section 209.327(c). Technical amendments are made so that this paragraph cross-references paragraphs (a) and (b). The existing provision contains an inaccurate cross-reference to paragraphs (c) and (d) of this section. This amendment is necessary for accuracy and clarity.

Section 209.329(a). This paragraph provides that the proof of a respondent's willful violation of one of the requirements of parts 213 through 241 (excluding parts 225, 228, and 233) of this title, or one of the requirements of 49 U.S.C. Chapt. 51, or any regulation or order prescribed thereunder, establishes a rebuttable presumption that the respondent is unfit to perform the safety-sensitive functions described in § 209.303. A technical amendment is made to this paragraph so that it refers to parts 213 through 241 of title 49 of the Code of Federal Regulations. The existing provision only refers to parts 213 through 236. Because parts 238 through 241 have been added to the Code of Federal Regulations since the last amendment of this provision, it is necessary to make this technical amendment for accuracy and clarity. This paragraph is also amended to include a reference to violations of 49 U.S.C. Chapt. 51, and any regulation or order prescribed thereunder, in order to remain consistent with the Act.

Section 209.329(b). Minor technical amendments are made to this paragraph to correct spelling and punctuation errors in the existing provision.

Processing of Emergency Waivers—§ 211.45

Section 211.45(a). This paragraph makes clear that the emergency waiver procedures are intended to go into effect when there is an occurrence of, or imminent threat of, an emergency event or an emergency situation. The types of emergency events and emergency situations intended to be covered by this direct final rule could be local, regional, or national in scope and could include natural or manmade disasters, such as hurricanes, floods, earthquakes, mudslides, forest fires, snowstorms, terrorist acts, biological outbreaks, releases of dangerous radiological, chemical, explosive, or biological material, or war-related activities that pose a risk of death, serious illness, severe injury, or substantial property damage. In order to remain consistent with the Act, technical amendments are made so that this paragraph identifies relevant emergency situations. This direct final rule also amends the definition of the terms ''emergency event'' and ''emergency situation'' to make them consistent with the terms as used in the Act.

Section 211.45(b). This paragraph contains information regarding FRA's establishment of an annual Emergency Relief Docket (ERD). Establishing a new ERD each year allows FRA to receive petitions for emergency waivers as soon as the occurrence of, or imminent threat of, an emergency event is determined to have occurred. A yearly ERD is also a convenient way to organize the emergency waiver petitions and related documents. For reference purposes, any petition can be located by the year in which the emergency event or emergency situation occurred. The Federal eRulemaking Portal (''FeP'') internet site, *http://www.regulations.gov,* that is identified in this final rule allows any interested party to request notification and to subsequently, without fee, be automatically notified via e-mail when documents are added to the designated ERD. This paragraph also makes clear that FRA will publish by January 31st of each year, a **Federal Register** notice identifying the ERD for that year. This will inform interested parties where to find petitions for emergency waiver during an emergency and will allow such parties to request e-mail notification. Placing a notice in the previous year's ERD will allow the parties interested in the prior year to automatically receive the new docket number. The only changes made by this direct final rule to the existing paragraph are technical amendments so that this paragraph refers to the Federal eRulemaking Portal and *http://www.regulations.gov* which replaced the DOT Docket Management System.

Section 211.45(c). This paragraph identifies the FRA Administrator (the ''Administrator'') as the individual responsible for determining when the emergency waiver procedures will be utilized. The Administrator is the appropriate person to determine whether a situation or set of circumstances constitutes an emergency for purposes of FRA's use of the emergency waiver procedures. The Administrator has a unique familiarity with the rail-industry through oversight of the following: Managing comprehensive safety programs and regulatory initiatives; enforcement of FRA safety regulations; development and implementation of national freight and passenger rail policy; and oversight of diverse research and development activities in support of improved railroad safety. During significant emergencies the Administrator has extensive interaction with the Department of Homeland Security, Director of National Intelligence, the Federal Bureau of Investigation, the Surface Transportation Board and other Federal agencies responsible for addressing public safety, health, security and welfare. In addition, the Administrator maintains contemporaneous communication with relevant rail transportation entities, including passenger and freight railroads. This experience and interaction provides a basis from which the Administrator can assess whether a situation or set of circumstances rises to the level of an emergency event that would necessitate activation of the emergency waiver procedures.

The Administrator's statement declaring that the emergency procedures are in effect will be placed in the appropriate ERD as soon as practicable. The FeP Internet site that is identified in the rule text allows any subscribing interested party to request notification, without fee, via e-mail when documents are added to the appropriate ERD. In determining whether an emergency exists the Administrator may consider states of emergency issued by a local, State, or Federal official, and determinations by the Federal government that a credible threat of a

terrorist attack exists. The Administrator will consider whether such emergencies significantly affect railroad operations, and whether it would be beneficial to activate the emergency waiver procedures. Minor technical amendments are being made to the existing provision in this final rule in order to make the provision consistent with the Act by using the term ''emergency situation,'' and by correcting the cross-reference to paragraph (b) of this section.

Section 211.45(d). This paragraph identifies the methods by which interested parties may be notified of FRA's determination to utilize the emergency waiver procedures. If conditions permit, FRA will issue the Administrator's determination on FRA's Web site to quickly notify the public. FRA will also place the Administrator's determination in the ERD as soon as practicable. This direct final rule makes technical amendments to the existing provision by slightly modifying the notification process consistent with the requirements of the Act. The Act does not require publication of the determination in the **Federal Register** and FRA believes that notification to interested parties will occur in a more expeditious manner if such notification is accomplished through the FRA Web site and the ERD. A minor change is also made in this paragraph by correcting the cross-reference to paragraph (c) of this section.

Section 211.45(e). This paragraph identifies the required content of a petition for emergency waiver. To be considered under the emergency waiver procedures, FRA must first determine that the petition is directly related to the occurrence of, or imminent threat of, an emergency event or an emergency situation. FRA will base its determination on the information provided in the petition. Thus, the petition should contain information that sufficiently demonstrates the relationship between the emergency event or emergency situation and the waiver relief being sought. This direct final rule does not modify the existing provision and is included in this document for the convenience of interested parties.

Section 211.45(f). This paragraph instructs the public on how to submit a petition under the emergency waiver procedures. FRA is permitting submission by e-mail, facsimile, or mail. Permitting a variety of methods for submitting petitions for emergency waiver is intended to enhance the convenience and effectiveness of the process during the occurrence of, or imminent threat of, an emergency event or emergency situation. The direct final rule includes a minor technical amendment to the existing provision by updating the submission information to include FRA's current address which changed subsequent to the issuance of the original rule.

Section 211.45(g). This paragraph contains information regarding FRA's handling of waiver petitions under the emergency waiver procedures. After FRA declares that the emergency procedures are in effect, it will accept petitions for emergency waivers. Petitions that are determined to be directly related to an emergency will be placed in the ERD for that year. The FeP numbers each document that is added to a docket. Thus, each petition submitted to the ERD will have a unique document number. For reference purposes, this document number should be identified on all communications related to that particular waiver petition. The only change being made by this direct final rule to the existing provision is a technical amendment so that this paragraph refers to the Federal eRulemaking Portal which replaced the DOT Docket Management System.

Section 211.45(h). This paragraph explains the comment process. During emergency situations and emergency events the public interest requires an expedited review process to ensure public safety. The Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment. However, comments may be submitted pursuant to the direction in this paragraph, and FRA will consider such comments to the extent practicable. This direct final rule amends the existing provision by specifically stating that FRA's Administrator is able to issue waivers in an emergency situation without prior notice and comment. The Act provides FRA with this authority. Thus, although interested parties are free to submit comments and request hearings, FRA is not required to address them or conduct such hearings prior to deciding a petition. The only other changes being made by this direct final rule to the existing provision are minor technical amendments. These include a reference to the Federal eRulemaking Portal and *http://www.regulations.gov* which replaced the DOT Docket Management System and a correction to the submission information to include FRA's current address which changed subsequent to the issuance of the original rule.

Section 211.45(i). This paragraph describes how FRA will handle requests for hearing. As noted, the Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment. Pursuant to the direction in this paragraph, a hearing may be requested. FRA may arrange a telephone conference between interested parties, a public hearing pursuant to this part, or may determine that a public hearing is unnecessary. This direct final rule amends the existing provision by specifically stating that FRA's Administrator is able to issue waivers in an emergency situation without prior notice and comment. The Act provides FRA with this authority. Thus, although interested parties are free to submit comments and request hearings, FRA is not required to address them or conduct such hearings prior to deciding a request for relief related to an emergency situation or event.

Section 211.45(j). This paragraph identifies the process by which FRA will make decisions on emergency waivers including: FRA's consideration of the petition; FRA's notification of the decision; the limits of any relief granted under the procedures, and FRA's right to reopen a docket and reconsider a decision.

The ability to grant or deny a petition without delay is essential to ensuring public safety during an emergency. In addition, the opportunity to reconsider a petition after the initial decision is made will ensure a robust deliberation. FRA's understanding of an emergency may change as the emergency event develops. Accordingly, the public will benefit from FRA's ability to reconsider decisions, and make appropriate adjustments based on further information. During an emergency it is a priority to address petitions for emergency waiver and to make decisions without delay.

Posting the decision letters in the appropriate ERD will provide notice to interested parties. The FeP Internet site that is identified in the rule text allows any interested party to receive, without fee, automatic notification via e-mail of ERD documents, including the Administrator's determination that emergency waiver procedures are in effect.

This paragraph also makes clear that any relief granted under these procedures may be issued for a period of not more than 60 days. If relief is needed for a period of time beyond 60 days, such relief may only be renewed upon application to the Administrator, after notice and an opportunity for a hearing on the waiver. FRA will consult and coordinate with other Federal agencies, as appropriate, for matters that may impact such agencies.

As discussed above, this direct final rule amends the existing provisions contained in this paragraph to make them consistent with the requirements and limitations contained in the Act. The final rule makes clear that FRA's Administrator is able to grant and issue decisions on waivers in an emergency situation without prior notice and comment. This final rule also adopts the specific time limits related to emergency waivers contained in the Act by changing the nine month limitation on the effectiveness of such waivers to the statutorily imposed 60-day limit. This paragraph is also amended to note that FRA will consult and coordinate with other Federal agencies on any matters that may impact such agencies. This broad language is intended to incorporate the existing narrow language noting that FRA will consult with the Department of Homeland Security on matters that significantly impact the mission of that agency.

Notice and Comment Procedures

FRA has determined that these miscellaneous revisions are non-controversial, affect FRA internal procedures, and/or involve non-substantive clarifications to existing rules. While FRA does not anticipate any adverse comment, interested parties may submit written comments or request an oral hearing on these amendments during the thirty (30) day period immediately following publication of this direct final rule.

Regulatory Impact

Executive Order 12866 and DOT regulatory policies and procedures

This direct final rule has been evaluated in accordance with Executive Order 12866 and DOT policies and procedures. The modifications contained in this direct final rule are considered non-significant because they are intended to merely revise internal FRA procedures for handling waivers directly related to an emergency, and for individual disqualification from performing safety-sensitive functions, and to make these procedures consistent with §§ 305 and 308 of the Rail Safety Improvement Act of 2008. FRA does not expect a change in the number of emergency waivers or the level of effort associated with the developing or processing of these as a result of the amendments to the procedures for handling waivers. In addition, FRA does not expect the impact of the amendments to the procedures for disqualification to result in more than a very minimal increase in the number of disqualification cases, if any. In the nearly twenty years that existing disqualification procedures have been in effect, only sixteen disqualification cases have been initiated. Overall, the economic impact of the amendments to the procedures contained in this direct final rule may potentially increase compliance costs nominally. The benefits resulting from the prompt and efficient conduct of proceedings, while affording administrative due process, are expected to fully justify any additional burden.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule will not have a significant economic impact on a substantial number of small entities. Pursuant to Section 312 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), FRA has issued a final policy that formally establishes ''small entities'' as including railroads that meet the line-haulage revenue requirements of a Class III railroad. 49 CFR part 209, app. C. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity. Id.

FRA certifies that this direct final rule will have no significant economic impact on a substantial number of small entities. FRA does not expect a change in the number of emergency waivers filed by small entities or the level of effort associated with the developing or processing of these as a result of the amendments to the procedures for handling waivers. There are approximately 520 railroads that are considered small entities. In the nearly twenty years that existing disqualification procedures have been in effect, only three disqualification cases have been initiated involving small railroads. Since this universe of railroads would be the same universe impacted by this rulemaking, and the number of overall disqualification cases is not expected to increase significantly, FRA does not expect the impact of the amendments to the procedures for disqualification involving small entities to impact a significant number of small railroads. Although there is a potential, FRA has concluded that there are no substantial economic impacts on small entities. To the extent that this rule has any impact on small entities, the impact will not be significant.

Paperwork Reduction Act

There is no additional burden associated with the expanded scope of disqualification proceedings under the revised requirements of Part 209 of this rule. Any burden associated with the current requirements of Part 209 is already covered under OMB No. 2130–0529, which currently expires February 28, 2010. The burden for waiver petitions is included separately under the OMB currently approved collection of information associated with each agency rulemaking. Any burden associated with the requirements for emergency waiver petitions in this final rule will be included separately in each collection of information associated with that particular agency rulemaking, either at the time agency re-approval is sought from OMB or at the time an agency rulemaking is newly published or revised and the agency seeks OMB approval for the corresponding collection of information.

Environmental Impact

FRA has evaluated this direct final rule in accordance with its ''Procedures for Considering Environmental Impacts'' (''FRA's Procedures'') (64 FR 28545, May 26, 1999) as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and related regulatory requirements. FRA has determined that this document is not a major FRA action (requiring the preparation of an environmental impact statement or environmental assessment) because it is categorically excluded from detailed environmental review pursuant to section 4(c)(20) of FRA's Procedures. 64 FR 28545, 28547, May 26, 1999. In accordance with section 4(c) and (e) of FRA's Procedures, the agency has further concluded that no extraordinary circumstances exist with respect to this direct final rule that might trigger the need for a more detailed environmental review. As a result, FRA finds that this direct final rule is not a major Federal action significantly affecting the quality of the human environment.

Federalism Implications

FRA believes it is in compliance with Executive Order 13132. This rulemaking action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132. This rulemaking will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and the responsibilities among the various levels of government, as specified in Executive Order 1312. Accordingly, FRA has determined that this rulemaking will not have sufficient

federalism implications to warrant consultation with State and local officials or the preparation of a federalism assessment. Accordingly, a federalism assessment has not been prepared.

Unfunded Mandates Reform Act of 1995

Pursuant to Section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that ''before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $128,100,000 or more in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement'' detailing the effect on State, local, and tribal governments and the private sector. Because this direct final rule will not change any regulatory requirements, this document will not result in the expenditure, in the aggregate, of $128,100,000 or more in any one year, and thus preparation of such a statement is not required.

Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' 66 FR 28355 (May 22, 2001). Under the Executive Order, a ''significant energy action'' is defined as any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking that: (1)(i) Is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. FRA has evaluated this direct final rule in accordance with Executive Order 13211. Because the miscellaneous revisions will not change any regulatory requirements, FRA has determined that this direct final rule will not have a significant adverse effect on the supply, distribution, or use of energy. Consequently, FRA has determined that this regulatory action is not a ''significant energy action'' within the meaning of Executive Order 13211.

Privacy Act Information

Interested parties should be aware that anyone is able to search the electronic form of all comments received into any agency docket 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://www.regulations.gov*.

List of Subjects

49 CFR Part 209

Administrative practice and procedure, Hazardous materials transportation, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR part 211

Administrative practice and procedure, Railroad safety.

Adoption of the Amendment

■ In consideration of the foregoing, FRA amends part 209 and part 211 of chapter II, subtitle B of title 49, Code of Federal Regulations, as follows:

PART 209—[AMENDED]

■ 1. The authority citation for part 209 continues to read as follows:

Authority: 49 U.S.C. 5123, 5124, 20103, 20107, 20111, 20112, 20112, 20114; 28 U.S.C. 2461, note; and 49 CFR 1.49.

■ 2. Section 209.301 is amended by revising paragraph (a) to read as follows:

§ 209.301 Purpose and scope.

(a) This subpart prescribes the rules of practice for administrative proceedings relating to the determination of an individual's fitness for performing safety-sensitive functions under the Federal railroad safety laws at 49 U.S.C. 20111(c).

* * * * *

■ 3. Section 209.303 is revised to read as follows:

§ 209.303 Coverage.

This subpart applies to the following individuals:

(a) Railroad employees who are assigned to perform service subject to the Hours of Service Act (49 U.S.C. Chapt. 211) during a duty tour, whether or not the person has performed or is currently performing such service, and any person who performs such service.

(b) Railroad employees or agents who:

(1) Inspect, install, repair, or maintain track and roadbed;

(2) Inspect, repair or maintain, locomotives, passenger cars, and freight cars;

(3) Conduct training and testing of employees when the training or testing is required by the FRA's safety regulations; or

(4) Perform service subject to the Transportation of Hazardous Materials laws (49 U.S.C. Chapt. 51), or any regulation or order prescribed thereunder;

(c) Railroad managers, supervisors, or agents when they:

(1) Perform the safety-sensitive functions listed in paragraphs (a) and (b) of this section;

(2) Supervise and otherwise direct the performance of the safety-sensitive functions listed in paragraphs (a) and (b) of this section; or

(3) Are in a position to direct the commission of violations of any of the requirements of parts 213 through 241 of this title, or any of the requirements of 49 U.S.C. Chapt. 51, or any regulation or order prescribed thereunder.

■ 4. Section 209.327 is amended by revising paragraph (c) to read as follows:

§ 209.327 Appeal.

* * * * *

(c) The Administrator may extend the period for filing an appeal or a response for good cause shown, provided the written request for extension is served before the expiration of the applicable period provided in paragraph (a) or (b) of this section.

* * * * *

■ 5. Section 209.329 is revised to read as follows:

§ 209.329 Assessment considerations.

(a) Proof of a respondent's willful violation of one of the requirements of parts 213 through 241 (excluding parts 225, 228, and 233) of this title, or of one of the requirements of 49 U.S.C. Chapt. 51, or any regulation or order prescribed thereunder, establishes a rebuttable presumption that the respondent is unfit to perform the safety-sensitive functions described in § 209.303. Where such presumption arises, the respondent has the burden of establishing that, taking account of the factors in paragraph (b) of this section, he or she is fit to perform the foregoing safety-sensitive functions for the period and under the other

conditions, if any, proposed in the notice of proposed disqualification.

(b) In determining respondent's lack of fitness to perform safety-sensitive functions and the duration and other conditions, if any, of appropriate disqualification orders under §§ 209.309, 209.323, and 209.327, the factors to be considered, to the extent each is pertinent to the respondent's case, include but are not limited to the following:

(1) The nature and circumstances of the violation, including whether the violation was intentional, technical, or inadvertent, was committed willfully, or was frequently repeated;

(2) The adverse impact or the potentially adverse impact of the violation on the health and safety of persons and the safety of property;

(3) The employing railroad's operating rules, safety rules, and repair and maintenance standards;

(4) Repair and maintenance standards adopted by the railroad industry;

(5) The consistency of the conditions of the proposed disqualification with disqualification orders issued against other employees of the employing railroad for the same or similar violations;

(6) Whether the respondent was on notice of any safety regulations that were violated or whether the respondent had been warned about the conduct in question;

(7) The respondent's past record of committing violations of safety regulations, including previous FRA warnings issued, disqualifications imposed, civil penalties assessed, railroad disciplinary actions, and criminal convictions therefor;

(8) The civil penalty scheduled for the violation of the safety regulation in question;

(9) Mitigating circumstances surrounding the violation, such as the existence of an emergency situation endangering persons or property and the need for the respondent to take immediate action; and

(10) Such other factors as may be warranted in the public interest.

PART 211—[AMENDED]

■ 6. The authority citation for part 211 continues to read as follows:

Authority: 49 U.S.C. 20103, 20107, 20114, 20306, 20502–20504, and 49 CFR 1.49.

■ 7. Section 211.45 is revised to read as follows:

* * * * *

§ 211.45 Petitions for emergency waiver of safety rules.

(a) *General.* This section applies only to petitions for waiver of a safety rule, regulation, or standard that FRA determines are directly related to the occurrence of, or imminent threat of, an emergency event or an emergency situation. For purposes of this section, the terms ''emergency event'' and ''emergency situation'' mean a natural or manmade disaster, such as a hurricane, flood, earthquake, mudslide, forest fire, snowstorm, terrorist act, biological outbreak, release of a dangerous radiological, chemical, explosive, or biological material, or a war-related activity, that poses a risk of death, serious illness, severe injury, or substantial property damage. The disaster may be local, regional, or national in scope.

(b) *Emergency Relief Docket.* Each calendar year FRA creates an Emergency Relief Docket (ERD) in the publicly accessible Federal eRulemaking Portal (FeP). The FeP can be accessed 24 hours a day, seven days a week, via the Internet at the docket's Web site at *http://www.regulations.gov.* All documents in the FeP are available for inspection and copying on the Web site or are available for examination at the DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590 during regular business hours (9 a.m.–5 p.m.). By January 31st of each year, FRA publishes a notice in the **Federal Register** identifying by docket number the ERD for that year. A notice will also be placed in the previous year's ERD identifying the new docket number.

(c) *Determining the existence of an emergency event or an emergency situation.* If the Administrator determines that an emergency event or an emergency situation identified in paragraph (a) of this section has occurred, or that an imminent threat of it occurring exists, and determines that public safety or recovery efforts require that the provisions of this section be implemented, the Administrator will activate the Emergency Relief Docket identified in paragraph (b) of this section. In determining whether an emergency exists, the Administrator may consider declarations of emergency made by local, State, or Federal officials, and determinations by the Federal government that a credible threat of a terrorist attack exists.

(d) *Notification.* When possible, FRA will post the FRA Administrator's determination described in paragraph (c) of this section on its Web site at *http://www.fra.dot.gov.* FRA will also place the FRA Administrator's determination in the ERD as soon as practicable.

(e) *Content of petitions for emergency waivers.* Petitions submitted to FRA pursuant to this section should specifically address how the petition is related to the emergency, and to the extent practicable, contain the information required under § 211.9(a) and (b). The petition should at a minimum describe the following: how the petitioner or public is affected by the emergency (including the impact on railroad operations); what FRA regulations are implicated by the emergency (*e.g.,* movement of defective equipment); how waiver of the implicated regulations would benefit petitioner during the emergency; and how long the petitioner expects to be affected by the emergency.

(f) *Filing requirements.* Petitions filed under this section, shall be submitted using any of the following methods:

(1) E-mail to FRA at: *RRS.Correspondence@fra.dot.gov*;

(2) Facsimile to FRA at: 202–493–6309; or

(3) Mail to FRA at: FRA Docket Clerk, Office of Chief Counsel, RCC–10, Mail Stop 10, 1200 New Jersey Ave. SE., Washington, DC 20590, facsimile no. 202–493–6068.

(g) *FRA Handling and Initial Review.* Upon receipt and initial review of a petition for waiver, to verify that it meets the criteria for use of these emergency procedures, FRA will add the petition to the ERD. The FeP numbers each document that is added to a docket. (For example, the first document submitted to the docket in 2009 will be identified as FRA–2009–XXX–1.) Thus, each petition submitted to the ERD will have a unique document number which should be identified on all communications related to petitions contained in this docket. If FRA determines that the petition does not meet the criteria for use of these emergency procedures, FRA will notify the petitioner and will process the petition under normal waiver procedures of this subpart.

(h) *Comments.* Although the Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment, comments may be submitted. Comments should be submitted as soon as possible, after a petition is available on the FeP. Any comment received will be considered to the extent practicable. All comments should identify the appropriate ERD and should identify the specific document number of the petition designated by the FeP in the ERD. Interested parties commenting on

a petition under this section should also include in their comments to the ERD telephone numbers at which their representatives may be reached. Interested parties may submit their comments using any of the following methods:

(1) E-mail to FRA at: *RRS.Correspondence@fra.dot.gov.*

(2) Facsimile to FRA at: 202–493–6309.

(3) Mail to the Docket Clerk, DOT Docket Management Facility, West Building Ground Floor, Room W12–140, 1200 New Jersey Ave., SE., Washington, DC 20590 or electronically via the internet at *http://www.regulations.gov.* Any comments or information sent directly to FRA will be immediately provided to the DOT FeP for inclusion in the ERD.

(i) *Request for hearing.* Although the Administrator may waive compliance with any part of a regulation prescribed or order issued without prior notice and comment, parties desiring a public hearing on any petition being processed under this section must notify FRA through the comment process identified in paragraph (h) of this section within 72 hours from the close of business on the day that the petition is entered into and available on the FeP. In response to a request for a public hearing, FRA may:

(1) Arrange a telephone conference between all interested parties to provide an opportunity for oral comment;

(2) Arrange a public hearing pursuant to the provisions contained in 49 CFR part 211; or

(3) Determine that a public hearing is unnecessary, inconsistent with safety, or not in the public interest.

(j) *Decisions.* FRA may grant a petition for waiver without prior notice and comment if the Administrator determines that it is in the public interest to grant the waiver; the waiver is not inconsistent with railroad safety; and the waiver is necessary to address an actual or impending emergency situation or emergency event. The Administrator will state in the decision issued under this section the reasons for granting the waiver.

(1) FRA reserves the right to reopen any docket and reconsider any decision made pursuant to these emergency procedures based upon its own initiative or based upon information or comments otherwise received.

(2) FRA decision letters, either granting or denying a petition, will be posted in the appropriate ERD and will reference the document number of the petition to which it relates.

(3) A waiver under this section may be issued for a period of not more that 60 days and may be renewed upon application to the Administrator only after notice and an opportunity for a hearing on the waiver. The Administrator will immediately revoke the waiver if continuation of the waiver would not be consistent with the goals and objectives of this part.

(4) In granting a waiver under this section, the Administrator will consult and coordinate with other Federal agencies, as appropriate, for matters that may significantly impact such agencies.

Issued in Washington, DC, on May 13, 2009.

Joseph Szabo,

Administrator, Federal Railroad Administration.

[FR Doc. E9–11598 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 92

[FWS–R7–MB–2008–0126; 91200–1231–9BPP–L2]

RIN 1018–AW29

Migratory Bird Subsistence Harvest in Alaska; Harvest Regulations for Migratory Birds in Alaska During the 2009 Season

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service or we) establishes migratory bird subsistence harvest regulations in Alaska for the 2009 season. These regulations will enable the continuation of customary and traditional subsistence uses of migratory birds in Alaska and prescribe regional information on when and where the harvesting of birds may occur. These regulations were developed under a co-management process involving the Service, the Alaska Department of Fish and Game, and Alaska Native representatives. The rulemaking is necessary because the regulations governing the subsistence harvest of migratory birds in Alaska are subject to annual review. This rulemaking establishes region-specific regulations that go into effect on the date of publication in the **Federal Register** and expire on August 31, 2009.

DATES: The amendments to subpart D of 50 CFR part 92 are effective May 19, 2009, through August 31, 2009.

FOR FURTHER INFORMATION CONTACT: Fred Armstrong, (907) 786-3887, or Donna Dewhurst, (907) 786-3499, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Mail Stop 201, Anchorage, AK 99503.

SUPPLEMENTARY INFORMATION:

Why Is This Current Rulemaking Necessary?

This current rulemaking is necessary because, by law, the migratory bird harvest season is closed unless opened by the Secretary of the Interior, and the regulations governing subsistence harvest of migratory birds in Alaska are subject to public review and annual approval. The Alaska Migratory Bird Co-management Council (Co-management Council) held a meeting in April 2008 to develop recommendations for changes effective for the 2009 harvest season. These recommendations were presented to the Service Regulations Committee (SRC) on July 30 and 31, 2008, and were subsequently proposed in a December 18, 2008, **Federal Register** (73 FR 76994).

This rule finalizes regulations for the taking of migratory birds for subsistence uses in Alaska during the spring and summer of 2009. This rule lists migratory bird season openings and closures by region.

How Do I Find the History of These Regulations?

Background information, including past events leading to this action, accomplishments since the Migratory Bird Treaties with Canada and Mexico were amended, and a history addressing conservation issues can be found in the following **Federal Register** documents:

Date	Federal Register Citation
August 16, 2002	67 FR 53511
July 21, 2003	68 FR 43010
April 2, 2004	69 FR 17318
April 8, 2005	70 FR 18244
February 28, 2006	71 FR 10404
April 11, 2007	72 FR 18318
March 14, 2008	73 FR 13788

These documents, which are all final rules setting forth the annual harvest regulations, are available at *http://alaska.fws.gov/ambcc/regulations.htm.*

Who Is Eligible To Hunt Under These Regulations?

Eligibility to harvest under the regulations established in 2003 was limited to permanent residents, regardless of race, in villages located

within the Alaska Peninsula, Kodiak Archipelago, the Aleutian Islands, and in areas north and west of the Alaska Range (50 CFR 92.5). These geographical restrictions opened the initial subsistence migratory bird harvest to only about 13 percent of Alaska residents. High-population areas such as Anchorage, the Matanuska-Susitna and Fairbanks North Star boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area, and Southeast Alaska were excluded from the eligible subsistence harvest areas.

Based on petitions requesting inclusion in the harvest, in 2004, we added 13 additional communities based on criteria set forth in 50 CFR 92.5(c). These communities were Gulkana, Gakona, Tazlina, Copper Center, Mentasta Lake, Chitina, Chistochina, Tatitlek, Chenega, Port Graham, Nanwalek, Tyonek, and Hoonah, with a combined population of 2,766. In 2005, we added three additional communities for glaucous-winged gull egg gathering only, based on petitions requesting inclusion. These southeastern communities were Craig, Hydaburg, and Yakutat, with a combined population of 2,459.

In 2007, we enacted the Alaska Department of Fish and Game's request to expand the Fairbanks North Star Borough excluded area to include the Central Interior area. This action excluded the following communities from participation in this harvest: Big Delta/Fort Greely, Healy, McKinley Park/Village and Ferry, with a combined population of 2,812. These removed communities reduced the percentage of the State population included in the subsistence harvest to 13 percent.

How Will the Service Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest or Threaten the Conservation of Endangered and Threatened Species?

We have monitored subsistence harvest for the past 15 years through the use of annual household surveys in the most heavily used subsistence harvest areas, such as the Yukon–Kuskokwim Delta. Continuation of this monitoring enables tracking of any major changes or trends in levels of harvest and user participation after legalization of the harvest. This final rule restricts hunting on the North Slope to times of day with sufficient daylight to enable hunters to distinguish and avoid shooting closed species. In addition, three conservation measures, which focus on increased migratory bird hunter outreach prior to hunts, increased regulatory enforcement and in-season harvest verification of Steller's eider mortality, will provide additional protection for threatened spectacled and Steller's eiders. Finally, we have an emergency closure provision (50 CFR 92.21) which specifies that the harvest may be closed or temporarily suspended upon a finding that a continuation of the regulation allowing the harvest would pose an imminent threat to the conservation of any endangered or threatened species or other migratory bird population.

With regard to Steller's eiders, the new regulation at 50 CFR 92.32 clarifies that we will take action under 50 CFR 92.21 as is necessary to prevent further take of Steller's eiders, which could include temporary or long-term closures of the harvest in all or a portion of the geographic area open to harvest. If mortality of threatened eiders occurs, we will evaluate each mortality event by criteria such as: cause, quantity, sex, age, location, and date. We will consult the Co-management Council when an emergency closure is being considered. Any emergency closure deemed necessary will be designed to minimize its impact on the subsistence harvest.

What Is Different in the Region-Specific Regulations for 2009?

Yellow-billed Loons

This final rule implements the request of the North Slope Borough Fish and Game Management Committee and the recommendation of the Co-management Council to continue into 2009 the provisions originally established in 2005 to allow subsistence use of yellow-billed loons inadvertently entangled in subsistence fishing (gill) nets on the North Slope. Yellow-billed loons are culturally important for the Inupiat Eskimo of the North Slope for use in traditional dance regalia. A maximum of 20 yellow-billed loons may be caught in 2009 under this provision. This provisio does not authorize intentional harvest of yellow-billed loons, but allows use of those loons inadvertently entangled during normal subsistence fishing activities. Individual reporting to the North Slope Borough Department of Wildlife is required by the end of each season. However, the North Slope Borough has asked fishermen, through announcements on the radio and through personal contact, to report inadvertent entanglements of loons as they occur, to better estimate the level of mortality caused by gill nets. In 2007, 14 yellow-billed loons were reported taken in fishing nets and an additional 2 were released alive. This provision, to allow subsistence possession and use of yellow-billed loons caught in fishing gill nets, is subject to annual review and renewal by the Service.

Aleutian and Arctic Terns

We are opening a season May 15–June 30 for harvesting Aleutian and arctic tern eggs in the Yakutat Harvest area, from Icy Bay (Icy Cape to Point Riou) and the coastal islands bordering the Gulf of Alaska from Point Manby southeast to and including Dry Bay. The Yakutat Tlingit Tribe requested this proposal, stating that this regulation would legalize a traditional gathering of tern eggs that has occurred for hundreds of years. The Tlingit refer to the terns as ''sea pigeons'' and gather eggs for sustenance during the salmon fishing season. ''Pigeon eggs'' are considered a highly desired food by many Native households in Yakutat. Harvested eggs are shared extensively throughout the community and especially with local Native elders. The Yakutat Tlingit Tribe has agreed to monitor the harvest of tern eggs and this summer will conduct a recall survey of the spring harvest. The Yakutat Ranger Station, U.S. Forest Service, in cooperation with the Service's Alaska Office of Migratory Bird Management is developing methods for monitoring the Aleutian and arctic tern populations in the Yakutat area. Work on this project is under way.

Spectacled and Steller's Eiders

Spectacled eiders *(Somateria fischeri)* and the Alaska-breeding population of Steller's eiders *(Polysticta stelleri)* are listed as threatened species, and their migration and breeding distribution overlaps with the spring and summer subsistence harvest on the Yukon-Kuskokwim Delta and the North Slope. Both spectacled and Steller's eiders are closed to hunting in the subsistence harvest, but harvest surveys and Service documentation indicates substantial numbers of both species have been taken during recent subsistence harvests on the North Slope.

The North Slope breeding population of spectacled eiders was estimated to be 12,916 (10,942-14,890, 95% Confidence Limits) individual birds during 2002-2006 (Service unpublished data), and they nest relatively widely across the North Slope. It is estimated that 35 (33-40, 95% Confidence Limits) spectacled eiders were taken on the North Slope during the 2005 subsistence season (Service unpublished data, 2006); it is estimated 99 (44-155, 95% Confidence Limits) spectacled eiders were taken at Barrow in 2007 (Service, preliminary data).

The North Slope breeding population of Steller's eider was estimated to be 576 (292-859, 90% Confidence Limits) individual birds during 1993-2008

(Service, unpublished data), and most of their nesting appears to be concentrated near Barrow, the northernmost point in Alaska. It is estimated that 19 (9-37, 95% Confidence Limits) Steller's eiders were taken on the North Slope during the 2005 subsistence season (Service unpublished data, 2006); it is estimated 36 (10 reported, Service preliminary data)] Steller's eiders were taken at Barrow in 2007. A subsistence harvest survey is not yet available for 2008, but the Service documented 20 Steller's eiders shot at Barrow (with another 7 Steller's eiders found dead but too heavily scavenged to determine cause of death).

Therefore, harvest survey estimates and direct observation of shot birds indicate that direct shooting occurs during the subsistence harvest, with impacts probably on the order of tens of each threatened eider species taken per year. Take is not authorized for either species during the subsistence harvest, and, in the case of Steller's eider, this amount of shooting mortality is likely not sustainable for the small Alaska-breeding population. Because of the small Steller's population size, their breeding concentration near Barrow, and the relatively high proportion of the estimated population shot during recent subsistence harvests, the Service focused on considering regulations and conservation efforts on the North Slope to benefit the Alaska-breeding population of Steller's eiders.

Several spectacled and Steller's eider management needs are addressed by this final rule. It newly restricts hunting on the North Slope to time of day with sufficient daylight to ensure hunters can distinguish and avoid shooting closed species; it clarifies for subsistence users that Service law enforcement personnel have authority to verify species of birds possessed by hunters; it clarifies that it is illegal to possess any bird closed to harvest; and it describes how the Service's existing authority of emergency closure would be implemented, if necessary, to protect Steller's eiders. The regulations, implemented in accordance with conservation measures (described below), are considered the principal way in which threatened eider shooting mortality will be substantially reduced or eliminated. The emergency closure authority provides an additional level of assurance that, if an unexpected amount of Steller's eider shooting mortality occurs, it will be curtailed to avoid approaching jeopardy to the existence of the species.

The Service developed three conservation measures that are an integral part of the proposed harvest and were approved for implementation by the Alaska Regional Director on April 6, 2009. The conservation measures substantially increase protection for spectacled and, particularly, Steller's eiders on the North Slope in 2009, and describe how the Service will detect, remedy, and quickly curtail any shooting mortality or injury of Steller's eiders that might occur during the harvest. In January 2009, the Service commenced planning for implementation of each measure in anticipation of the subsistence harvest. The three conservation measures are:

1. Increase Migratory Bird Hunter Outreach Prior to the Hunts

The Service with North Slope partners will provide migratory bird hunter outreach in Wainwright, Point Hope, Point Lay, and Barrow prior to the 2009 subsistence harvest. The outreach educational objectives will include: hunter understanding of the 2009 hunting regulations; ability to distinguish among the open and closed species of eiders in flight; the need to reduce crippling loss; and an understanding of the Service's role and obligation for enforcement and monitoring.

2. Increased Service Enforcement of Migratory Bird Regulations

The Service will sustain a law enforcement presence on the North Slope during the migratory bird hunts. The Service believes this is necessary to increase community understanding and acceptance of the shooting mortality problem, deter violations, and obtain compliance with the regulations. The Service will conduct real-time monitoring of the harvest to meet the primary objective of detecting Steller's eider mortality during the hunts so appropriate and timely corrective action can be taken. Regulatory enforcement objectives will be achieved through a two-part strategy: (i) pre-season community and hunter education and outreach, and (ii) in-season implementation of the law enforcement portion of this plan and enforcement of all Service regulations.

3. In-season Harvest Verification of Steller's Eider Mortality and Injury

Three types of monitoring efforts are necessary during the 2009 subsistence harvest and fall hunts on the North Slope: (i) Steller's eider breeding surveys to inform the coordination of the conservation measures, (ii) harvest verification by Service law enforcement to meet the objective of detecting Steller's eider mortality during the hunts so appropriate and timely corrective action can be taken to prevent further mortality; and (iii) monitoring for injured and dead birds to begin to quantify crippling rate and loss. All in-season monitoring information will be used to independently evaluate harvest survey reports, the efficiency of the regulations, conservation measures, and outreach efforts.

To summarize, the Service has dual goals and responsibilities of authorizing a subsistence harvest while protecting migratory birds and threatened species. Although these goals are challenging, they are not irreconcilable with sufficient recognition of the need to protect threatened species, measures to remedy documented threats, and commitment from the subsistence community and other conservation partners to work together toward those dual goals. With these dual goals in mind, the Service has included in this final rule a provision that restricts hunting on the North Slope to times of day with sufficient daylight to enable hunters to avoid shooting closed species. Moreover, the Service, working with partners, developed additional measures to eliminate the potential for shooting mortality or injury of the Alaska-breeding population of Steller's eider on the North Slope. These measures include: 1) increased waterfowl hunter outreach and community awareness; 2) increased enforcement of the migratory bird regulations that are protective of listed eiders; and 3) in-season Service verification of the harvest to detect any Steller's eider mortality. In 2009, the Service and the community will immediately address and remedy any detected Steller's eider mortality; and, as a matter of Service policy, any detected Steller's eider shooting mortality will be curtailed at an amount estimated to be sustainable by the population. Further, by focusing these protections for Steller's eiders at Barrow (location of the largest known concentration of Alaska-breeding Steller's eiders), the Service is protecting the breeding population at its primary nesting area.

Summary of Public Involvement

On December 18, 2008, we published in the **Federal Register** a proposed rule (73 FR 76994) to establish spring and summer migratory bird subsistence harvest regulations in Alaska for the 2009 subsistence season. The proposed rule provided for a public comment period of 30 days. We posted an announcement of the comment period dates for the proposed rule, as well as the rule itself and related historical documents, on the Council's internet

homepage. We issued a press release announcing our request for public comments and the pertinent deadlines for such comments, which was faxed to the media Statewide. Additionally, all documents were available on *www.Regulations.gov*.

By the close of the public comment period on January 20, 2009, we had received written responses from one individual and three organizations. There was a predominate request to extend the public comment period and to hold public hearings in the North Slope villages potentially impacted by the regulations. Based on these requests, we held four public meetings to record public comments on the proposed regulations: January 26, 2009, at the Inupiat Heritage Center, 5421 North Star St., Barrow; January 27, 2009, at the Robert James Community Center, Wainwright; January 28, 2009, at the Community Center, Point Lay; and January 29, 2009, at the Qargi Community Center, Point Hope. A second public meeting was held in Point Lay on March 10, 2009.

We also reopened the public comment period until March 12, 2009, by publishing a notice in the February 10, 2009, **Federal Register** (75 FR 6563). The public was informed that if they had submitted comments any time before March 12, 2009, they did not need to resubmit because we had already incorporated them into the public record and would consider them in preparation of our final determination. By the close of the second public comment period on March 12, 2009, we had received written responses from 40 individuals and 7 organizations.

Response to Public Comments

General Comments

Comment: We received two general comments on the overall regulations that expressed strong opposition to the concept of allowing any harvest of migratory birds in Alaska.

Service Response: For centuries, indigenous inhabitants of Alaska have harvested migratory birds for subsistence purposes during the spring and summer months. The Canada and Mexico migratory bird treaties were recently amended for the express purpose of allowing subsistence hunting for migratory birds during the spring and summer. The amendments indicate that the Service should issue regulations allowing such hunting as provided in the Migratory Bird Treaty Act, 16 U.S.C. 712 (1). See **STATUTORY AUTHORITY** section for more details.

The Preamble to the Protocol amending the Canada Treaty states that one of its goals is to allow a traditional subsistence hunt while also improving conservation of migratory birds through effective regulation of this hunt. In addition, the Preamble notes that, by sanctioning a traditional subsistence hunt, the Parties do not intend to cause significant increases in the take of migratory birds, relative to their continental population sizes, compared to the take that is presently occurring. Any significant increase in take as a result of the types of hunting provided for in the Protocol would be inconsistent with the Convention. If at some point the subsistence harvest regulations result in significantly increased harvest, management strategies will be implemented to ensure maintenance of continental populations.

Comment: One commenter expressed: ''I was listening to some of these people that said they . . . have been giving out citations. And there was an incident two or three years ago, one of your agents violated one of the fishing nets that was out in the Inlet. Were there any citations or arrests made in that occasion? I don't think so. Because it was in the papers that they pull a net out just to release a loon that was tangled up in the net; left the net on the sand for the fish to rot.''

Service Response: This was an isolated incident. We worked with the owner of the subsistence net and the North Slope Borough to resolve the issue.

Comment: Two commenters requested that the public comment period be delayed past the holidays, and/or extended past 30 days.

Service Response: We were not able to extend the original comment period, but we did reopen the public comment period until March 12, 2009 by publishing a document in the February 10, 2009, **Federal Register** (75 FR 6563). The public was informed that if they had submitted comments any time before March 12, 2009, they did not need to resubmit because we had already incorporated them into the public record and would consider them in preparation of our final determination.

Comment: Sixteen commenters explained the true value of subsistence to their way of life on the North Slope — it includes both providing essential food and preserving the age-old customs and traditions associated with it.

Service Response: We respectfully acknowledge the importance of the customs and traditions that go along with the subsistence way of life in rural Alaska. One of the mandates of the Migratory Bird Treaty Amendment Protocols with Canada and Mexico is to recognize and maintain the cultural and traditional lifestyle of the indigenous inhabitants of Alaska.

Comment: In regard to the proposed new North Slope regulations, one commenter wrote, ''we believe the rule is unlikely to achieve its objectives in the medium to long term, and will likely create much mistrust between the community and your agency. This mistrust may affect the Service's ability to achieve its mission in regard to other species.''

Service Response: We intend to make every attempt to maintain positive working relationships with the North Slope communities by developing conservation measures in a cooperative environment.

Comment: Five commenters brought up that proposed changes in the regulations were not developed in coordination with the North Slope Borough or other North Slope organizations and the tribal entities in particular that have a right to have a government-to-government relationship.

Service Response: We will continue to improve our coordination efforts as this situation dictates the need for special conservation provisions in the regulations for listed species. Given the mortality of Steller's eiders documented in Barrow in the summer of 2008, we determined that there was an urgent need to get preventative actions put in place before the start of the 2009 subsistence season. A process was established to develop consensus among Service analysts as to what actions to propose, but due to the controversy involved, the process took some time.

Once we decided on a course of action, we went to Barrow in December to seek comments at a public meeting of the North Slope Fish and Game Advisory Committee. We conducted public meetings in Barrow, Wainwright, Point Lay, and Point Hope on January 26–29, 2009, and again in Point Lay on March 10, 2009, documenting public comments on the proposed actions. A meeting was held on February 6, 2009, in Anchorage between the Service, the Alaska Department of Fish and Game, the North Slope Borough Wildlife Department, the Native Village of Barrow, Inupiat Community of the Arctic Slope, Wainwright Traditional Council, and Ukpeagvik Inupiat Corporation to discuss the current situation and come up with options working toward a solution. The Alaska Regional Director made several trips to Barrow (February 10 and March 12 and 26, 2009) to meet with all the leaders of the North Slope organizations and craft

a Memorandum of Understanding between the Service and partnering North Slope organizations.

Comment: Seven commenters expressed concern that the new proposed regulations for the North Slope did not go through the Alaska Migratory Bird Co-Management Council and ''if regulations are put in place that are unilaterally put in by the Service without going through the Co-Management Council that helps defeat the purpose of the Co-Management Council; it doesn't engender trust; it doesn't engender respect, and after all it is a co-management council where the partners are supposed to be working together and the Steller's eiders regulations in 2009 have not gone through that co-management process. . . . But using the Co-Management Council as an umbrella, as a cover for the unilateral decisions that the Service is making in this case, is not appropriate and perhaps a better way to do these regulations would be to go through the Section 7 consultation instead of in the Co-Management Council's own regulations.'' Another commenter explained: ''Going outside of the co-management process for development of significant rule changes erodes confidence and legitimacy in the co-management process.''

Service Response: The Co-Management Council was briefed on Steller's eider issues and the situation on the North Slope at its fall meeting on September 24-25, 2008. Reviewing the incidence of human-caused Steller's eider mortality documented in Barrow in the summer of 2008, we determined that there was an urgent need to put preventative actions in place before the start of the 2009 subsistence season. Regulatory changes were developed later in the fall to serve as preventative actions. The Co-Management Council members were then informed on the details of the proposed actions upon publication of the proposed rule and encouraged to submit comments during the public comment period.

Comment: Eight commenters expressed concern that the Service needs to work with the North Slope Borough, Ukpeagvik Inupiat Corporation (UIC), tribal entities, and the City of Barrow to come up with a solution together.

Service Response: We agree on the importance of developing a plan of action together with the organizations representing the involved public. A meeting was held on February 6, 2009, in Anchorage between the Service, the Alaska Department of Fish and Game, the North Slope Borough Wildlife Department, the Native Village of Barrow, Inupiat Community of the Arctic Slope, Wainwright Traditional Council, and UIC to discuss the current situation and come up with options working toward a solution. A Memorandum of Understanding is to be signed by these parties prior to the opening of the season.

Comment: One commenter questioned that we did not exercise due diligence in consulting with tribal authorities under Executive Order 13175 and Secretarial Order 3225 regarding the Endangered Species Act and its application to Alaska Native subsistence. Six additional commenters expressed concern that we have not consulted nor coordinated with North Slope tribal governments to evaluate the new regulations for possible effects on tribes or trust resources. One commenter also brought up the 2004 Consolidated Appropriations Act (Section 16) requiring consultations with Alaska Native Corporations on the same basis as Indian tribes.

Service Response: We are strongly committed to a public process that's includes input from everyone affected by its regulatory decisions. We also recognize that Alaska's tribes have a special, unique legal and political relationship with the Federal government as exemplified by Executive Order 13175. However, because the takings exemption in the Migratory Bird Treaty Act applies to all indigenous inhabitants of the subsistence harvest areas, regardless of tribal status, we disagree that formal government to government consultation is required. Nevertheless, we chose to consult with tribes in the development of the program structure implementing the Co-management program as described in our 2002 final rule (67 FR 53517, August 16, 2002). The Co-management Council was formed in part to serve as the venue for meaningful dialogue with duly appointed regional representatives whose principal duty is to carry forward recommendations from Alaska Natives, including representatives of Federally-recognized tribes and Alaska Native Corporations, throughout their region. Five additional elements were added to the proposed regulation beyond the elements considered by the Co-management Council. To ensure input was received from affected Federally recognized tribes and Alaska Native Corporations regarding these five elements, the Service held public meetings in Barrow, Wainwright, Point Lay, and Point Hope. While scheduling these meetings, members of the Service contacted various Federally-recognized tribal government officials and offered to meet with them separately to hear information about the proposed regulation and to provide additional opportunity for the tribal government or Alaska Native Corporation representative to comment. In addition, we contacted each affected tribal government and Alaska Native Corporation and provided a copy of the proposed regulations, encouraging them to submit any comments in writing. At the request of Point Lay Tribal Council members, we held one additional public meeting in Point Lay during a time when more tribal council members could be present. To date, we have conducted 28 meetings on the North Slope with the affected tribal governments and other partners to foster agreement and cooperation on the strengthened efforts to conserve Steller's eiders.

The five additional elements were added to conserve and protect species listed under the Endangered Species Act. However, this regulation establishes restrictions applicable only to listed species and is submitted under the authority of the Migratory Bird Treaty Act and not the Endangered Species Act. Consequently, the proper authority for consultation is Executive Order 13175. To the extent Executive Order 13175 or the 2004 and 2005 appropriations bill language applies, consultation was conducted as described above.

Comment: One commenter cited Executive Order 12866, and asked whether the rule will create inconsistencies with other Federal agencies' actions (per section 3(f)(2)) and entitlements, grants, user fees, loan programs, rights, and obligations of their recipients (per section 3(f)(3)). Under Executive Order 12630, the commenter stated that this rule does have significant taking implications.

Service Response: The Office of Management and Budget has established and published criteria for determining whether or not a rule is significant under Executive Order 12866 (see **REQUIRED DETERMINATIONS** section for more details). Inconsistencies will not be created via this rulemaking with other Federal agencies' actions. This rule will not have an annual effect of $100 million on the economy. Also this rule will not materially impact entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. With regard to Executive Oder 12630 (Takings), this rule applies to the harvesting of migratory birds and has no impact on land ownership.

Comment: One commenter brought up concerns under the Unfunded Mandates Reform Act stating: ''In developing the

rules, the Department of the Interior certified that this rule ' ... does not have a significant or unique effect on state, local, or tribal governments or the private sector' under the Unfunded Mandates Reform Act. In contrast, we believe the rule will have unique effects, in two ways. First, obtrusive observation by enforcement personnel will change subsistence harvesting patterns, likely leading to active avoidance of not only enforcement personnel but also others in the area, such as agency biologists, researchers, and staff of the regional government.... Second, as the Service relies on harvest figures from the Borough migratory bird household surveys, the new regulations will likely depress community support for surveys in general.... As a result, the 'best available science' will be more difficult to collect and of questionable reliability.''

Service Response: The Unfunded Mandates Reform Act addresses only economic impacts of more than $100 million on local, State, or tribal governments. This rule results in no such economic impacts. See the **UNFUNDED MANDATES REFORM ACT** section of the preamble for more details.

Comment: One commenter expressed: ''We want to see more employment with our own Native people and my tribal members. We want to see more funds coming in . . . having Fish and Wildlife people that are tribal members so that we can regulate what's going on out there and be a part of it . . . .''

Service Response: We agree that it is desirable for the Federal Government to employ more local people and we have sought opportunities to do so. Since 2005, the Office of the Co-management Council has funded North Slope subsistence migratory bird harvest surveys through the North Slope Borough, which has involved the hiring of local surveyors in the villages. The Native Village of Barrow recently submitted an application for a tribal wildlife grant, and an award is expected in March or April 2009. This grant provides funding to hire one or more individuals to conduct eider monitoring and outreach in Barrow for the season. We are also in the process of contracting for a community liaison representative to reside in Barrow.

Comment: One commenter opined that it is necessary to revise the Environmental Assessment before proceeding with this rulemaking document. The commenter believes that the existing Environmental Assessment failed to adequately consider the effects of the ruling on North Slope public health and safety.

Service Response: The primary purpose of the preferred alternative in the existing Environmental Assessment (EA) for the 2009 season is to open a season that allows for continuation of a customary and traditional harvest of migratory birds by qualified Alaska residents, including non-Natives. Another purpose is to avoid negative impacts on threatened or endangered migratory birds. The EA evaluates the potential impacts of regulations proposed for the 2009 season. The only new regulation for the North Slope that could limit the subsistence harvest of birds is the shooting hours restriction prohibiting shooting in the dark, which applies only during the last 11 (Barrow) to 21 (Point Hope) days in August.

We do not have adequate information to evaluate how many birds are normally taken in the dark, or how much of an impact this will have on the families partially or entirely dependent on subsistence foods. However, this impact will still be far less than that imposed by the other alternatives considered, such as not opening the subsistence hunt statewide or opening a hunt that parallels the sport hunt by including species bag limits plus restriction on shooting hours. So even given the potential negative impacts on subsistence users of the affected North Slope communities, we would still choose the same preferred alternative and do not see a need to reinitiate the EA process for the 2009 season. In the event of a limited harvest closure on the North Slope issued under our Emergency Closure authority, we will meet the National Environmental Policy Act requirements by following published emergency procedures culminating in an Environmental Action Statement.

Law Enforcement

Comment: We received nine comments regarding the enforcement of the migratory bird subsistence regulations in the Barrow area. Commenters indicated that they believe enforcement was ''too aggressive,'' that the killing of Steller's eiders during 2008 was not done by subsistence hunters, and that the community and the Service should work together to find solutions and not resort to law enforcement.

Service Response: Since the Migratory Bird Treaty Amendments and Co-management Council regulations process has been implemented, the Service's Office of Law Enforcement and Divisions of Endangered Species and Migratory Bird Management have worked with many groups and individuals in the greater North Slope area and Barrow specifically to provide information on the regulatory requirements and enforcement of the regulations. Our approach has focused on significant outreach efforts, including public meetings, radio talk show opportunities, posted fliers, and brochures followed by a phased-in, increased reliance on enforcement actions.

We are working closely with North Slope communities and Tribal entities to formulate a comprehensive conservation strategy for Steller's eider conservation that focuses on public outreach, harvest monitoring, and when necessary, enforcement. We are hopeful that this increased emphasis on collaboration will allow the hunting public to participate fully in the process.

Comment: One commenter questioned whether the enforcement officers can identify the different eiders. The commenter said that the officers should be trained in bird identification before contacting hunters.

Service Response: All of the Service law enforcement officers detailed to work on the North Slope of Alaska are trained and proficient in waterfowl identification, including eiders.

Comment: Two commenters question how the new regulations for the subsistence migratory bird hunt can be enforced on private lands in and around Barrow, and one commenter added concern that violators, if caught, could go to Federal prison.

Service Response: The Migratory Bird Treaty Act gives the Federal Government, namely the Service, the jurisdiction to enforce all regulations regarding the taking of migratory birds within the United States. Enforcement of these regulations is neither dictated or in any way restricted by land or water ownership. Most violations of the subsistence migratory bird regulations are misdemeanors involving only monetary fines with an optional appearance in Federal Court.

Comment: One commenter expressed the opinion that law enforcement is counterproductive in subsistence hunts. The commenter explains: ''Clearly for commercial fishing and commercial hunting and guided hunts you need enforcement agents, but I think there's good evidence that enforcement in a subsistence hunt is counterproductive . . . . There's lot of scientific literature that indicates that enforcement in a subsistence setting is not helpful.''

Service Response: We balance education, outreach, and enforcement with a goal of encouraging voluntary compliance. We believe that the

penalties imposed for violations serve as a deterrent and encourage conservation.

Comment: One commenter remarked that: ''The department in promulgating this rule has determined it will not unduly burden the judicial system and it meets the requirements of section 3(a) and section 3(b)(2) of Executive Order 12988. And this is not true. There will be a burden on the judicial system . . . if people have to go through courts and the systems.''

Service Response: In 2008, eight Violation Notices (tickets) were issued on the North Slope for migratory bird harvest violations. These violations are classified as misdemeanors, and the Service, through the issuance of Violation Notices, seeks only monetary fines. A hunter who is given a Violation Notice has the option to appear in Federal Court to contest the charge. Only more serious violations require a mandatory court appearance. These changes should not pose any significant additional burden on the judicial system.

How Will the Service Ensure That the Subsistence Harvest Will Not Raise Overall Migratory Bird Harvest or Threaten the Conservation of Endangered and Threatened Species?

Comment: We received six comments acknowledging the need for Steller's eider conservation on the North Slope.

Service Response: We appreciate the shared concern for this threatened species.

Comment: We received six comments that the new regulations created to conserve Steller's eiders are creating a problem for the subsistence users on the North Slope. The commenters stated that local people depend on harvest of marine mammals, birds, fish, and other subsistence animals, and that the new proposed regulations could result in negative impacts to the local people, but that it is not clear whether these proposals are going to help raise the population of the threatened eiders.

Service Response: Under the Migratory Bird Treaty Act and the Endangered Species Act, we have a compound mandate emphasizing conservation of migratory birds and the protection of threatened and endangered species, while providing for the customary and traditional taking of migratory birds for subsistence use. The intent of the new North Slope regulations is to fulfill these competing mandates, while eliminating or minimizing take of threatened eiders during the subsistence harvest. In season monitoring will determine the effectiveness of these regulations and other efforts.

Comment: One commenter explained that the Steller's eider hen and ducklings found left in a pile were put there deliberately by subsistence hunters for law enforcement to find. A second commenter adds: ''the steller's eider deaths are not unintended take resulting from the subsistence hunt; they are an illegal deliberate take resulting from individuals breaking the law. The proposed rule punishes not only those individuals responsible for killing eiders, but the entire community....'' A third commenter echoed that these birds were shot in response to negative interactions between hunters and enforcement.

Service Response: Under the Endangered Species Act, incidental take is defined as the taking of a protected species not for the purpose of, but only incidental to, the carrying out of an otherwise lawful activity. The Steller's eiders found dead in Barrow last year comprised take relative to the subsistence hunt, malicious take, accidents, and unknown causes. When we find birds that have been shot and abandoned, it is difficult to determine why. These regulations are intended to add protection by minimizing take associated with the subsistence hunt.

Comment: One commenter brought up the point that Steller's eiders have a history of not nesting every year in the Barrow area, and that if they don't nest in 2009, then the new regulations would not be necessary and should be eliminated for the remainder of the 2009 season.

Service Response: Even in failed nesting years, protected eiders may continue to stay in the area before migrating south, and birds nesting further east will migrate through the area.

Comment: We received two comments that local elders had provided testimony that Steller's eiders were abundant in Barrow in some years and not in others, suggesting that Barrow may be on the outer range of these birds, which would explain inconsistencies in nesting. A second commenter added: ''You must also account for the possibility that eiders from Russia may come to Barrow and northern Alaska to nest every once in a while.''

Service Response: We agree that Alaska is on the outer edge of the species' current breeding range. We believe that inconsistencies in nesting arise from the species' association with brown lemmings and their predators, which vary in abundance from year to year. This appears to be true in Russia as well as in Alaska. We have some evidence to suggest that females that nest in Alaska return to Alaska in subsequent years and have no evidence of females switching from one continent to another for breeding. Males probably switch between continents, following females. We have the responsibility to conserve the population listed as threatened, which is the North American breeding population.

Comment: Ten commenters expressed concern that the real cause of the Steller's eider decline in the Barrow area was not being addressed, namely the effects of predators such as gulls, jeagers, ravens, and arctic foxes. One commenter suggested using local hunters to kill foxes around Barrow in the winter and shoot gulls in the summer. Another commenter added: ''Predator control seems like a reasonable idea using local hunters, both the avian and ground predators, outreach of course suggested, but that could be enhanced, possibly some habitat enhancement. It's interesting that the highest nesting density is in a drained lake out here along the Gaswell Road.''

Service Response: The Steller's Eider Recovery Plan lists a number of factors contributing to the species' decline, including predators. Arctic foxes are documented to be the primary nest predator. Our fox control program has had some success in reducing fox numbers in the Barrow nesting area. We are continuing discussions with our North Slope partners to explore other means to control predators as necessary.

Comment: One commenter expressed concern about a statement the Service had made saying that Steller's eiders only reside in the Barrow area. The commenter countered that subsistence hunters have seen them all over the North Slope and that calling them endangered is misleading because they are abundant in other parts of the world.

Service Response: We acknowledge that there may have been a misunderstanding between the commenter and what was stated by the Service representative. It is well documented that Steller's eiders range throughout the coastal North Slope, but primarily west of Nuiqsut. Steller's eiders are divided into Atlantic and Pacific populations; the Pacific population is further divided into the more abundant Russia-breeding population along the Russian eastern arctic coastal plain, and the threatened Alaska-breeding population. Service aerial survey information has documented a concentration of breeding birds in and around Barrow. We welcome additional information and will incorporate it into future analyses as feasible.

Comment: One commenter expressed concern that ''on the Energy Supply, Distribution or Use, Executive Order 13211, you have the oil companies you're protecting that come down here and do a whole bunch of flying all over the area around the nesting areas and probably are killing some off too.'' Three other commenters also brought up oil and gas exploration and expressed concern that the Service was not fully considering the possible impacts on the endangered eiders by increasing development.

Service Response: We hold all North Slope users to the same standards in regard to the take of protected species. Under the Endangered Species Act, the definition of ''take'' includes disturbance. Every federal agency is required to consult with the Service under Section 7 of the Endangered Species Act to ensure that any action authorized, funded or carried out by such agency is not likely to jeopardize the continued existence of any threatened or endangered species, such as spectacled and Steller's eiders, and is not likely to result in the destruction or adverse modification of designated critical habitat Accordingly, we regularly review oil and gas activities authorized, funded or carried out by federal agencies in these consultations under Section 7.

Comment: Two commenters brought up the issue of decreasing sea ice and the likely increase in tourism and other shipping, and that the Service should be evaluating what this may do to the endangered eiders using the North Slope.

Service Response: As the climate and habitat changes, any new users of the area will also be subject to the Service's review of their activities in accordance with the requirements of Section 7 of the Endangered Species Act.

Comment: Four commenters expressed doubts concerning the Steller's eider population model cited in the proposed rule with one commenter stating that ''the results of the model actually show that the population could go extinct in 10 years, but it also shows that the population could increase. There's so much variability in the data and the model is not good enough that it shouldn't be used to support the decision.'' Two commenters complained that neither the model nor the analyses on which it is based were made available to the public, nor was the model peer reviewed. Another commenter expressed ''there is uncertainty surrounding the population size, survival rate, reproductive rate, estimates used to develop this model.'' Yet another commenter pointed out deficiencies in the model, including very sparse data sets on breeding and productivity parameters and low sample sizes for clutch size, hatching success, and fledging success.

Service Response: We agree with some of these concerns and, consequently, we do not intend to use or cite the Steller's eider population model again until it has been peer reviewed, and we have confirmed that it represents the best available science.

Comment: Two commenters stated concern over the incidental damage caused to nesting Steller's eiders by the Service's research and monitoring efforts around Barrow, from nest abandonment to actually stepping on eggs. There should be equal disclosure on incidental and accidental damage done during the research each year, and that they had heard over 10 were killed last year alone during the course of conducting research.

Service Response: We acknowledge that research and monitoring, even when performed by professional biologists, impacts nesting birds. Generally this impact is of small magnitude. However, although every reasonable effort is made to keep it minimal, acquiring needed information for biological studies makes some disturbance unavoidable. Few quantitative estimates of the extent of detrimental effects exist for waterfowl, particularly for eiders in tundra environments. However, we have been monitoring and reporting all documented or suspected detrimental effects of their studies on Steller's eiders in the Barrow area, according to research permit requirements. Those effects over the years have been minimal (Rojek 2008), but do include the possible loss of one nest in 2008. In other areas, the depredation rate on eggs or nests in a Brant colony was not found to be influenced by researcher nest visits (Sedinger 1990). A similar study found minimal effects on egg loss (<0.7%) by nest visits in a Snow Goose colony (Bety and Gauthier 2001), in spite of increased activity by glaucous gulls in the visited colony in one of two years of study. Daily survival rates were slightly smaller (but not significantly so in either of two years) for marked visited nests compared to remotely monitored Spectacled Eider nests (Grand and Flint 1997).

Recently, more sensitive statistical analysis procedures have been derived to detect and correct for observer effects on daily survival rates (Rotella 2000), although large samples are needed to detect differences. Using this method, studies of nesting in King Eiders confirmed a short-term negative effect associated with observer visits to nests (Bentzen *et al.* 2008). Even if hard to quantify, the influence of visitation is recognized by biologists and continued efforts are made to minimize harm by reducing visitation frequency and not unnecessarily flushing incubating birds. There is more concern that change in predator populations associated with development or other activities could have larger effects (Truett 1997). Increased predator populations would potentially influence success of all nests, not just the small proportion of nests that are studied by biologists.

Comment: One commenter expressed concern over growing ''invasive'' species such as the ''Canada white geese'' (snow geese) overgrazing in some areas and out-competing other species out of the habitat.

Service Response: There has been no documented evidence that snow geese compete with eiders for either food or habitat. We are not aware of any adverse impacts to protected eiders by invasive bird species on the North Slope.

Comment: One commenter questioned if the Service understood the bigger picture of what has happened to the Steller's eiders. The commenter explained that for people in Barrow, their diet is mainly snow geese, king eider's, and occasionally, the common eiders. ''But we don't hunt these Steller's, and we know that the population is low.'' Furthermore, ''The elders tells us that sometimes they come lots and sometimes they come few. They also said maybe . . . they're going down south, something happening and not—and it's not in the Arctic, but when they go down south to eat—maybe something's coming from the ocean or Aleutian or natural gas seepage or what, I don't know.''

Service Response: We agree that the original cause of the decline in Steller's eiders in Alaska is unknown; however, eider adult mortality from all causes has a significant impact on threatened North American breeding populations. The changes in harvest regulations for the North Slope are an attempt by us to minimize adult mortality incidental to the subsistence harvest.

Comments on Original Region-Specific Regulations

Comment: One commenter opposed the closed season for nesting birds in the Barrow area explaining: ''And the dates that it's open and closed: I hunt well before these dates on birds and I hunt well after that it's closed. So I hunt well before April...all the way until October. I hunt all summer days. So I think you guys need to change that.''

Service Response: The Migratory Bird Treaty with Japan dictates that birds must be protected during their principal nesting season. The Service, working with the Co-management Council, has agreed that a 30–day closure is the minimum necessary to adequately protect the nesting birds. We deferred to the North Slope partners to specify the dates of the closure.

What Is Different in the Region-Specific Regulations for 2009? – Yellow-billed Loons and Aleutian Terns

Comment: One commenter expressed support of the proposal to continue allowing possession of inadvertently caught yellow-billed loons on the North Slope.

Service Response: We appreciate the continued support on this regulation.

Comment: One commenter supported the new tern egg harvest in the Yakutat area, but cautioned that the Service should annually assess the harvest's impact on overall tern productivity in the affected colonies to ensure that harvest practices are efficient and minimally disruptive to the terns.

Service Response: The U.S. Forest Service is partnering with us to ensure that annual monitoring of the affected tern colonies will be conducted. In addition, the Yakutat tribe has agreed to monitor the subsistence harvest.

What Is Different in the Region-Specific Regulations for 2009? – Steller's Eiders

Comment: Six commenters did not like the new North Slope regulation making it illegal to simply possess a Steller's eider, stating that culturally they are not a wasteful people and will salvage a bird even if they did not kill it. One commenter clarified: ''It's our customary and traditional practice to pick up animals that are edible, and if it happens to be a spectacled or Steller's eider, we're going to use it for food and we shouldn't be cited for stuff like that. The other one is at least I was raised when you see an animal suffering that may have hit a power line and it happens to be a spectacled or Steller's eider, we should have every right to kill that bird and use it for subsistence because we do not let our animals suffer. That's the way we were raised, and that's what those regulations should be.''

Service Response: This regulation clarifies a point that it is already illegal under the Migratory Bird Treaty Act to possess any bird closed to harvest. You may not possess birds that are illegally harvested. We agree that birds should not be wasted and we use recovered carcasses for additional scientific studies and educational purposes. After samples are taken, the hide may be made available for customary and traditional uses such as replicating a historical garment made of eiders.

Comment: Two commenters questioned the proposed regulation requiring subsistence hunters to present their birds upon request of a Service law enforcement officer. One commenter questioned whether this requirement would provide additional information on the harvest and how this would be applied outside of Barrow. Another commenter explained their opposition to the regulation: ''and again I see by force proposed...that's what I heard tonight with number 4, must present to the officer for species identification. To me that's called a fool; a fool that wants to go to jail. I certainly don't want to go to jail for any reason, especially for just killing a bird.''

Service Response: An important component of the conservation strategy being developed is to enable publishing of the annual regulations to open the subsistence harvest. A key component on the North Slope will be our ability to monitor and verify the ongoing harvest. This requirement will enable our officers to effectively verify harvest composition when contacting hunters in the field.

Comment: One commenter explained that both the requirement to present birds taken to law enforcement officers and the prohibition on simple possession of a Steller's eider ''are redundant with existing authorities. The provisions seem unnecessary to make possession of illegal birds a violation, and they would not alter requirements for search and seizure to compel presentation of birds.''

Service Response: Both are already legal requirements, but not explicitly spelled out in the migratory bird subsistence regulations. Publication in the **Federal Register** reinforces and clarifies these requirements for the North Slope subsistence user.

Comment: Six commenters expressed concern about the emergency closure provision regarding Steller's eiders stating that there is no definition as to what is needed to trigger the closure. One commenter clarified: ''we are concerned that the provisions in proposed 50 CFR 92.32 are not sufficiently defined. In particular, FWS should clarify what level of mortality or other activity would constitute an imminent threat to the conservation of threatened Steller's eiders.... FWS should specify what action it will take to abate that threat once such a finding is made.'' Another commenter specifically wanted to know ''If our people in Point Lay take spectacled (Steller's) eiders, you know, by accident . . . is that going to affect Wainwright or Barrow?'' Another commenter stated that ''the Service should consider a realistic threshold for take including non-hunting mortalities... by which to measure the efficacy of subsistence hunting restrictions to protect the Steller's eider.''

Service Response: We continue to work diligently with our North Slope partners to avoid any emergency harvest closure. If Stellar's eider mortalities occur, we will evaluate each mortality event by criteria such as: cause, quantity, sex, age, location, and date. If we find that an imminent threat is posed to the eiders, we will take action necessary to prevent further take of Steller's eiders, which could include temporary or long-term closures. We will consult the Co-management Council when an emergency harvest closure is being considered. Any emergency closure deemed necessary will be designed to minimize its impact on subsistence harvest.

Comment: One commenter questioned why 50 CFR 92.32, which authorizes emergency closures to protect Steller's eiders, is a necessary addition to the already published regulation at 50 CFR 92.21.

Service Response: We are clarifying that the Alaska Regional Director has the authority to initiate an emergency closure to minimize take of threatened eiders.

Comment: Five commenters stated concern over the negative impacts any emergency closure would have over customs and traditions affecting Barrow and other coastal communities. One commenter explained it this way: ''successful whaling captains have a responsibility...to feed the community. And the first serving that they do is going to be soup, and that soup is going to be ducks, king and common eider, geese, caribou, and other things, but the majority of it is going to be migratory birds. We have a harvest quota of 22 or more animals or bowhead whales per year, and we could have up to that many (Nalukataq—summer blanket toss festivals) ..., but we have a lot of people to feed. And if these proposed regulations are going to impact our whaling, you know, to be able to serve the soup, you're going to have a big problem on your hand(s).'' Another commenter explained that ''if the Service determines that the hunt should be curtailed to protect the Steller's eider, it should leave room for the Inupiat to continue their practice of nalukataq.'' Two other commenters explained about the importance of duck hunting while spring whaling, because

the birds are used directly to feed the whalers while out on the ice for long periods.

Service Response: We will make every practical attempt to avoid closing the subsistence harvest of birds. These regulations are designed to provide opportunity for spring and summer subsistence harvest of migratory birds while protecting listed eiders. We agree that an emergency closure would impact that opportunity locally. Any emergency closure deemed necessary will be designed to minimize that impact.

Comments: One commenter stated that ''of all the new regulations to protect the Steller's eider, the closure of all migratory bird hunting along some roads near Barrow is most likely to reduce inadvertent and vandalistic shooting of eiders on their primary nesting areas.''

One commenter said that the Barrow road closure was not clear enough, clarifying that ''not closing the ocean especially for springtime hunting is important and leaving areas in the lagoon, out at duck camp, out at Piquniq open for shooting is also important.'' A second commenter expressed a similar sentiment by recommending that the closure be truncated to allow hunting within ½ mile of Elson Lagoon and the Chukchi Sea Coast.

One commenter questioned whether the Service had conducted ground truthing to justify the Barrow road closure plus 1-mile buffer zone.

One commenter was against closing Gaswell Road to migratory bird hunting explaining: ''I've been hunting on that Gaswell Road . . . and it's up to 18 miles. . . . I walk bringing ducks home all the way from the shooting station, carrying . . . my shotgun, you know, just to feed my family....'' A second commenter further explained: ''If there is an area closure for subsistence hunting as proposed in Barrow, it should be only along Cakeeater, Gaswell, and Freshwater Lake Roads and only during the nesting and breeding season. Stevenson Road, the Beach Road should not be included in the road closure. Spring hunting of king and common eiders on the spring ice just west of Stevenson Road in Barrow and late summer and fall hunting of these same birds at Piquniq are essential traditional, cultural, and subsistence activities. Goose hunting in the spring should never be closed. Accidental shooting of Steller's eiders during goose hunting does not occur because the Steller's eiders are not present at that time when the geese are.''

Service Response: This response addresses the previous four comments regarding the Barrow road closure: We agree that closing the Barrow roads to all subsistence bird hunting might not accomplish the desired effect of protecting nesting Steller's eiders, and we have eliminated the closure from this final rule. The 30–day harvest closure to protect nesting birds is already in place in these regulations and will be enforced. We believe this existing regulatory provision, when carried out, will protect nesting eiders. We will work with partners to inform hunters of this provision.

Comments: Fifteen commenters expressed concern about expanding the Steller's eider specific regulations to Point Lay, Point Hope, and Wainwright, simply because eiders migrate past these villages. Many of the commenters opined that there needs to be more evidence to justify the expanded restrictions. One commenter brought up that recent harvest surveys indicate take only for Barrow through Wainwright, and do not warrant harvest restrictions west of Wainwright. Another commenter suggested that the regulations should apply when Steller's eiders are actually present.

Service Response: We have limited the Steller's eider specific regulations to the villages in the geographic area used by migrating and possibly nesting Alaska-breeding Steller's eiders (the listed population). Although we recognize the species is now thought to nest primarily in the vicinity of Barrow, the four coastal villages are included because the listed population migrates past all those villages twice during the subsistence harvest. We would like to know more about the actual risk to listed eiders by shooting in the villages of Point Lay, Point Hope, and Wainwright and would welcome collection of village-specific subsistence harvest information to assist in setting future regulations.

Comments: Four commenters wanted to know why other communities and regions where Steller's eider are found were not included in these new regulations. One commenter elaborated: ''If you guys are so concerned about the survival of the Steller's eiders . . . , you must also strictly regulate all other activities that occur in the birds' range and not just North Slope subsistence hunters.'' Another commenter stated that Steller's eiders migrate along the entire coast of western Alaska and regulating the North Slope villages, but not the western coast villages appears to be arbitrary.

Service Response: We do consider and review the regulations statewide regarding species protected under the Endangered Species Act, and all other Federally authorized or funded activities. In the case of the Steller's eider, the new regulations apply during the subsistence harvest, when the listed population of Steller's eiders are migrating and breeding on the North Slope.

Comment: Four commenters did not like the definition of the North Coastal Zone and opposed having it range up to 5 miles inland. One commenter suggested changing it to only ¼ mile inland.

Service Response: We defined the North Coastal Zone as the area of likely Steller's eider occupancy during the nesting season. We do know Steller's eiders are documented by both the aerial and ground surveys to occur at least 5 miles inland in the Barrow area. They may very well occur farther inland than that, but we believe that a 5-mile limit is a reasonable compromise of regulation coverage and likely location of occurrence for the bird.

Commenst: Nine commenters opposed instituting subsistence migratory bird shooting hours. One commenter questioned the logic of daylight regulated shooting hours when there is continuous 24–hour daylight on the North Slope for much of the summer. Another commenter went further on this thought by stating that ''the latitude of the North Coast Zone... produces light conditions that are seldom limiting'' due primarily to protracted Civil Twilight. The commenter further questioned whether this was just another attempt to apply sport hunting regulations to the subsistence hunt. Another commenter explained their opposition: ''The brant, the time I go hunting, is very early in the morning; it'll be dark, and when I leave, I'll still be hunting during the dark. It will be sun time, but then that's not when they're flying. I'll wait until it gets dark again, and then that's when they'll fly again. So when you say you can't hunt during the dark, after the sun goes down, that is very bad. I think you guys need to change that.''

Service Response: We understand the complications of dealing with the extended twilight period on the North Slope. In response, we are developing individual sunrise/sunset tables for Point Hope, Point Lay, Wainwright, and Barrow to be published in the public regulations booklets. These shooting hours will start on the date in the summer when the National Weather Service considers periods of ''true dark'' to exist, and continue until August 31.

Comment: One commenter asked if the Service is considering any parallel regulatory changes to 50 CFR 20 to protect Steller's eiders during the fall season starting September 1, 2009. The

commenter adds ''If the Service has concerns about the fall season and is considering regulatory changes that transcend the two hunting seasons, we would like to start this discussion so that Steller's eider issues can be addressed as the Pacific Flyway early season regulations process begins in early March.''

Service Response: Most of the new North Slope regulations in 50 CFR 92.31 already parallel those regulating the fall hunting season starting September 1, 2009, such as the provisions for shooting hours, possession restriction, and mandatory bag checks. If the Alaska Regional Director institutes an emergency closure under 50 CFR 92.32 to go into effect during the 2009 subsistence season, then the Service Director may elect to continue this closure into the fall season under his authority established in 50 CFR 20.26. This action, if deemed necessary, will be done in consultation with the Co-management Council and the Pacific Flyway.

Statutory Authority

We derive our authority to issue these regulations from the Migratory Bird Treaty Act of 1918, 16 U.S.C. 712(1), which authorizes the Secretary of the Interior, in accordance with the treaties with Canada, Mexico, Japan, and Russia, to ''issue such regulations as may be necessary to assure that the taking of migratory birds and the collection of their eggs, by the indigenous inhabitants of the State of Alaska, shall be permitted for their own nutritional and other essential needs, as determined by the Secretary of the Interior, during seasons established so as to provide for the preservation and maintenance of stocks of migratory birds.''

Required Determinations

Regulatory Planning and Review (Executive Order 12866)

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

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). An initial regulatory flexibility analysis is not required. Accordingly, a Small Entity Compliance Guide is not required. The rule legalizes a pre-existing subsistence activity, and the resources harvested will be consumed by the harvesters or persons within their local community.

Small Business Regulatory Enforcement Fairness Act

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

(a) Will not have an annual effect on the economy of $100 million or more. It will legalize and regulate a traditional subsistence activity. It will not result in a substantial increase in subsistence harvest or a significant change in harvesting patterns. The commodities being regulated under this rule are migratory birds. This rule deals with legalizing the subsistence harvest of migratory birds and, as such, does not involve commodities traded in the marketplace. A small economic benefit from this rule derives from the sale of equipment and ammunition to carry out subsistence hunting. Most, if not all, businesses that sell hunting equipment in rural Alaska would qualify as small businesses. We have no reason to believe that this rule will lead to a disproportionate distribution of benefits.

(b) Will not cause a major increase in costs or prices for consumers; individual industries; Federal, State, or local government agencies; or geographic regions. This rule does not deal with traded commodities and, therefore, does not have an impact on prices for consumers.

(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 rule deals with the harvesting of wildlife for personal consumption. It does not regulate the marketplace in any way to generate effects on the economy or the ability of businesses to compete.

Unfunded Mandates Reform Act

We have determined and certified under the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, State, or tribal governments or private entities. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act is not required. Participation on regional management bodies and the Co-management Council will require travel expenses for some Alaska Native organizations and local governments. In addition, they will assume some expenses related to coordinating involvement of village councils in the regulatory process. Total coordination and travel expenses for all Alaska Native organizations are estimated to be less than $300,000 per year. In the Notice of Decision (65 FR 16405; March 28, 2000), we identified 12 partner organizations (Alaska Native nonprofits and local governments) to administer the regional programs. The Alaska Department of Fish and Game will also incur expenses for travel to Co-management Council and regional management body meetings. In addition, the State of Alaska will be required to provide technical staff support to each of the regional management bodies and to the Co-management Council. Expenses for the State's involvement may exceed $100,000 per year, but should not exceed $150,000 per year. When funding permits, we make annual grant agreements available to the partner organizations and the Alaska Department of Fish and Game to help offset their expenses.

Takings (Executive Order 12630)

Under the criteria in Executive Order 12630, this rule does not have significant takings implications. This rule is not specific to particular land ownership, but applies to the harvesting of migratory bird resources throughout Alaska. A takings implication assessment is not required.

Federalism (Executive Order 13132)

Under the criteria in Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. We discuss effects of this final rule on the State of Alaska in the Executive Order 12866 and Unfunded Mandates Reform Act sections above. We worked with the State of Alaska to develop

these regulations. Therefore, a Federalism Assessment is not required.

Civil Justice Reform (Executive Order 12988)

The Department, in promulgating this rule, has determined that it will not unduly burden the judicial system and that it meets the requirements of sections 3(a) and 3(b)(2) of Executive Order 12988.

Government-to-Government Relations With Native American Tribal Governments

Because eligibility to hunt under these regulations is not limited to tribal members, but rather extends to all indigenous inhabitants of the subsistence harvest areas, we are not required to engage in formal consultation with tribes. However, in keeping with the spirit of the President's memorandum of April 29, 1994, ''Government-to-Government Relations With Native American Tribal Governments'' (59 FR 22951), and Executive Order 13175 (65 FR 67249; November 6, 2000), concerning consultation and coordination with Indian Tribal Governments, we conducted statewide meetings with tribes and tribal and nonprofit organizations to evaluate the rule for possible effects on tribes or trust resources, and have determined that there are no significant effects. The rule will legally recognize the subsistence harvest of migratory birds and their eggs for indigenous inhabitants including tribal members. In 1998, we began a public involvement process to determine how to structure management bodies in order to provide the most effective and efficient involvement of subsistence users. We began by publishing in the **Federal Register** stating that we intended to establish management bodies to implement the spring and summer subsistence harvest (63 FR 49707, September 17, 1998). Meetings with the Alaska Department of Fish and Game and the Native Migratory Bird Working Group were held to provide information regarding the amended treaties and to listen to the needs of subsistence users. The Native Migratory Bird Working Group was a consortium of Alaska Natives formed by the Rural Alaska Community Action Program to represent Alaska Native subsistence hunters of migratory birds during the treaty negotiations. We held forums in Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. We led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay and for the Central Council of Tlingit & Haida Indian Tribes in Juneau.

On March 28, 2000, we published in the **Federal Register** (65 FR16405) the Notice of Decision: ''Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds.'' This notice described the way in which management bodies would be established and organized. Based on the wide range of views expressed on the options document, the decision incorporated key aspects of two of the modules. The decision established one statewide management body consisting of 1 Federal member, 1 State member, and 7–12 Alaska Native members, with each component serving as equals.

Paperwork Reduction Act

This rule has been examined under the Paperwork Reduction Act of 1995. OMB has approved our collection of information associated with the voluntary annual household surveys used to determine levels of subsistence take. The OMB control number is 1018–0124, which expires on January 31, 2010. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Endangered Species Act Consideration

Section 7 of the Endangered Species Act (16 U.S.C. 1536), requires the Secretary of the Interior to ''review other programs administered by him and utilize such programs in furtherance of the purposes of the Act'' and to ''insure that any action authorized, funded, or carried out... is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of [critical] habitat. . . .'' An intra-agency consultation with the Fairbanks Fish and Wildlife Field Office was conducted on this harvest as it will be managed in accordance with this final rule and the conservation measures. The consultation was completed with a biological opinion dated April 6, 2009 that concluded the final rule and conservation measures, as proposed, are not likely to jeopardize the continued existence of spectacled or Steller's eiders or result in the destruction or adverse modification of designated critical habitat.

National Environmental Policy Act Consideration

The annual regulations and options were considered in the Environmental Assessment, ''Managing Migratory Bird Subsistence Hunting in Alaska: Hunting Regulations for the 2009 Spring/Summer Harvest,'' issued November 21, 2008. Copies are available from the person listed under **FOR FURTHER INFORMATION CONTACT** or at *http://www.Regulations.gov*.

Energy Supply, Distribution, or Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. This is not a significant regulatory action under Executive Order 12866; it would allow only for traditional subsistence harvest and would improve conservation of migratory birds by allowing effective regulation of this harvest. Further, this rule is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action under Executive Order 13211 and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 92

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Subsistence, Treaties, Wildlife.

■ For the reasons set out in the preamble, we amend title 50, chapter I, subchapter G, of the Code of Federal Regulations as follows:

PART 92—MIGRATORY BIRD SUBSISTENCE HARVEST IN ALASKA

■ 1. The authority citation for part 92 continues to read as follows:

Authority: 16 U.S.C. 703–712.

Subpart D—Annual Regulations Governing Subsistence Harvest

■ 2. In subpart D, add § 92.31 to read as follows:

§ 92.31 Region-specific regulations.

The 2009 season dates for the eligible subsistence harvest areas are as follows:

(a) *Aleutian/Pribilof Islands Region.*

(1) Northern Unit (Pribilof Islands):

(i) Season: April 2–June 30.

(ii) Closure: July 1–August 31.

(2) Central Unit (Aleut Region's eastern boundary on the Alaska Peninsula westward to and including Unalaska Island):

(i) Season: April 2–June 15 and July 16–August 31.

(ii) Closure: June 16–July 15.

(iii) Special Black Brant Season Closure: August 16–August 31, only in Izembek and Moffet lagoons.

(iv) Special Tundra Swan Closure: All hunting and egg gathering closed in units 9(D) and 10.

(3) Western Unit (Umnak Island west to and including Attu Island):

(i) Season: April 2–July 15 and August 16–August 31.

(ii) Closure: July 16–August 15.

(b) *Yukon/Kuskokwim Delta Region.*

(1) Season: April 2–August 31.

(2) Closure: 30–day closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with local subsistence users, field biologists, and the Association of Village Council President's Waterfowl Conservation Committee. This 30–day period will occur between June 1 and August 15 of each year. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(3) Special Black Brant and Cackling Goose Season Hunting Closure: From the period when egg laying begins until young birds are fledged. Closure dates to be announced by the Service's Alaska Regional Director or his designee, after consultation with field biologists and the Association of Village Council President's Waterfowl Conservation Committee. A press release announcing the actual closure dates will be forwarded to regional newspapers and radio and television stations and posted in village post offices and stores.

(c) *Bristol Bay Region.*

(1) Season: April 2–June 14 and July 16–August 31 (general season); April 2–July 15 for seabird egg gathering only.

(2) Closure: June 15–July 15 (general season); July 16–August 31 (seabird egg gathering).

(d) *Bering Strait/Norton Sound Region.*

(1) Stebbins/St. Michael Area (Point Romanof to Canal Point):

(i) Season: April 15–June 14 and July 16–August 31.

(ii) Closure: June 15–July 15.

(2) Remainder of the region:

(i) Season: April 2–June 14 and July 16–August 31 for waterfowl; April 2–July 19 and August 21–August 31 for all other birds.

(ii) Closure: June 15–July 15 for waterfowl; July 20–August 20 for all other birds.

(e) *Kodiak Archipelago Region,* except for the Kodiak Island roaded area, which is closed to the harvesting of migratory birds and their eggs. The closed area consists of all lands and waters (including exposed tidelands) east of a line extending from Crag Point in the north to the west end of Saltery Cove in the south and all lands and water south of a line extending from Termination Point along the north side of Cascade Lake extending to Anton Larson Bay. Waters adjacent to the closed area are closed to harvest within 500 feet from the water's edge. The offshore islands are open to harvest.

(1) Season: April 2–June 30 and July 31–August 31 for seabirds; April 2–June 20 and July 22–August 31 for all other birds.

(2) Closure: July 1–July 30 for seabirds; June 21–July 21 for all other birds.

(f) *Northwest Arctic Region.*

(1) Season: April 2–June 9 and August 15–August 31 (hunting in general); waterfowl egg gathering May 20–June 9 only; seabird egg gathering May 20–July 12 only; hunting molting/non-nesting waterfowl July 1–July 31 only.

(2) Closure: June 10–August 14, except for the taking of seabird eggs and molting/non-nesting waterfowl as provided in paragraph (f)(1) of this section.

(g) *North Slope Region.*

(1) Southern Unit (Southwestern North Slope regional boundary east to Peard Bay, everything west of the longitude line 158°30'W and south of the latitude line 70°45'N to the west bank of the Ikpikpuk River, and everything south of the latitude line 69°45'N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 2–June 29 and July 30–August 31 for seabirds; April 2–June 19 and July 20–August 31 for all other birds.

(ii) Closure: June 30–July 29 for seabirds; June 20–July 19 for all other birds.

(iii) Special Black Brant Hunting Opening: From June 20–July 5. The open area would consist of the coastline, from mean high water line outward to include open water, from Nokotlek Point east to longitude line 158°30'W. This includes Peard Bay, Kugrua Bay, and Wainwright Inlet, but not the Kuk and Kugrua river drainages.

(2) Northern Unit (At Peard Bay, everything east of the longitude line 158°30'W and north of the latitude line 70°45'N to west bank of the Ikpikpuk River, and everything north of the latitude line 69°45'N between the west bank of the Ikpikpuk River to the east bank of Sagavinirktok River):

(i) Season: April 6–June 6 and July 7–August 31 for king and common eiders; April 2–June 15 and July 16–August 31 for all other birds.

(ii) Closure: June 7–July 6 for king and common eiders; June 16–July 15 for all other birds.

(3) Eastern Unit (East of eastern bank of the Sagavanirktok River):

(i) Season: April 2–June 19 and July 20–August 31.

(ii) Closure: June 20–July 19.

(4) All Units: yellow-billed loons. Annually, up to 20 yellow-billed loons total for the region may be inadvertently entangled in subsistence fishing nets in the North Slope Region and kept for subsistence use. Individuals must report each yellow-billed loon inadvertently entangled while subsistence gill net fishing to the North Slope Borough Department of Wildlife Management by the end of the season.

(5) North Coastal Zone (Cape Thompson north to Point Hope and east along the Arctic Ocean coastline around Point Barrow to Ross Point, including Iko Bay, and 5 miles inland).

(i) Migratory bird hunting is permitted from one-half hour before sunrise until sunset, during August.

(ii) No person shall at any time, by any means, or in any manner, possess or have in custody any migratory bird or part thereof, taken in violation of subpart C and D of this part.

(iii) Upon request from a Service law enforcement officer, hunters taking, attempting to take, or transporting migratory birds taken during the subsistence harvest season must present them to the officer for species identification.

(h) *Interior Region.*

(1) Season: April 2–June 14 and July 16–August 31; egg gathering May 1–June 14 only.

(2) Closure: June 15–July 15.

(i) *Upper Copper River Region* (Harvest Area: Units 11 and 13) (Eligible communities: Gulkana, Chitina, Tazlina, Copper Center, Gakona, Mentasta Lake, Chistochina and Cantwell).

(1) Season: April 15–May 26 and June 27–August 31.

(2) Closure: May 27–June 26.

(3) The Copper River Basin communities listed above also documented traditional use harvesting birds in Unit 12, making them eligible to hunt in this unit using the seasons specified in paragraph (h) of this section.

(j) *Gulf of Alaska Region.*

(1) Prince William Sound Area (Harvest area: Unit 6 [D]), (Eligible Chugach communities: Chenega Bay, Tatitlek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(2) Kachemak Bay Area (Harvest area: Unit 15[C] South of a line connecting the tip of Homer Spit to the mouth of Fox River) (Eligible Chugach Communities: Port Graham, Nanwalek).

(i) Season: April 2–May 31 and July 1–August 31.

(ii) Closure: June 1–30.

(k) *Cook Inlet* (Harvest area: portions of Unit 16[B] as specified below) (Eligible communities: Tyonek only).

(1) That portion of Unit 16(B) south of theSeason: April 2–May 31 Skwentna River and west of the Yentna RiverThat portion of Unit 16(B), and August 1–31 south of the Beluga River, Beluga Lake, and the Triumvirate Glacier.

(2) Closure: June 1–July 31.

(l) *Southeast Alaska.*

(1) Community of Hoonah (Harvest area: National Forest lands in Icy Strait and Cross Sound, including Middle Pass Rock near the Inian Islands, Table Rock in Cross Sound, and other traditional locations on the coast of Yakobi Island. The land and waters of Glacier Bay National Park remain closed to all subsistence harvesting [50 CFR Part 100.3].

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(2) Communities of Craig and Hydaburg (Harvest area: small islands and adjacent shoreline of western Prince of Wales Island from Point Baker to Cape Chacon, but also including Coronation and Warren islands).

(i) Season: glaucous-winged gull egg gathering only: May 15–June 30.

(ii) Closure: July 1–August 31.

(3) Community of Yakutat (Harvest area: Icy Bay [Icy Cape to Point Riou], and coastal lands and islands bordering the Gulf of Alaska from Point Manby southeast to Dry Bay).

(i) Season: glaucous-winged gull, aleutian and arctic tern egg gathering: May 15–June 30.

(ii) Closure: July 1–August 31.

■ 3. In subpart D, add § 92.32 to read as follows:

§ 92.32 Emergency regulations to protect Steller's eiders.

Upon finding that continuation of these subsistence regulations would pose an imminent threat to the conservation of threatened Steller's eiders, the U.S. Fish and Wildlife Service Alaska Regional Director, in consultation with the Co-management Council, will immediately under § 92.21 take action as is necessary to prevent further take. Regulation changes implemented could range from a temporary closure of duck hunting in a small geographic area to large-scale regional or State-wide long-term closures of all subsistence migratory bird hunting. Such closures or temporary suspensions will remain in effect until the Regional Director, in consultation with the Co-management Council, determines that the potential for additional Steller's eiders to be taken no longer exists.

Dated: May 12, 2009.

Will Shafroth,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. E9–11663 Filed 5–18–09; 8:45 am]

BILLING CODE 4310-55-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 070717352–8886–02]

RIN 0648–AV65

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Pelagic Longline Take Reduction Plan

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

ACTION: Final rule.

SUMMARY: The National Marine Fisheries Service (NMFS) announces its determination that the pelagic longline fishery has a high level of mortality and serious injury across a number of marine mammal stocks, and issues the final Atlantic Pelagic Longline Take Reduction Plan (PLTRP) and implementing regulations to reduce serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. The PLTRP is based on consensus recommendations submitted by the Atlantic Pelagic Longline Take Reduction Team (PLTRT). The PLTRP is intended to meet the statutory mandates and requirements of the Marine Mammal Protection Act (MMPA) through both regulatory and non-regulatory measures, including a special research area, gear modifications, outreach material, observer coverage, and captains' communications.

DATES: This final rule is effective June 18, 2009.

ADDRESSES: Copies of the Final Environmental Assessment (EA), the Regulatory Impact Review (RIR), and the Final Regulatory Flexibility Act (FRFA) analysis are available from Protected Resources Division, NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701–5505. The PLTRP Compliance guide and Pelagic Longline Take Reduction Team (PLTRT) meeting summaries may be obtained by writing to Erin Fougeres, NMFS, Southeast Region, 263 13th Avenue South, St. Petersburg, FL 33701–5505.

This final rule, its references, and background documents for the PLTRP can be downloaded from the Take Reduction web site at *http://www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.htm* and the NMFS Southeast Regional Office website at *http://sero.nmfs.noaa.gov/pr/pr.htm*.

FOR FURTHER INFORMATION CONTACT: Erin Fougeres or Jennifer Lee, NMFS, Southeast Region, 727–824–5312, or Kristy Long, NMFS, Office of Protected Resources, 301–713–2322. Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

This final rule, which serves as the final PLTRP, implements regulatory and non-regulatory measures recommended by the PLTRT to satisfy the requirements of the MMPA. Details concerning the justification for and development of this PLTRP were provided in the preamble to the proposed rule (73 FR 35623, June 24, 2008) and are not repeated here. The proposed rule provided a 90–day public comment period to provide feedback to NMFS via electronic submission, postmarked mail, or facsimile. In addition, one PLTRT meeting was conducted during the 90 day public comment period. Based on comments received (see ''Comments and Responses'' section), NMFS made minor changes to the proposed rule. Changes between the proposed and final rule are noted in the ''Changes from the Proposed Rule'' section.

Distribution, Stock Structure, and Abundance of Pilot Whales

In the mid-Atlantic bight (MAB), (i.e., the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71 W. long. between 35° N. lat. and 43° N. lat), the Atlantic pelagic longline fishery interacts with two species of pilot whales. Long-finned pilot whales are distributed worldwide in cold temperate waters in both the Northern (North Atlantic) and Southern Hemispheres. In the North Atlantic, the species is broadly distributed and thought to occur from 40° to 75° N. lat. in the eastern North Atlantic and from 35° to 65° N. lat. in the western North Atlantic (Abend and Smith, 1999). Short-finned pilot whales are also distributed worldwide in warm temperate and tropical waters. In U.S. Atlantic waters,

this species is found in the Gulf of Mexico (GOM) and in the western North Atlantic as far north as the central MAB. Both species tend to favor the continental shelf break and slope, as well as other areas of high relief, but are also present offshore in the pelagic environment. In the western North Atlantic, they may be associated with the north wall of the Gulf Stream and with thermal fronts (Waring *et al.*, 1992).

The two species are difficult to distinguish during visual abundance surveys, and therefore, in many cases, reference is made to the combined species, *Globicephala* spp. Due to this difficulty in species identification, the species' boundaries for short-finned and long-finned pilot whales in the western North Atlantic have not been clearly defined. However, their distributions are thought to overlap along the U.S. mid-Atlantic coast between 35° and 39° N. lat. (Payne and Heinemann, 1993; Bernard and Reilly, 1999). The greatest area of overlap in distribution of the two species seems confined to an area along the shelf edge between 38° and 40° N. lat. in the MAB, where long-finned pilot whales are present in winter and summer and short-finned pilot whales are present in at least the summer (Waring *et al.*, 2008).

Stock structure is not well known for long-finned or short-finned pilot whales in the North Atlantic. Indirect and direct studies on long-finned pilot whales indicate that there is some degree of stock differentiation within the North Atlantic (Mercer, 1975; Bloch and Lastein, 1993; Abend and Smith, 1995; Abend and Smith, 1999; Fullard *et al.*, 2000). For short-finned pilot whales, there is no available information on whether the North Atlantic stock is subdivided into smaller stocks.

The total number of pilot whales off the eastern U.S. and Canadian Atlantic coast is unknown, although estimates from particular regions of their habitat (e.g., continental slope) exist for select time periods (see Waring *et al.*, 2006 for a complete summary). Observers at sea cannot reliably distinguish long- and short-finned pilot whales visually. As a result, sightings of pilot whales are not identified to species and resulting survey estimates are considered joint estimates for both species. The best available estimate for *Globicephala* spp. in the U.S. Exclusive Economic Zone (EEZ) is the sum of the estimates from the summer 2004 U.S. Atlantic surveys, 31,139 (Coefficient of Variation, or CV=0.27), where the estimate from the northern U.S. Atlantic is 15,728 (CV=0.34), and from the southern U.S. Atlantic is 15,411 (CV=0.43) (Waring *et al.*, 2008). This joint estimate is the most recent available, and these surveys include the most complete coverage of the species' habitats (although the PLTRT recognized that this estimate was limited to the U.S. EEZ). For *Globicephala* spp., the minimum population estimate, which accounts for uncertainty in the best estimate (Wade and Angliss, 1997), is 24,866.

Distribution, Stock Structure, and Abundance of Risso's Dolphins

Risso's dolphins occur worldwide in warm temperate and tropical waters roughly between 60° N. and 60° S. lat., and records of the species in the western North Atlantic range from Greenland south, including the Gulf of Mexico (Kruse *et al.*, 1999). In the U.S. Atlantic EEZ, the species is most commonly seen in the MAB shelf edge year round and is rarely seen in the Gulf of Maine (Waring *et al.*, 2004). Risso's dolphins are pelagic, preferring waters along the continental shelf edge and deeper, as well as areas of submerged relief such as seamounts and canyons (Kruse *et al.*, 1999). There is no information available on population structure for this species.

Abundance estimates for Risso's dolphins off the U.S. or Canadian Atlantic coast are unknown, although eight estimates from particular regions of their habitat exist for select time periods (Waring *et al.*, 2006). Sightings of Risso's dolphins are almost exclusively in the continental shelf edge and continental slope areas. The best available abundance estimate for Risso's dolphins in the U.S. EEZ is the sum of the estimates from the summer 2004 U.S. Atlantic surveys, 20,479 (CV=0.59), where the estimate from the northern U.S. Atlantic is 15,053 (CV=0.78), and from the southern U.S. Atlantic is 5,426 (CV=0.540) (Waring *et al.*, 2008). This joint estimate is the most recent available, and the surveys have the most complete coverage of the species' habitat (although the PLTRT recognized that this estimate was limited to the U.S. EEZ). The minimum population estimate for the western North Atlantic Risso's dolphin, which accounts for uncertainty in the best estimate (Wade and Angliss, 1997), is 12,920.

Potential Biological Removal, Serious Injury and Mortality Estimates, and Take Reduction Plan Determination

The Potential Biological Removal (PBR) level is the maximum number of animals, not including natural mortalities, that can be removed annually from a stock, while allowing that stock to reach or maintain its optimum sustainable population level. Specifically, it is defined as the product of minimum population size (in this case, of the portion of the stock surveyed within the U.S. EEZ), one-half the maximum productivity rate, and a recovery factor (MMPA Sec. 3(20), 16 U.S.C. 1362). The maximum productivity rate for both pilot whales and Risso's dolphin is 0.04, the default value for cetaceans (Barlow *et al.*, 1995). The recovery factor, which provides greater protection for endangered, depleted, or threatened stocks, or stocks of unknown status relative to optimum sustainable population (OSP), is 0.48 for both species because the CV of the average mortality estimate is between 0.3 and 0.6 (Wade and Angliss, 1997), and because both stocks are of unknown status. The PBR for both species of western North Atlantic pilot whales combined (i.e., *Globicephala* spp.) is 249, and the PBR for the western North Atlantic stock of Risso's dolphin is 129 (Waring *et al.*, 2008).

The 2007 Marine Mammal Stock Assessment Report (SAR) reported an average combined annual serious injury and mortality incidental to pelagic longline fishing of 86 pilot whales (CV=0.16) and 34 Risso's dolphins (CV=0.32), based on the years 2001–2005 (Waring *et al.*, 2008). However, more recent estimates (Fairfield-Walsh and Garrison, 2007; Garrison, 2007) bring the 5–year average annual combined serious injury and mortality for pilot whales to 109 animals (CV=0.194, years 2002–2006) and for Risso's dolphins to 20 animals (CV=0.381, years 2002–2006). Based on this information, serious injury and mortality of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery is below PBR, but exceeds the insignificance threshold (i.e., 10% of PBR)(69 FR 43338, July 20, 2004). Furthermore, NMFS has determined that there is a high level of serious injury and mortality in the Atlantic pelagic longline fishery across a number of marine mammal stocks, warranting the development and implementation of a take reduction plan for both pilot whale and Risso's dolphin stocks.

Components of the Final PLTRP

The final PLTRP takes a stepwise, adaptive management approach to achieve the long-term goal of reducing serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate within five years of implementation. A series of management measures, implemented by this final rule, are designed to make an

initial significant contribution to reducing serious injury and mortality. The final PLTRP also includes research recommendations for better understanding how pilot whales and Risso's dolphins interact with longline gear, as well as assessing current and potential new management measures. The PLTRT agreed to evaluate the success of the final PLTRP at periodic intervals over the next five years and to consider amending the PLTRP based on the results of ongoing monitoring, research, and evaluation.

The PLTRT recommended a suite of management strategies to reduce mortality and serious injury of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery. The complete list of these recommendations can be found in Sections VIII and IX of the Draft PLTRP (PLTRT, 2006). This final rule addresses both the regulatory and non-regulatory measures recommended by the PLTRT. NMFS incorporated nearly all of the PLTRT's consensus recommendations from the Draft PLTRP into the proposed and final PLTRP, with only minor modifications.

One consensus recommendation is not implemented through this final rule, but is implemented under a different authority. The PLTRT recommended NMFS develop and implement a mandatory certification program to educate owners and operators of pelagic longline vessels about ways to reduce serious injury and mortality of marine mammal bycatch. NMFS is implementing the PLTRT's recommendation using NMFS' existing regulatory authority at 50 CFR 635.8, Workshops. On October 2, 2006, NMFS published the Consolidated Highly Migratory Species (HMS) Fishery Management Plan (FMP) and the associated final rule (71 FR 58058), which requires all HMS longline fishermen to attend a NMFS workshop and earn certification in mitigation, handling, and release techniques for sea turtles, sea birds, and other protected species. Since 2007, NMFS has incorporated education on careful handling and release techniques for marine mammals, current regulations and guidelines related to marine mammal bycatch that apply to the fishery, and an explanation of the purpose and justification of those regulations and guidelines into these workshops. NMFS will expand the content of the workshops as appropriate to meet the needs of the PLTRP.

Regulatory Measures

NMFS issues the following three regulatory measures: (1) a Cape Hatteras Special Research Area (CHSRA), with specific observer and research participation requirements for fishermen operating in that area; (2) a 20–nm (37.04–km) upper limit on mainline length for all pelagic longline sets within the MAB; and (3) an informational placard that must be displayed in the wheelhouse and on the working deck of all active pelagic longline vessels in the Atlantic fishery.

Cape Hatteras Special Research Area

As recommended by the PLTRT, NMFS is designating a special research area offshore of Cape Hatteras (hereafter referred to as the CHSRA) with specific observer and research participation requirements for fishermen operating in that area at any time during the year. The CHSRA includes all waters inside and including the rectangular boundary described by the following coordinates: 35° N. lat., 75° W. long., 36° 25' N. lat., and 74° 35' W. long (Figure 1). The CHSRA encompasses a 5,927 sq km (2,288 sq mile) region that over the past five years has exhibited both high fishing effort and high pilot whale bycatch rates. NMFS delineated the area to encompass the vast majority of the observed marine mammal interactions and to exclude the area where inshore longline vessels target yellowfin tuna and coastal sharks, since the inshore area had low observed marine mammal interaction rates.

Vessels in the CHSRA are required to carry observers when requested. Vessels deploying or fishing with pelagic longline gear in the CHSRA must call the NMFS Southeast Fisheries Science Center (SEFSC) at least 48 hours, but no more than 96 hours, prior to embarking on the trip. This is in addition to any existing selection and notification requirements for observer coverage by the Pelagic Observer Program (POP). If, upon calling in, the vessel is informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip, then the vessel need not wait until their stated date and time of departure and may depart on their fishing trip immediately. If a vessel is assigned an observer, the vessel must take the observer during that trip; if the vessel refuses to take the observer, the vessel is prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip. No waivers will be granted to vessels fishing in the CHSRA that do not meet observer safety requirements. By not allowing exemptions for observer coverage within the CHSRA, NMFS will be able to improve observer data and bycatch estimates within the CHSRA.

In addition to the requirement for carrying observers, NMFS is also requiring vessels in the CHSRA to participate in research. This will enable focused research on pilot whale interactions with the pelagic longline fishery, thus contributing to achieving the objectives of the PLTRP. Obtaining better data for characterizing fishery interactions is a high priority. The PLTRT was limited in its ability to develop management strategies to reduce the frequency of interactions between pilot whales and longline fishing gear due to a lack of information regarding the nature, timing, and causes of these interactions. The CHSRA, with its observer and research participation requirements, will enable NMFS to assess current and potential new management measures and will be fundamental in formulating effective bycatch reduction strategies in the future.

To implement the research participation requirement, observers will conduct scientific investigations aboard pelagic longline vessels in the CHSRA, as authorized by MMPA section 118(d)(2)(C). These scientific investigations will be conducted in addition to observing normal fishing activities and will be designed to support the goals of the PLTRP. The observers will inform vessel operators of the specific additional investigations that may be conducted during the trip. An observer may direct vessel operators to modify their fishing behavior, gear, or both. Instead of or in addition to carrying an observer, vessels may be required to carry and deploy gear provided by NMFS or an observer or modify their fishing practices. By calling the NMFS SEFSC, per the observer requirement described above, vessels are agreeing to take an observer and acknowledging they are both willing and able to participate in research in the CHSRA without any compensation. If vessels are assigned any special research requirements, they must participate in the research for the duration of the assignment. If they do not participate in the research, they are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip.

A vessel may transit through the CHSRA with pelagic longline gear onboard without meeting the observer and research requirements specified above and in 50 CFR 229.36(d)(1) and § 229.36(d)(2) if that gear is stowed according to 50 CFR § 229.36(d)(3). Allowing fishing vessels to transit through the CHSRA with stowed gear without meeting the special observer and research requirements for that area

will permit vessels to increase their safety in the event of foul weather by taking the most direct route to port and may reduce fuel costs for fishing vessels as they will not have to transit around the CHSRA to and from port.

Mainline Length

In accordance with the PLTRT's recommendation, NMFS is establishing a 20–nm (37.04–km) upper limit on mainline length for all pelagic longline sets within the MAB, including the CHSRA. Operators of individual fishing vessels are allowed to fish multiple sets at one time, if they so desire, but the mainline length for each set must not exceed 20 nm (37.04 km).

NMFS may waive this restriction in the CHSRA with a written letter of authorization from the Director, NMFS SEFSC, in specific cases to support research for reducing bycatch of marine mammals in the pelagic longline fishery. Fishermen are strongly encouraged to carry this letter of authorization on board their vessel during research trips, to facilitate at sea enforcement. In cases where NMFS intends to waive the mainline length restriction, NMFS will notify the PLTRT.

Careful Handling and Release Guidelines Posting Requirement

As recommended by the PLTRT, NMFS is requiring that an informational placard with marine mammal careful handling and release guidelines be displayed in the wheelhouse and on the working deck of all active pelagic longline vessels in the Atlantic fishery. NMFS has developed and published this placard, which is based on the existing marine mammal careful handling and release guidelines for pelagic longline gear. The PLTRT specified the placard should draw on information presented in a mandatory certification program and reference filling out a Marine Mammal Injury and Mortality Reporting Form for every marine mammal interaction as required by MMPA section 118(e) and 50 CFR 229.6. NMFS believes this action will facilitate the careful handling and release of any pilot whale, Risso's dolphin, or other small cetacean incidentally caught during pelagic longline fishing. The posting requirement ensures NMFS' guidelines are readily available for reference during a capture or entanglement event.

Non-regulatory Measures

As recommended by the PLTRT, NMFS is adopting the following non-regulatory measures as components of the final PLTRP: (1) Within constraints of available funding, increase observer coverage throughout all Atlantic pelagic longline fisheries that interact with pilot whales or Risso's dolphins to 12 to 15 percent; (2) encourage vessel operators (i.e., captains) throughout the fishery to maintain daily communications with other local vessel captains regarding protected species interactions, with the goal of identifying and exchanging information relevant to avoiding protected species bycatch; (3) update careful handling/release guidelines, equipment, and methods; and (4) provide quarterly reports of marine mammal interactions in the pelagic longline fishery to the PLTRT.

Increased Observer Coverage

The PLTRT recommended NMFS increase observer coverage to 12 to 15 percent throughout all Atlantic pelagic longline fisheries that interact with pilot whales and Risso's dolphins to ensure representative sampling of fishing effort. The PLTRT specified sampling should be designed to achieve statistical reliability of marine mammal bycatch estimates and should also take into account the objectives of marine mammal bycatch reduction. If resources are not available to provide such observer coverage for all fisheries, regions, and seasons, the PLTRT recommended NMFS allocate observer coverage to fisheries, regions, and seasons with the highest observed or reported bycatch rates of pilot whales. The PLTRT recommended additional coverage be achieved by either increasing the number of NMFS observers who have been specially trained to collect additional information supporting marine mammal research, or by allowing designated and specially-trained ''marine mammal observers'' (deployed by either NMFS or cooperating researchers) who would supplement traditional observer coverage.

NMFS is implementing this recommendation within the constraints of available funding. A simulation analysis evaluating the effects of increased observer coverage on the precision of bycatch estimates indicated: (1) 12 to 15 percent observer coverage would result in the most significant gains in precision, (2) setting a higher target in this range would ''guard'' against unforeseen problems placing observers on vessels, and (3) further increases in coverage would yield relatively little additional precision despite significantly higher costs. Pilot whales are primarily observed to interact with the longline fishery in the MAB and Northeast Coastal areas; Risso's dolphins interact with the fishery in these areas as well as the Northeast Distant area. Based on these observations, NMFS will, within the constraints of available funding, increase observer coverage to 12 to 15 percent, in order of priority, in the (1) CHSRA, (2) MAB, and (3) other areas, such as Northeast Coastal. While this measure is geared towards improving the precision of serious injury and mortality estimates, additional coverage would also better characterize fishing operations and marine mammal behavior, facilitate collection of data needed for research, and increase opportunities to collect biopsy samples from hooked or entangled marine mammals.

Captains' Communications

The PLTRT recommended NMFS encourage vessel operators (i.e., captains) to maintain daily communication with other local vessel operators regarding protected species interactions throughout the Atlantic pelagic longline fishery with the goal of identifying and exchanging information relevant to avoiding protected species bycatch. Captains' communication were considered as both a strategy for avoiding marine mammals' exposure to vessels and gear and as a strategy for reducing the probability of an interaction once marine mammals are in the vicinity of the gear.

Available information from three case studies of voluntary captains' communication programs supports the inference that voluntary communication programs have substantially reduced fisheries bycatch and provided large economic benefits that outweigh the relatively nominal operating costs (Martin *et al.*, 2005). For this communication strategy to be effective, the exchange of information must be timely, the entire fleet in a region must cooperate, and it must result in an action being taken to either avoid or reduce bycatch (e.g., captains need to describe the nature of their protected species interactions, discuss the results of any mitigation or safe handling/release measures used, and share best practices).

Atlantic pelagic longline fishermen are motivated to avoid interactions with marine mammals, as these interactions can result in significant economic loss due to loss of both target catch and gear from depredation and entanglements, respectively. Marine mammal interactions also represent a safety risk to vessel operators and crew, as pilot whales caught in gear can be very dangerous due to their size and strength. Therefore, NMFS will work with CHSRA researchers and fishermen to

encourage captains' communications in the CHSRA through voluntary cooperation and as part of ongoing research.

Careful Handling and Release Guidelines

The PLTRT recommended NMFS update the guidelines for careful handling and release of entangled or hooked marine mammals. They recommended NMFS' guidelines include descriptions of appropriate equipment and methods. They also encouraged both NMFS and the pelagic longline industry to develop new technologies, equipment, and methods for safer and more effective handling and release of entangled or hooked marine mammals. They recommended developments be evaluated carefully and incorporated into revised guidelines for careful handling and release of marine mammals when appropriate.

In the winter of 2006, in preparation for the workshops for HMS fishermen, NMFS worked with the PLTRT and other NMFS staff to update a preexisting placard to reflect the best available information on careful handling and release of marine mammals. This version of the placard has been distributed at HMS training workshops in 2007 and 2008. NMFS will periodically update the guidelines per the PLTRT's recommendation, based on any new technologies, equipment, and methods for safer and more effective handling and release of entangled or hooked marine mammals.

Additional Research and Data Collection

NMFS will pursue the research and data collection goals outlined by the PLTRT, within the constraints of available funding. These include short-, medium-, and long-duration research and data collection goals designed to enhance the success of the PLTRP. Because there is a significant lack of information concerning how pilot whales and Risso's dolphins interact with the pelagic longline fishery, many of the research recommendations are general in scope and applicable to both pilot whales and Risso's dolphins unless specified otherwise. The complete list of these recommendations can be found in Section IX of the Draft PLTRP (PLTRT, 2006).

As recommended by the PLTRT, priority will be given to: (1) research on species with serious injury and mortality levels closest to or exceeding PBR levels; (2) research to evaluate the effects of implemented management measures, and (3) research on species specific abundance, mortality, and post-hooking survivorship. NMFS will consider the PLTRT's recommendations for additional research and data collection when establishing NMFS' funding priorities. NMFS will follow those recommendations to the extent that good scientific practice and resources allow. As feasible and appropriate, NMFS will consult with PLTRT members during this process.

Adaptive Management and Monitoring

The final PLTRP takes a stepwise, adaptive management approach to achieve the long-term goal of reducing, within five years of its implementation, serious injuries and mortalities of pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery to insignificant levels approaching a zero mortality and serious injury rate. A series of monitoring and evaluation steps are built into the five-year implementation phase of the final PLTRP.

Under the final PLTRP, the PLTRT will periodically: (1) analyze the status of scientific information on pilot whales and Risso's dolphins, (2) evaluate the effectiveness of the PLTRP, and (3) adjust the PLTRP's management measures and research program, as appropriate, to ensure that the goal of the PLTRP will be met within 5 years of its implementation. Per the PLTRT's request, NMFS will provide any updates available on the following types of information to inform these periodic assessments: (1) Status of PLTRP implementation, (2) SARs; (3) habitat analyses; (4) data collection and research findings; (5) voluntary efforts carried out by the pelagic longline industry; (6) status of observer coverage; and (7) predictive model results for pilot whales and Risso's dolphins, based on updated data.

The timing of these assessments will be tied to both the availability of data and the time needed to adequately evaluate the effectiveness of management measures or the results of the research program. As requested by the PLTRT, NMFS will provide them with quarterly reports of bycatch of marine mammals in the pelagic longline fishery. The quarterly reports will help determine when it would be timely and useful for the PLTRT to reconvene. In conjunction with the receipt of quarterly bycatch reports, the PLTRT agreed to assess the merits of convening future PLTRT meetings, either in-person or by teleconference.

Comments and Responses

NMFS received ten sets of written comments on the proposed rule by the September 22, 2008, deadline. Comments were received from the Marine Mammal Commission, the U.S. Department of Interior, North Carolina Division of Marine Fisheries, Ocean Conservancy, Oceana, Center for Biological Diversity, the Humane Society of the U.S., two commercial fishermen, and one member of the public. Three of these organizations generally supported NMFS' use of existing authority to implement the mandatory HMS longline certification workshops. Other comments, which are responded to here, were considered when developing this final rule to amend the regulatory and non-regulatory measures that implement the PLTRP.

General Comments

Comment 1: The Humane Society of the U.S. and Ocean Conservancy agreed with NMFS' determination that the level of bycatch in the pelagic longline fishery signifies a high level of bycatch across a number of marine mammal stocks warranting development of a take reduction plan.

Response: NMFS agrees and has determined that the high level of take of some marine mammal species in the Atlantic pelagic longline fishery warrants a PLTRP. This final rule is composed of regulatory and non-regulatory measures recommended by the PLTRT to reduce pilot whale and Risso's dolphin bycatch in the Atlantic pelagic longline fishery.

Comment 2: Ocean Conservancy recommended including a map of the CHSRA in the final rule.

Response: NMFS has included a map of the CHSRA in Figure 1 of this final rule.

Comment 3: The Humane Society of the U.S., Oceana, and the Center for Biological Diversity were concerned that the establishment of a 20–nm (37.02–km) upper limit on the mainline length might actually result in more gear being deployed to compensate for lost effort, thus increasing overall bycatch in the pelagic longline fishery. The Center for Biological Diversity suggested that NMFS should amend the regulation to ensure that no more than 20–nm (37.02–km) of mainline in total is set by a single vessel at a time. Oceana encouraged NMFS to require mainline length reductions outside the MAB, if they were effective at reducing bycatch.

Response: Using predictive modeling, NMFS and the PLTRT evaluated several fishery effort compensation scenarios in creating the 20–nm (37.04–km) upper limit on mainline length regulation. These included a scenario in which any set with an original mainline length greater than or equal to 30 miles was

replaced by two, 20 mile sets with the same hook spacing as the original, longer set. Even under this scenario of over-compensation for fishing effort, there was an estimated reduction in pilot whale interactions of 29 percent from the status quo. Thus, the predictive model suggests that the number of hooks in the water is irrelevant to catches of pilot whales, rather it is the length of the mainline for each set that predicts bycatch (PLTRT, 2006). Therefore, NMFS does not believe that overall marine mammal bycatch will increase in the pelagic longline fishery under this final regulation, or that vessels should be limited to one 20–nm (37.04 km) set at a time. However, NMFS will continue to evaluate the effectiveness of this final rule for reductions in marine mammal bycatch in the pelagic longline fishery and will address the issue if it appears the regulations are having the opposite effect intended.

In addition, the PLTRT recommended implementing mainline length reductions in the MAB because 81 percent of pilot whale interactions with pelagic longline fishing gear occur in this area (PLTRT, 2006). The PLTRT recognized that it may be desirable to extend the limitation on mainline length to sets occurring in other regions of the Atlantic fishery, based on additional information on the effectiveness of the limitation in reducing marine mammal bycatch rates in the MAB (PLTRT, 2006). If mainline length reductions are effective at reducing pilot whale and Risso's dolphin bycatch, NMFS will consult the PLTRT regarding potential expansion of this regulation.

Comment 4: Two commercial fishermen and the N.C. Division of Marine Fisheries were opposed to the 48–hour advance call-in requirement for vessels deploying or fishing with pelagic longline gear in the CHSRA or transiting through the CHSRA with pelagic longline gear onboard. Their concerns included that: (1) many North Carolina fishing vessels make trips that are 1–3 days in duration and often return to the fishing grounds as soon as the catch is offloaded and fuel and ice are taken aboard; and (2) fishing in the CHSRA is weather, current, and fish report/activity dependent, and, therefore, the decision of whether to fish is often made with less than 12–hours notice. They were concerned that a 48–hour call-in requirement may result in the loss of a fishing opportunity and/or loss of favorable weather for fishing. The N.C. Division of Marine Fisheries recommended that NMFS use a program similar to the current observer program to notify fishermen of the requirement to carry scientific observers, rather than the 48–hour call-in requirement.

Response: NMFS has determined that 48–hours is the minimum amount of time necessary for the NMFS SEFSC to have an observer available in the mid-Atlantic region to observe fishing trips in the CHSRA. However, to alleviate the burden on fishermen, NMFS is allowing vessels to depart prior to their stated date and time of departures if, upon calling in, the vessel is informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip. Because this is an area of significant marine mammal bycatch, NMFS believes this measure provides access to a productive fishing area while also ensuring opportunities to collect data and increase our understanding of the nature of marine mammal/pelagic longline interactions.

Comment 5: The N.C. Division of Marine Fisheries, the Humane Society of the U.S., and Ocean Conservancy suggested and/or supported allowing vessels to transit through the CHSRA with pelagic longline gear onboard without calling the NMFS SEFSC 48–hours in advance, provided all gear were properly stowed in accordance with current NMFS regulations. The N.C. Division of Marine Fisheries expressed concern that vessels fishing outside the CHSRA and encountering unfavorable weather or other vessels desiring to transit through the CHSRA to reach safe harbor - would be required to steam additional distance to bypass the CHSRA or ride out the weather until 48–hours had elapsed, which could result in safety hazards, increased fuel consumption, lost time, and increased expenses.

Response: NMFS agrees that the 48–hour call-in requirement for vessels transiting through the CHSRA could pose a safety hazard and/or economic burden to pelagic longline fishing vessels. Therefore, NFMS has created an exception to the regulation to allow pelagic longline vessels to transit through the CHSRA without meeting the observer and research requirements specified in 50 CFR 229.36(d)(1) and (d)(2), if that gear is stowed according to § 229.36 (d)(3).

Comment 6: The N.C. Division of Marine Fisheries requested that the language concerning refusal to take an assigned observer in the CHSRA be clarified to specify that the prohibition from deploying or fishing with pelagic longline gear in the CHSRA will be for the duration of that trip only.

Response: NMFS agrees that the intent was to prohibit fishing in the CHSRA only for the trip affected by refusal to take an observer or research non-participation and has incorporated clarifying language into § 229.36(d)(1) and (d)(2).

Comment 7: Four commenters had concerns and/or suggestions for NMFS regarding compliance with the proposed rule. The Center for Biological Diversity and the Humane Society of the U.S. expressed concern that fishermen might avoid observer coverage in the CHSRA by only fishing in the area when no observers were available. Oceana recommended that NMFS and the U.S. Coast Guard develop a standardized procedure for measuring mainline length to assist in compliance and enforcement of this regulation. Ocean Conservancy recommended that NMFS develop a communication plan, to be shared with the PLTRT, describing how non-compliance with the regulations will be enforced.

Response: With so many factors to consider in conducting a fishing trip (such as weather, tide, fishing reports), NMFS does not believe that it would be economically viable for fishermen to base their trips solely on observer availability. Because fishermen must call in 48–hours before each fishing trip to the CHSRA, it would be time-consuming and difficult for fishermen to attempt to avoid observer coverage, and fishermen will not be able to predict when observers are available.

NMFS will work closely with its Office of Law Enforcement, the U.S. Coast Guard, and state enforcement agents to ensure effective enforcement of the regulations described in this final rule, including mainline length limitations. To protect the integrity and covert nature of an enforcement plan, though, specific details concerning enforcement will not be shared with the public.

Comment 8: Three commenters noted the importance of outreach in the success of the PLTRP. Ocean Conservancy recommended that NMFS develop a communication plan, to be shared with the PLTRT, describing which fishing vessels should call-in to deploy or fish with pelagic longline gear in the CHSRA or transit through the CHSRA with pelagic longline gear onboard. The Ocean Conservancy also encouraged NMFS to conduct outreach with affected fishermen to ensure that captains fishing in the CHSRA and throughout the MAB communicate with each other regarding interactions with marine mammals. The Humane Society of the U.S. and the Center for Biological Diversity encouraged NMFS to undertake outreach to ensure that pelagic longline vessels have the *Careful Handling and Release Guidelines*

Placard, understand its information, and are using it appropriately.

Response: NMFS agrees that communication with the pelagic longline fishermen and outreach will be critical to the success of the PLTRP. To ensure that pelagic longline fishermen are familiar with the measures outlined in this take reduction plan, NMFS will develop a compliance guide, which will help clarify the regulations and necessary compliance actions. Fishermen and other interested parties will be able to download the compliance guide from a website; the compliance guide will also be available by contacting the Protected Resources Division, NMFS, Southeast Region (see **ADDRESSES**). In addition, more than one-third of the PLTRT is composed of commercial fishermen and industry representatives, who can assist NMFS with compliance via outreach to the fishermen they represent. NMFS also currently has a fishery liaison based in North Carolina who can assist with outreach to pelagic longline fishermen. Finally, NMFS will present elements of the PLTRP at the mandatory HMS longline certification workshops. NMFS has already incorporated education on careful handling and release techniques for marine mammals, current regulations and guidelines related to marine mammal bycatch that apply to the fishery, and an explanation of the purpose and justification of those regulations and guidelines into these workshops.

Comment 9: Oceana, Ocean Conservancy, the Center for Biological Diversity, the Humane Society of the U.S., and the Marine Mammal Commission supported and/or encouraged NMFS to allocate appropriate funds to increase observer coverage to 12 to 15 percent in the Atlantic pelagic longline fishery. A commercial fisherman and the Ocean Conservancy suggested that NMFS station observers in the mid-Atlantic region to meet the PLTRP's goal of increased observer coverage in the MAB and/or reduce the waiting time for fishermen to depart on a fishing trip. The N.C. Division of Marine Fisheries was concerned that NMFS would not have an adequate number of trained marine mammal observers to achieve the recommended level of observer coverage without unduly impacting North Carolina pelagic longline fishermen.

Response: NMFS agrees that it is important to increase observer coverage to 12 to 15 percent in the Atlantic pelagic longline fishery, has included increased observer coverage as an element of this final PLTRP, and will attempt to achieve this level of coverage within the constraints of available funding. NMFS manages its observer funding in the most cost effective manner for the greatest benefit to our living marine resources; therefore, we would consider stationing observers in the mid-Atlantic region, if it were cost effective to do so. If there are insufficient funds or trained observers available, then NMFS will be unable to meet the recommended observer coverage of 12 to 15 percent. However, this would not affect the fishing ability of North Carolina pelagic longline fishermen. As discussed in the response to Comment 4, within the CHSRA, NMFS is allowing fishing vessels to depart prior to their stated date and time of departures if informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip. In addition, NMFS will make every effort to inform fishermen about upcoming and future research projects in the CHSRA in an attempt to minimize any burden placed on those fishermen.

Comment 10: NMFS received several comments on the mandatory HMS longline certification workshops and the informational placard to be displayed in the wheelhouse and on the working deck of all active pelagic longline vessels in the Atlantic fishery. Ocean Conservancy recommended that the mandatory HMS longline certification workshops include information and training on fishermen's reporting of marine mammal interactions, which is required by the MMPA Section 118(e). They also recommended that marine mammal information be included in all HMS longline certification workshops, including those based in the Gulf of Mexico and Caribbean, rather than just those in the Atlantic region. The Ocean Conservancy, Oceana, and the Marine Mammal Commission also suggested that NMFS expand the geographic area where the informational placard should be displayed to the entire Atlantic, Gulf of Mexico, and Caribbean.

Response: NMFS currently includes, and will continue to include, information and training on the reporting of marine mammal interactions in the mandatory HMS longline certification workshops. NMFS agrees that the placard should be displayed throughout the Atlantic fishery. This was the original intention of the PLTRT and this requirement was included in the EA and the preamble to the proposed rule. However, the placard posting requirement was incorrectly linked in the regulation text of the proposed rule to only the MAB region. Therefore, in the final rule NMFS has clarified that the placard posting requirement specified in 50 CFR 229.36(c) applies to all U.S. pelagic longline vessels operating in the Atlantic federal EEZ off the U.S. East Coast.

Because bycatch rates of pilot whales and Risso's dolphins are highest in the MAB, the PLTRT limited the scope of the PLTRP to the MAB and did not include the GOM and Caribbean. As a result, NMFS is not requiring the placard to be posted outside of the Atlantic. However, NMFS will provide the placard to any fishermen who request it and will encourage voluntary compliance with this measure in the Gulf of Mexico and Caribbean.

Comment 11: Oceana, Ocean Conservancy, the Center for Biological Diversity, the Humane Society of the U.S., and the Marine Mammal Commission encouraged NMFS to secure funding to carry out the research priorities outlined in the Draft PLTRP. They recommended that the highest priority research should be directed towards defining the stock structure of pilot whales in the MAB.

Response: NMFS will work with its partners and will seek to use available funding sources to carry out the research and data collection priorities outlined by the PLTRT. NMFS is currently conducting research to define the stock structure of pilot whales in the mid-Atlantic and will continue to do so.

Changes From the Proposed Rule

After considering the public comments received, NMFS is making minor changes between the proposed rule and this final rule. As a result of clarification from the PLTRT regarding their intent, NMFS is altering the notification process for waiving a 20–nm (37.04–km) upper limit on mainline length for research in the CHSRA to include notifying the PLTRT, but NMFS will not publish that notification in the **Federal Register**. NMFS is deleting the phrase ''as delineated in the list of fisheries'' from 50 CFR 229.36 (a), because it was deemed unnecessary. NMFS is also clarifying that the placard posting requirement specified in 50 CFR 229.36(c) applies to all U.S. pelagic longline vessels operating in the Atlantic Federal EEZ off the U.S. East Coast. Although this requirement and its geographic scope were clearly stated in the EA and the preamble to the proposed rule, it was incorrectly linked in the regulation text of the proposed rule to only the MAB region.

NMFS is clarifying that under 50 CFR 635.32, exempted fishing permits, scientific research permits, display permits, and letters of acknowledgment

are issued; Atlantic HMS tunas, swordfish, or shark permits are not issued. Therefore, the reference to § 635.32 was deleted from the regulatory text at 50 CFR 229.36 (a)(1) because it did not apply.

In addition, NMFS is changing the regulations for pelagic longline vessels in the CHSRA to allow a vessel to transit through the CHSRA with pelagic longline gear onboard without meeting the observer and research requirements specified in 50 CFR 229.36(d)(1) and (d)(2), if that gear is stowed according to 50 CFR 229.36(d)(3). The stowage definition in § 229.36(d)(3) was not presented in the proposed rule, but was based on a similar stowage definition for bottom longline gear at 50 CFR 622.34(k)(4)(i).

NMFS is clarifying the 48–hour call-in notification described in § 229.36(d)(1) to state that vessels must call in at least 48 hours, but no more than 96 hours, prior to departing on a fishing trip to the CHSRA. The 96–hour limit was added to clearly define the amount of lead time a fisher needed to provide to NMFS. NMFS is also allowing a fishing vessel to depart prior to their stated departure time if, upon calling in, the vessel is informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip. The SEFSC call-in number given in § 229.36(d) of the final rule is also different from that given in the proposed rule. Finally, NMFS is clarifying in § 229.36(d)(1) that a fishing vessel that refuses to take an assigned observer is prohibited from deploying or fishing with pelagic longline gear in the CHSRA for the duration of that fishing trip.

Classification

NMFS determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management programs of North Carolina, Virginia, Maryland, Delaware, New Jersey, New York, Connecticut, Rhode Island, and Massachusetts. This determination was submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act (CZMA). Letters stating concurrence with NMFS' CZMA consistency determination were received from the approved coastal management programs of North Carolina, Virginia, Delaware, Connecticut, and Rhode Island. No responses were received from Maryland, New Jersey, New York, or Massachusetts; CZMA consistency in these states was inferred.

This rule does not contain policies with federalism implications as that term is defined in Executive Order 13132.

This rule has been determined to be not significant under Executive Order 12866.

NMFS prepared a final regulatory flexibility analysis (FRFA), based on the initial regulatory flexibility analysis (IRFA), of the final rule. A statement of the need for and objectives of the final rule is stated elsewhere in the preamble and is not repeated here. A summary of the FRFA follows. For a copy of this analysis, see the **ADDRESSES** section.

NMFS considers all HMS permit holders to be small entities because they either had average annual receipts less than $4.0 million for fish-harvesting, average annual receipts less than $6.5 million for charter/party boats, 100 or fewer employees for wholesale dealers, or 500 or fewer employees for seafood processors. These are the Small Business Administration (SBA) size standards for defining a small versus large business entity in this industry. An ''active'' pelagic longline vessel is considered to be a vessel that reported pelagic longline activity in the HMS logbook. The number of active HMS pelagic longline vessels has been precipitously decreasing since 1994. In the MAB, only 85 unique pelagic longline vessels reported effort between 2001 and 2006. The number of vessels fishing in the MAB has declined in recent years, and between 2003 and 2006, the number of vessels reporting effort in the MAB ranged between 38 and 41.

Four alternatives were considered and analyzed for the final rule. Alternative 1 (the no action alternative) would maintain the status quo management for the pelagic longline fishery under the HMS FMP. Alternative 2 would implement only the non-regulatory components recommended in the Draft PLTRP, while allowing time for collecting additional scientific data prior to implementing regulatory measures. Alternative 3, the preferred alternative, would limit the mainline length to 20–nm (37.04–km) or less within the MAB, designate the CHSRA with associated observer and research participation requirements, and require all pelagic longline vessels to post an informational placard on careful handling and release of marine mammals. Alternative 4 would include a six-month closure (July-December) of the southern MAB sub-regional area and a year-round mainline length reduction throughout the MAB, inclusive of that sub-regional area.

Under Alternative 1, the no action alternative, it is estimated that the Atlantic pelagic longline fleet generates an estimated $24.6 million in revenues. Under this alternative there would be no direct cost or benefit beyond the status quo. The non-regulatory actions associated with Alternative 2 would also be expected to have very little economic impact on the fishery.

NMFS estimated the potential change in fishery revenues from the mainline length restriction included under Alternative 3, depending on the level of compensation in fishing effort, by applying average species weights reported to dealers in 2004 and the average 2006 ex-vessel prices reported by dealers in the MAB region. The change in fishery revenues was estimated to range from an increase of $777,747 (full compensation in the number of hooks fished) to a loss of $819,523 (no compensation in the number of hooks fished), with an estimated loss of $239,383 with 50 percent compensation in the number of hooks fished. This change in revenues would impact 41 or fewer vessels per year based on current trends in the number of active pelagic longline vessels and the number of vessels that operated in the MAB in 2006. If one assumes that 41 vessels are affected by this restriction, then the estimated annual impact per vessel ranges from an increase of $18,969 per vessel to a decrease of $19,988 per vessel, with an estimated decrease of $5,838 under the most likely scenarios (50 percent compensation in fishing effort).

The economic costs of Alternative 4 were evaluated based upon historical observed catch rates and reported effort in the MAB fishing area only for the period 2002 to 2004. The impact of the closure of the southern region of the MAB from July-December was estimated by assuming no catch in that area, resulting in a total estimated cost of $770,000. The combined effect of the 6–month closure and the mainline length restriction through the MAB resulted in an estimated cost of $1.64 million, reflecting only lost catch and assuming no compensation or redistribution of effort. The reduction in revenues would impact 41 or fewer vessels per year based on the current trends in the number of active pelagic longline vessels and the number of vessels that operated in the MAB in 2006. If one assumes that 41 vessels would be affected by this restriction, then per vessel impacts are estimated to be $40,000.

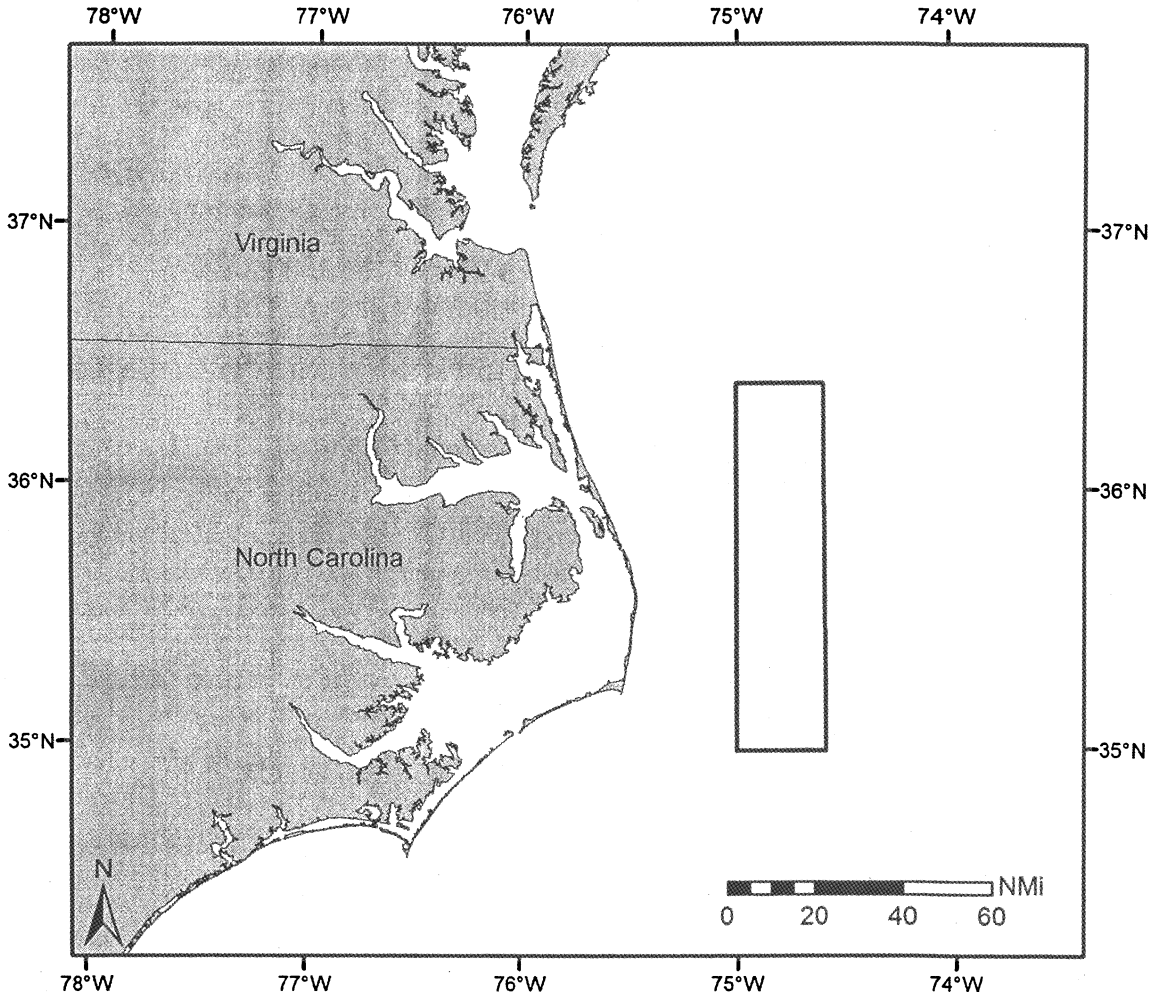
Alternative 1 (the no action alternative) and Alternative 2 were not selected because they were not expected

to meet the conservation objectives of the final rule or the goals in MMPA section 118. Both Alternatives 3 and 4 would meet the conservation objectives of the final rule. However, Alternative 4 was not selected because it would likely result in larger economic impacts to small entities than Alternative 3 (the preferred alternative).

References Cited

A complete list of all references cited in this final rule can be found on the PLTRT website at *http://www.nmfs.noaa.gov/pr/interactions/trt/pl-trt.htm* and the NMFS Southeast Regional Office website at *http://sero.nmfs.noaa.gov/pr/pr.htm*, and is also available upon request from the NMFS Southeast Regional Office in St. Petersburg, FL (see **ADDRESSES**).

Figure 1. Boundary of the Cape Hatteras Special Research Area (CHSRA).



List of Subjects in 50 CFR Part 229

Administrative practice and procedure, Fisheries, Reporting and recordkeeping requirements.

Dated: May 11, 2009.

John Oliver,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 229 is amended as follows:

PART 229—AUTHORIZATION FOR COMMERCIAL FISHERIES UNDER THE MARINE MAMMAL PROTECTION ACT OF 1972

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. In § 229.3, paragraphs (t) and (u) are added to read as follows:

§ 229.3 Prohibitions.

* * * * *

(t) It is prohibited to deploy or fish with pelagic longline gear in the Mid-Atlantic Bight unless the vessel:

(1) Complies with the placard posting requirement specified in § 229.36(c); and

(2) Complies with the gear restrictions specified in § 229.36(e).

(u) It is prohibited to deploy or fish with pelagic longline gear in the Cape

Hatteras Special Research Area unless the vessel is in compliance with the observer and research requirements specified in § 229.36(d).

■ 3. In subpart C, § 229.36 is added to read as follows:

§ 229.36 Atlantic Pelagic Longline Take Reduction Plan (PLTRP).

(a) *Purpose and scope.* The purpose of this section is to implement the PLTRP to reduce incidental mortality and serious injury of long-finned and short-finned pilot whales and Risso's dolphins in the Atlantic pelagic longline fishery off the U.S. east coast, a component of the Atlantic Ocean, Caribbean, Gulf of Mexico large pelagics longline fishery.

(1) *Persons subject to this section.* The regulations in this section apply to the owner and operator of any vessel that has been issued or is required to be issued an Atlantic HMS tunas, swordfish, or shark permit under § 635.4 of this title and that has pelagic longline gear onboard as described under § 635.21(c) of this title.

(2) *Geographic scope.* The geographic scope of the PLTRP is the Atlantic Federal EEZ off the U.S. East Coast. The regulations specified in paragraphs (b) through (d) of this section apply throughout the Atlantic Federal EEZ off the U.S. East Coast. The regulation specified in paragraph (e) of this section applies to all U.S. Atlantic pelagic longline vessels operating in the EEZ portion of the Mid-Atlantic Bight.

(b) Definitions. In addition to the definitions contained in the MMPA and §§ 216.3 and 229.2 of this chapter, the following definitions apply.

(1) *Cape Hatteras Special Research Area (CHSRA)* means all waters inside and including the rectangular boundary described by the following lines: 35° N. lat., 75° W. long., 36° 25' N. lat., and 74° 35' W. long.

(2) *Mid-Atlantic Bight* means the area bounded by straight lines connecting the mid-Atlantic states' internal waters and extending to 71° W. long. between 35° N. lat. and 43° N. lat.

(3) *Observer* means an individual authorized by NMFS, or a designated contractor, placed aboard a commercial fishing vessel to record information on marine mammal interactions, fishing operations, marine mammal life history information, and other scientific data; to collect biological specimens; and to perform other scientific investigations.

(4) *Pelagic longline* has the same meaning as in § 635.2 of this title.

(c) *Marine Mammal Handling and Release Placard.* The placard, ''Marine Mammal Handling/Release Guidelines: A Quick Reference for Atlantic Pelagic Longline Gear,'' must be kept posted inside the wheelhouse and on the working deck. You may contact the NMFS Southeast Regional Office at (727) 824–5312 to request additional copies of the placard.

(d) *CHSRA*—(1) *Special observer requirements.* If you deploy or fish with pelagic longline gear in the CHSRA, or intend to do so, you must call NMFS Southeast Fisheries Science Center (SEFSC), 1–888–254–2558, at least 48 hours, but no more than 96 hours, prior to embarking on your fishing trip. This requirement is in addition to any existing selection and notification requirement for observer coverage by the Pelagic Observer Program. If, upon calling in, you are informed by the NMFS SEFSC that no observer will be assigned and that no special research requirements will apply for that trip, then you need not wait until your stated date and time of departure and may depart on your fishing trip immediately. If you are assigned an observer, you must take the observer during that fishing trip. If you do not take the observer, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip. You must comply with all provisions of § 229.7, Monitoring of incidental mortalities and serious injuries. In addition, all provisions of 50 CFR 600.746, Observers, apply. No waivers will be granted under § 229.7(c)(3) or § 600.746(f). A vessel that would otherwise be required to carry an observer, but is inadequate or unsafe for purposes of carrying an observer and for allowing operation of normal observer functions, is prohibited from deploying or fishing with pelagic longline gear in the CHSRA.

(2) *Special research requirements.* In addition to observing normal fishing activities, observers may conduct additional scientific investigations aboard your vessel designed to support the goals of the PLTRP. The observer will inform you of the specific additional investigations that may be conducted during your trip. An observer may direct you to modify your fishing behavior, gear, or both. Instead of carrying an observer, you may be required to carry and deploy gear provided by NMFS or an observer or modify your fishing practices. By calling in per § 229.36(d)(1), you are agreeing to take an observer. You are also acknowledging you are both willing and able to participate in research, as per this paragraph, in the CHSRA consistent with the PLTRP without any compensation. If you are assigned any special research requirements, you must participate in the research for the duration of the assignment. If you do not participate in the research, you are prohibited from deploying or fishing with pelagic longline gear in the CHSRA for that fishing trip.

(3) *Exception for transit.* If pelagic longline gear is appropriately stowed, a vessel may transit through the CHSRA without meeting the observer and research requirements specified in § 229.36(d)(1) and § 229.36(d)(2). For the purpose of this paragraph, transit means non-stop progression through the area. Pelagic longline gear is appropriately stowed if all gangions, hooks, and buoys are disconnected from the mainline; hooks are not baited; longline left on the drum is covered with a tarp; and all other gear components are either stowed below deck or secured on deck and covered with a tarp.

(e) *Gear restrictions.* No person may deploy a pelagic longline that exceeds 20 nautical miles (nm) (37.04 km) in length in the Mid-Atlantic Bight, including in the CHSRA, unless they have a written letter of authorization from the Director, NMFS Southeast Fishery Science Center to use a pelagic longline exceeding 20 nm (37.04 km) in the CHSRA in support research for reducing bycatch of marine mammals in the pelagic longline fishery.

[FR Doc. E9–11664 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 95
Tuesday, May 19, 2009

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1150

[Docket No. DA–08–07: AMS–DA–08–0050]

National Dairy Promotion and Research Program; Proposed Rule and Opportunity To File Comments, Including Written Exceptions, on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on proposed amendments to the Dairy Promotion and Research Order. This proposed action is pursuant to the Farm Security and Rural Investment Act of 2002 (2002 Farm Bill) and the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). The 2002 Farm Bill mandates that the Dairy Promotion and Research Order be amended to implement an assessment on imported dairy products to fund promotion and research. The 2008 Farm Bill specifies a mandatory assessment rate of 7.5 cents per hundredweight of milk, or equivalent thereof, on dairy products imported into the United States. This proposed rule, in accordance with the 2008 Farm Bill, amends the term ''United States'' in the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501–4514, as amended) to mean all States, the District of Columbia, and the Commonwealth of Puerto Rico. Producers in these areas will be assessed 15 cents per hundredweight for all milk produced and marketed.

DATES: Comments must be submitted on or before June 18, 2009.

ADDRESSES: Comments on this proposed rule should be identified with the docket number AMS-DA–08–0050; DA–08–07. Commenters should identify the date and page number of the issue of the proposed rule. Interested persons may comment using any of the following procedures:

- *Mail:* Comments may be submitted by mail to Whitney A. Rick, Chief, Promotion and Research Branch, Dairy Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2958–S, Stop 0233, Washington, DC 20250–0233.
- *Fax:* Comments may be faxed to (202) 720–0285.
- *E-mail:* Comments may be e-mailed to *Whitney.Rick@usda.gov.*
- *Internet: http://www.regulations.gov.*

All comments submitted by the above procedures will be available for viewing at: *http://www.regulations.gov,* or at USDA, AMS, Dairy Programs, Promotion and Research Branch, Room 2958–S, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday, (except on official Federal holidays). Persons wanting to view comments in Room 2958–S are requested to make an appointment in advance by calling (202) 720–6909.

FOR FURTHER INFORMATION CONTACT: Whitney Rick, USDA, AMS, Dairy Programs, Promotion and Research Branch, Stop 0233-Room 2958-S, 1400 Independence Avenue, SW., Washington, DC 20250–0233, (202) 720–6909, *Whitney.Rick@usda.gov.*

SUPPLEMENTARY INFORMATION: This proposed rule is pursuant to the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4501, *et seq.*), Public Law 98–180, enacted November 29, 1983, as amended May 13, 2002, by Public Law No. 107–171, and further amended June 18, 2008, by Public Law No. 110–246.

Executive Order 12866

This proposed rule has been determined to significant for purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget. A cost-benefit analysis for this proposed rule is available at *http://www.ams.usda.gov/dairyimportassessment.*

Assessments to dairy producers under the Order are relatively small compared to producer revenue. If dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico had paid assessments of $0.15 per hundredweight of milk marketed in 2007, it is estimated that $1.1 million would have been paid. This is about 0.6 percent of the $192 million total value of milk produced and marketed in these areas.

The assessments collected from importers under the Dairy Promotion and Research Program are expected to be relatively small compared to the value of dairy imports. If importers had been assessed $0.075 per hundredweight, or equivalent thereof, for imported dairy products in 2007 as specified in this rule, it is estimated that less than $6.1 million would have been paid. This is about 0.3 percent of the $2.4 billion value of the dairy products imported in 2007.

Examination of import volumes for 2007 indicates that tariff rate quotas (TRQs) seem to constrain dairy imports in varying degrees for some products, but not for others. TRQs do not seem to be a significant hindrance to the volume imported for many dairy products. Significant quantities of dairy products imported are not subject to TRQs.

The Program promotes dairy ingredients through DMI's Innovation and Ingredients Program and through the Web site *http://www.innovatewithdairy.com.* Through importer representation on the Dairy Board and possible establishment of qualified programs by importers, imported products could be promoted to a greater extent than with current program.

Civil Rights Analysis

Consideration has been given to the potential civil rights implications of this proposed rule on affected parties to ensure that no person or group shall be discriminated against on the basis of race, color, national origin, gender, religion, age, disability, sexual orientation, marital or family status, political beliefs, parental status, or protected genetic information. Although detailed information is not available on importers who would be subject to the amendments or the users of imported dairy products, broad consideration was given to the employees of such entities and those individuals who wish to use information collected under this mandatory program concerning the assessing of dairy product importers. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Moreover, the amendments would not exclude from participation any persons or

groups, deny any persons or groups the benefits of the program, or subject any persons or groups to discrimination.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Dairy Production Stabilization Act of 1983 authorizes the National Dairy Promotion and Research Program. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 4509 of the Act, any person subject to the Dairy Promotion and Research Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and requesting a modification of the Order or to be exempted from the Order. A person subject to an Order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this proposed rule will not have a significant economic impact on a substantial number of small entities. The purpose of the Regulatory Flexibility Act is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be disproportionately burdened.

The Dairy Production Stabilization Act of 1983 authorizes a national program for dairy product promotion, research and nutrition education. Congress found that it is in the public interest to authorize the establishment of an orderly procedure for financing through assessments on all milk produced in the United States for commercial use and on imported dairy products, to carry out a coordinated program of promotion designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

As directed by the 2008 Farm Bill, approximately 360 producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico will become subject to the provisions of the Dairy Promotion and Research Order. The Small Business Administration [13 CFR 121.201] defines small dairy producers as those having annual receipts of $750,000 or less annually. Most of the producers who will become subject to the proposed provisions of the Order are considered small entities.

Assessments to dairy producers under the Order are relatively small compared to producer revenue. If dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico had paid assessments of $0.15 per hundredweight of milk marketed in 2007, it is estimated that $1.1 million would have been paid. This is about 0.6 percent of the $192 million total value of milk produced and marketed in these areas. The assessment for dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico will be collected by persons who pay the producers for milk produced and marketed, and the money will be remitted to the National Dairy Promotion and Research Board (Dairy Board).[1] These ''responsible persons,'' usually milk handlers, incur the cost of calculating the assessment due from each dairy producer, forwarding a form monthly to the Dairy Board, and sending checks to the Dairy Board and designated Qualified Programs. Responsible persons maintain any records that are necessary to account for the collection of the 15-cent assessment. Books and records for producers and persons collecting assessments subject to the Order shall be maintained for two years beyond the fiscal period of their applicability. These books and records would be made available to employees or agents of the Dairy Board or the Department during normal business hours for inspection if necessary for verification purposes. For the purpose of the Regulatory Flexibility Act, a dairy products manufacturer is a small business if it has fewer than 500 employees. For purposes of determining a milk handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant is considered a large business even if the local plant has fewer than 500 employees. While the number of responsible persons collecting assessments under the Order in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico are not known, we would expect that most would be considered small businesses.

According to the U.S. Customs and Border Protection (CBP), there were 1,751 importers of dairy products listed in § 1150.152 (b) in 2007. Although data is not available concerning the sizes of these firms, it is reasonable to assume that most of them would be considered small businesses. Although many types of businesses import dairy products, the most common classification for dairy product importers is Grocery and Related Product Merchant Wholesalers (North American Industry Classification System, category 4244). The Small Business Administration [13 CFR 121.201] defines such entities with fewer than 100 employees as small businesses. According to 2005 statistical data from the U.S. Census Bureau, 95.4 percent of these types of businesses had fewer than 100 employees (*http://www.census.gov/csd/susb/susb05.htm*).

This proposed rule would impose minimal reporting and recordkeeping requirements on importers subject to the Order. Books and records for importers subject to the Order shall be maintained for two years beyond the calendar year in which the import occurs. These books and records would be made available to employees or agents of the Dairy Board or the Department during normal business hours for inspection if necessary for verification purposes. Importers must maintain books and records sufficient to verify that products have been properly classified according to the Harmonized Tariff Schedule (HTS). Importers already maintain such books and records in order to comply with tariff regulations. In some cases, importers would be required to keep books and records concerning specific milk solids content of imported products. This rule proposes two methods for importers to calculate assessments due. If the importer has sufficient documentation to determine the milk solids content of the product to be imported, the importer would use an assessment rate of $0.01327 per kilogram (kg) of milk solids to calculate and pay the assessment. In many cases, the importer would have this documentation on hand as part of normal business practice. If the importer does not have adequate documentation concerning the milk solids content of the product to be imported, the importer would pay a rate per kg of product

[1] Any producer that sells milk directly to consumers shall remit the assessment directly to the Dairy Board.

volume as listed in the table displayed in § 1150.152 (b)(1)(ii). In this case, it would only be necessary for the importer to maintain books and records to verify compliance with certain HTS code assignment requirements.

Assessments to importers under the Order are relatively small compared to the value of dairy imports. If importers had been assessed $0.075 per hundredweight of milk, or equivalent thereof, on imported dairy products in 2007 as specified in this rule, it is estimated that less than $6.1 million would have been paid. This is about 0.3 percent of the $2.4 billion value of the imported dairy products.

Finally, this proposed rule provides for importer organizations that conduct qualified national, regional, or state dairy product promotion, research, or nutrition education programs to receive assessment funds upon being designated by individual importers and for nominations for representation of importers to be submitted by organizations that represent importers of dairy products, as approved by the Secretary. While the number of such organizations is expected to be small, the members of such organizations reflect the same size composition as discussed above.

Interested persons are requested to comment specifically on the number and size of entities that would be regulated by this proposed rule.

Paperwork Reduction Act

Information collection requirements and recordkeeping provisions contained in 7 CFR Part 1150 have been previously approved by the Office of Management and Budget and assigned OMB Control Number 0581–0093 under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). Section 1601 of the 2002 Farm Bill (Pub. L. 107–171) and section 1601 of the 2008 Farm Bill (Pub. L. 110–246) exempt this proposed rule from the Paperwork Reduction Act. Although exempted, the requirements of the Paperwork Reduction Act were considered in developing the provisions of this proposed rule. The information collection requirements are minimal but essential to carry out the intent of the Dairy Production Stabilization Act of 1983. The proposed Order provisions have been carefully reviewed and every effort has been made to minimize recordkeeping costs or requirements.

Under the Order, importers would be responsible to pay assessments. CBP will serve as the collecting agent for assessments on imported dairy products and will remit the assessments to the Dairy Board. The Department anticipates that importers would be required to provide additional reports and records on occasions when additional information is needed as evidence of compliance, or in cases when the importer seeks a reimbursement of assessments. Such records must be retained for at least 2 years beyond the calendar year of their applicability.

Under the Order provisions, each person making payment to a producer for milk produced in the Untied States and marketed for commercial use (responsible person) collects an assessment for all such milk handled. Responsible persons calculate the assessments due from each dairy producer. Under the proposed order provisions, responsible persons making payments to dairy producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico would be required to collect and remit assessments and file reports with the Dairy Board. The Order would impose certain recordkeeping requirements on responsible persons; however, information required under the Order could be compiled from currently maintained records. Any producer marketing milk of that producer's own production directly to consumers is a responsible person. Such records must be retained for at least 2 years beyond the calendar year of their applicability.

The forms on which producer information is to be collected require the minimum information necessary to effectively carry out the requirements of the Order. There are no training requirements for individuals filling out reports and remitting assessments to the Dairy Board. The forms are designed to be simple and easy to understand and place as small a burden as possible on the persons required to file the information.

The timing and frequency of collecting information are intended to meet the needs of the program while minimizing the amount of work necessary to fill out the required reports. In addition, the information to be included on these forms is not available from other sources because such information relates specifically to individual producers and responsible persons who are subject to the provisions of the Order. Therefore, there is no practical method for collecting the required producer information without the use of these forms.

The assessment would place a minimal burden on newly regulated producers or importers who seek to direct monies to Qualified Programs. The amount of time required to designate to a qualified program is estimated to be 15 minutes to prepare a written request. Qualified Programs are certified by the Secretary and authorized by Federal or State law for the purpose of promoting dairy products.

The proposed Order provisions would place a minimal burden on newly regulated producers or importers who seek nomination to serve on the Dairy Board. Importers and producers would be required to complete a background information form for submission to the Secretary. The estimated time for completing the form is 30 minutes, which includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the form. Additionally, there would be minimal burden on importer organizations that voluntarily request to be approved by the Secretary to participate in the program by making nominations to the Board. The estimated time for reporting this is 30 minutes. This is similar to the information collection burden for certification of producer organizations.

Currently, a producer who operates under an approved National Organic Program (NOP) (7 CFR Part 205) certificate and thus only produces products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation shall be exempt from the payment of assessments. This proposed rule provides that an importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation, would be exempt from the payment of assessments. The Order places a minimal burden on a producer or importer applying for such an exemption. The producer or importer must provide a request to the Dairy Board, on a form provided by the Dairy Board, at any time initially and annually thereafter. For importers, the documentation is the same as for a producer.

In addition, there are some requirements for information from importers that are occasional. For example, if an importer claims a refund from the Dairy Board for an overpayment, circumstances dictate the time that it would take for the importer to gather the information necessary to make the claim. Assembling and transmitting the necessary documentation to the Dairy Board would place a minimal burden on importers.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies, and to

provide increased opportunity for citizen access to Government information and services and for other purposes.

Background

The Dairy Production Stabilization Act of 1983 authorizes the Order for dairy product promotion, research, and nutrition education as part of a comprehensive strategy to increase human consumption of milk and dairy products and to reduce milk surpluses. The program functions to strengthen the dairy industry's position in the marketplace by maintaining and expanding domestic and foreign consumption of fluid milk and dairy products.

Section 1505 of the 2002 Farm Bill requires that the Order be amended to implement a mandatory assessment on dairy products imported into the United States and that the assessment be submitted to CBP at the time entry documents are filed.

Section 1507 of the 2008 Farm Bill amended the term ''United States'' in Section 4502(1) of the Dairy Production Stabilization Act of 1983 to mean all of the States, the District of Columbia, and the Commonwealth of Puerto Rico. This amendment requires that the States of Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico be added to the existing regions of the Dairy Board and the commencement of assessing producers in these areas 15 cents per hundredweight on all milk produced and marketed commercially.

The Order is administered by a 36-member Dairy Board appointed by the Secretary representing 13 geographic regions of the United States. In order to complement the current geographical make up of the existing regions, it is proposed that the each of the four new jurisdictions be added to the region of closest geographic proximity. Therefore, Alaska would be added to Region 1, currently comprised of Oregon and Washington; Hawaii would be added to Region 2, currently California; and the District of Columbia and the Commonwealth of Puerto Rico would be added to Region 10, currently comprised of Florida, Georgia, North Carolina, South Carolina and Virginia. Each person making payment to a producer in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico for milk produced and marketed for commercial use, would be required to collect an assessment on all milk handled for the account of the producer at the rate of 15 cents per hundredweight and would remit the assessment to the Dairy Board. Any producer marketing milk of that producer's own production in the form of milk or dairy products to consumers, either directly or through retail or wholesale outlets, would remit to the Dairy Board an assessment on such milk at the rate of 15 cents per hundredweight. Each person responsible for the remittance of the assessment for milk marketing from producers in Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico would remit to the Dairy Board not later than the last day of the month following the month in which the milk was marketed.

Section 10607 of the 2002 Farm Bill provides for an exemption from payment of assessments by organic milk producers and importers of dairy products. Section 1150.157 of the Order currently provides the specific requirements necessary for producers to receive the exemption. (*See* 70 FR 2744 for a complete discussion of implementation of the provisions of section 10607 of the 2002 Farm Bill.) Section 1150.157 would be amended to provide an exemption for importers. A producer who operates under an approved National Organic Program (NOP) (7 CFR Part 205) certificate and thus only produces products that are eligible to be labeled as 100 percent organic under the NOP, and is not a split operation, would be exempt from the payment of assessments. An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205), and who is not a split operation, would be exempt from the payment of assessments. To receive the exemption, producers and importers of products labeled as 100 percent organic, and who do not produce any non-organic products, would provide a request to the Dairy Board, on a form provided by the Dairy Board, at any time initially and annually thereafter.

The 2002 Farm Bill amendments authorize importers to have representation on the Dairy Board. Initially, importers are required to be represented by at least 2 importers appointed by the Secretary. Thereafter, importer representation on the Dairy Board will be adjusted at least once every three years, if necessary, to reflect the volume of imports relative to domestic marketings of milk. The amendments also specify that the assessments may not be used for foreign market promotion and that they be implemented in a manner consistent with United States trade obligations.

The 2002 Farm Bill specifies that the assessment be 15 cents per hundredweight, or equivalent thereof, on dairy products imported into the United States. However, this rate was changed with the 2008 Farm Bill; Section 1507 specifies that the assessment will be 7.5 cents per hundredweight of milk, or the equivalent thereof. The assessment is equivalent to one-half the payment domestic dairy farmers are required to remit.

With the 2002 Farm Bill, the policy statement in the Dairy Production Stabilization Act of 1983 has been revised to make it clear that the purpose of the program is to expand the consumption of dairy products, whether produced domestically or imported. A program that promotes the substitution of a dairy product from one source with a dairy product from another source would not be consistent with this policy. Likewise, the Dairy Board and USDA carefully will consider whether any brand advertising or promotion would have a detrimental affect on other brands of dairy products before giving approval. No program would be approved if it would negatively affect similar domestic or imported dairy products.

Preliminary Statement

The 2002 and 2008 Farm Bills authorize the Secretary to issue regulations to implement the mandatory dairy import assessment without providing a notice and comment period. However, due to the interest of affected parties, a comment period is provided until June 18, 2009.

Comments may address any proposed provision of the regulation, but specifically, interested parties are asked to submit comments on the proposed designation of imported dairy products to be assessed under the Order and the proposed methods used to calculate assessments on such products.

This proposed rule amends certain provisions of the Order to conform to legislative changes of the enacted 2002 and 2008 Farm Bills. Section 1505 of the 2002 Farm Bill amends sections 110(b), 111, 112, 113(b), 113(e), 113(g), 113(k), and 116(b) of the Act, thereby necessitating revisions to certain provisions of the Order. Section 1507 of the 2008 Farm bill amends sections 111, 113(e), 113(g) and 130 of the Act also necessitating revisions to certain provisions of the Order.

Order provisions would be revised as follows:

1. In § 1150.106, the term *United States* would be redefined to include all of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

2. Section 1150.109 would be revised to recognize national qualified programs.

3. In § 1150.111, the term *Milk* would be redefined to remove the necessity that it be produced in the United States.

4. A new section, § 1150.120, would be added to define the term *Imported Dairy Product.*

5. A new section, § 1150.121, would be added to define the term *Importer.*

6. A new section, § 1150.122, would be added to define the term *CBP.*

7. Section 1150.131 would be modified in total to incorporate the requirement that the 36-member Dairy Board be increased initially by two importer members to give representation to importers. Procedures are established to be applied at least once every three years to determine the future importer representation on the Dairy Board. Modifications also are made to the regions to include Alaska, Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico.

8. Section 1150.132 would be modified to include the terms of office for importer representatives to the Board.

9. Section 1150.133 would be modified to delete obsolete references, to clarify certain terms, and to provide a process for importer nominations.

10. Section 1150.134 would be modified to include importers and to include national programs in disclosure requirements.

11. Section 1150.135 would be modified to reference the proper amended sections.

12. Section 1150.139(e) would be modified to include importers and importer organizations.

13. Section 1150.140(b) would be modified to include importers.

14. Section 1150.140(n) would be modified to remove the necessity for the Dairy Board to encourage coordination of programs designed to promote only fluid milk and dairy products produced in the United States.

15. A new paragraph, § 1150.151(c), would be added to limit the amount of funds the Dairy Board may expend in foreign market development for products manufactured in the United States.

16. Section 1150.152 would be modified to establish a procedure for collecting the assessment on imported dairy products, to establish a rate of assessment, to allow importers to receive a credit on assessments paid to a Qualified Program, and to properly reference amended sections.

17. Section 1150.153 would be modified to include importers, to recognize that national programs may apply for certification of qualification, and to indicate that national programs fall under the same provisions as State or regional plans. Other sections that reference Qualified Programs would also be modified to include national programs.

18. Section 1150.156 would be modified to cover charges and penalties for importers.

19. Section 1150.157 would be modified to remove language concerning exemption requests from producers received on or before August 15, 2005, and to provide an assessment exemption for importers who import only 100 percent organic products.

20. Section 1150.171 would be revised to require reports from importers if necessary for compliance verification and to properly reference an amended section.

21. Section 1150.172 would be modified to add importer books and records requirements.

22. Section 1150.187 would be modified to indicate that information and record keeping requirements have been approved by OMB and assigned an OMB control number ''as appropriate.''

The 2002 Farm Bill requires that the Order be amended to provide an assessment on imported dairy products into the United States and provides for importer representation on the Dairy Board. The 2008 Farm Bill requires importers to pay 7.5 cents per hundredweight of milk, or the equivalent thereof, on imported dairy products, an assessment which is equivalent to one-half the amount domestic dairy producers are required to remit.

The assessments on imported dairy products would be collected by CBP from importers at the time the entry summary documents are filed. If the importer has adequate documentation concerning the milk solids content of the imported dairy product, the assessment would be based upon milk solids content of the imported dairy product. If the importer does not have adequate documentation concerning the milk solids content of the imported dairy product, a default assessment rate for each HTS code would be applied. The assessments collected would be transferred by CBP to the Dairy Board to fund the national dairy promotion and research program. The Dairy Board would establish a compliance program and procedures to verify, as necessary, that correct assessments have been paid by importers based upon total milk solids content or default assessment rates for imported dairy products.

Since the mandatory 7.5-cent assessment is per one hundred pounds of milk, this proposed rule applies a standard rate of assessment per unit of milk solids. On average during the period January 2006 through December 2007, a hundredweight of U.S. producer milk contained 12.45 pounds of milk solids (3.68 percent butterfat and 8.77 percent nonfat milk solids).[2] Since the assessment rate stated in the 2008 Farm Bill is 7.5 cents per hundredweight of milk or its equivalent, this rule establishes the assessment rate per volume of imported milk solids as $0.00602 per pound ($0.075/12.45 pounds) or $0.01327 per kg (1 kg = 2.204623 pounds). This rate would be applied to the estimated milk solids content for any imported products listed in the table displayed in § 1150.152(b)(1).

If the importer has sufficient documentation to determine the milk solids content of the product to be imported, the importer would use the assessment rate of $0.01327 per kg of milk solids to calculate and pay the assessment. Milk solids of U.S. origin would not be included in the calculation. Alternatively, if the importer does not have adequate documentation concerning the milk solids content of the imported product, the importer would pay a default rate per kg of product volume as listed in the table displayed in § 1150.152(b)(1).

For most products, the default assessment rate for each HTS code would be based upon maximum milk solids content. In some cases, the maximum milk solids content is stated in the HTS; in other cases, various sources other than the HTS would be used to estimate the maximum milk solids content for the particular HTS number. In cases where maximum milk solids content is not stated in the HTS and cannot be estimated, a typical milk solids content is used, if available. Where neither a maximum nor a typical milk solids content is available, a milk solids content of a similar listed product may be used. In some cases, no information is available concerning milk solids content for an HTS number other than a minimum requirement stated in the HTS. In these cases, this minimum milk solids content stated in the HTS is used.

The various sources used to help determine default assessment rates include the HTS; CBP rulings; an April 1991 study by the Commodity Analysis Division of the Agricultural Stabilization and Conservation Service entitled *Methodology of Calculating the Milk Equivalent, Total Solids Basis, of*

[2] National Agricultural Statistics Service (NASS), Dairy Products 2007 Annual Summary (April 2008).

CCC Purchases of Surplus Dairy Products and of Imports of Dairy Products; the *Nutrient Database for Standard Reference,* USDA Agricultural Research Service; a handbook entitled *Dairy-Based Ingredients* by Ramesh Chandan, Egan Press, 1997; a handbook entitled *Cheese Varieties and Descriptions* by USDA Agricultural Research Service, 1969; data from the National Agricultural Statistics Service; Federal Standards of Identity as designated by the Food and Drug Administration, U.S. Department of Health and Human Services (Chapter 21, Code of Federal Regulations); a U.S. Government Accounting Office Study entitled *Dairy Products: Imports, Domestic Production, and Regulation of Ultra-filtered Milk,* March 2001; and a paper by the Food and Agricultural Organization of the United Nations entitled *The Technology of Traditional Milk Products in Developing Countries,* FAO Animal Production and Health Paper 85, 1990. A detailed table reflecting the sources above, *Default Import Assessment Rates for the National Dairy Promotion and Research Program,* is available at *http://www.ams.usda.gov/dairyimportassessment.*

The following discussion illustrates the procedure used to determine the default assessment rates and the alternative methods used to calculate the assessment. Cheddar cheese generally contains no more than 66.6 percent milk solids.[3] By multiplying the milk solids assessment rate of $0.01327 by 66.6 percent, a default unit assessment rate of $0.009 per kg of product volume (rounded to the nearest tenth of 1 cent) is determined and appears in the table listed in § 1150.152(b)(1). An importer of Cheddar cheese who does not have adequate documentation concerning the milk solids content of the cheese would pay using this assessment rate. If an importer imports Cheddar cheese with a milk solids content of 62.0 percent milk solids, and that importer has sufficient documentation as specified in § 1150.172(b) stating the milk solids content of the imported cheese, the importer would pay an assessment $0.008 per kg of product volume ($0.01327 times 62.0 percent, rounded to the nearest tenth of one cent).

Section 1150.152(b)(4) allows the Dairy Board to make adjustments for importers who have underpaid or overpaid assessments. Under this Section, if an importer pays an incorrect assessment, the Dairy Board would issue a refund to importer. For example, if assessments were paid on an imported dairy product not produced from cow's milk (such as products made from goat milk or sheep milk), the importer may request a refund from the Dairy Board.

The Dairy Production Stabilization Act of 1983 defines dairy products as ''products manufactured for human consumption which are derived from the processing of milk, and includes fluid milk products.'' The 2002 Farm Bill amended the Act to provide an assessment on imported dairy products. An imported dairy product is defined as any dairy product imported into the United States, including dairy products imported into the United States in the form of: (1) Milk, cream, and fresh and dried dairy products; (2) butter and butterfat mixtures; (3) cheese; and (4) casein and mixtures. The Act specifies that milk means any class of cow's milk.

This proposed rule designates a comprehensive list of products containing milk solids. The list includes:

- Dairy products made from cow's milk included in HTS Chapter 4, headings 0401 through 0406.
- Other dairy items whose HTS description specifies that the product contains cow's milk, butterfat, and/or milk solids.
- Certain items known to usually contain dairy ingredients.

The following types of dairy-related items are specifically excluded from the list:

- Items subject to by HTS General Note 15, which includes products imported by or for the account of any U.S. government agency and products imported for the personal use of the importer-products that will not enter the commerce of the United States.
- Items that categorically do not contain cow's milk. [4]
- Items categorically used as animal feed.
- Items which may or may not contain milk solids and parameters for milk solids are not stated in the HTS, such as pizza, quiche, and pudding.

The promotion assessment domestically is paid by dairy farmers on all milk marketed. Thus, for any product, dairy or otherwise, that is produced using domestic milk, the assessment has been paid. The Dairy Board does not promote all dairy products. For instance, the Dairy Board does not advertise or promote ice cream even though dairy farmers pay a 15-cent per hundredweight assessment for milk used in the production of ice cream. Other examples would be food preparations, infant formula, and milk chocolate, all of which contain dairy products. Thus, the import assessment would be collected on all specified imported dairy products and imported products containing dairy solids, whether or not the Dairy Board chooses to promote such product.

The 2002 Farm Bill requires that importers be represented by at least 2 members on the Dairy Board. The Dairy Board, which is comprised of 36 members who represent 13 geographic regions, will be expanded initially to include 2 importer representatives. The importers, like domestic dairy farmers who are appointed to the Dairy Board, shall serve for terms of 3 years and will be eligible to serve 2 consecutive 3-year terms with the exception that the 2 importer members initially appointed to the Board shall serve until October 31, 2010, and October 31, 2011. Importers shall be appointed from nominations submitted by importers under such procedures as the Secretary deems necessary.

The 2002 Farm Bill specifies that the Secretary shall review once every three years the average volume of domestic production of dairy products compared to the average volume of imports of dairy products into the United States during the previous 3 years. On the basis of the review, the Secretary shall reapportion the importer representation on the Dairy Board to reflect the proportional share of U.S. market by domestic production and imported dairy products. In order to provide a basis for comparison of domestic production of dairy products to imported products, estimated total milk solids would be used. Statistics for total milk solids of domestic dairy products are published annually by USDA National Agricultural Statistics Service. The calculation of total milk solids for imported products for reapportionment purposes would be the same as the calculation of total milk solids for assessment purposes.

Like domestic producers, importers would be required to direct 5 cents per hundredweight of milk, or equivalent thereof, of their assessment to the Dairy

[3] According to NASS statistics, the lowest weekly average moisture content of barrel Cheddar cheese rounds to 33.4 percent for States other than Minnesota and Wisconsin for the week ending March 10, 2007. The remaining 66.6 percent would have been composed of milk solids.

[4] There are some HTS codes that clearly distinguish whether or not the product contains cow's milk and others that do not. For example, HTS 04064020 is for Roquefort cheese in original loaves. Roquefort cheese, by definition, is made from sheep's milk. On the other hand, HTS 04069099 is designated for cheeses that do not fit the description of any other HTS code and either do not contain cow's milk solids or are soft ripened cheeses that do contain cow's milk solids. While HTS 04064020 is excluded from the comprehensive list considered for the Import Assessment Program, HTS 04069099 is included in the list.

Board. Importers would be permitted to direct the remainder, up to 2.5 cents per hundredweight of milk, or equivalent thereof, of their assessment to a Qualified Dairy Product Promotion, Research, and Nutrition Education Program authorized under Federal or State law, similar to domestic dairy producers.

The language in the Order would be modified to make it clear that dairy products are to be promoted regardless of national origin. The definition of ''milk'' would be changed to include all cow's milk instead of only cow's milk produced in the United States. In § 1150.140 (n) concerning duties of the Board to ''* * * maintain and expand domestic and foreign markets and uses for fluid milk and dairy products,'' the words ''produced in the United States'' would be been stricken. A proposed provision is included in the order to address the requirement that none of the assessments collected on imported dairy products may be used for foreign market promotion.

The 2002 Farm Bill mandates that the import assessment be implemented in a manner consistent with United States trade obligations. USDA has consulted with the United States Trade Representative who has determined that this proposed rule is consistent with the international trade obligations of the Federal Government.

Subtitle F of Title 1 of the 2002 Farm Bill at section 1601 and Subtitle F of Title 1 of the 2008 Farm Bill at section 1601 provide for the implementation timeframe and the promulgation of these regulations without regard to the Paperwork Reduction Act (44 U.S.C. Chapter 35), the Statement of the Policy of the Secretary of Agriculture, effective July 24, 1971 (36 FR 13804, and the notice and comment provisions of section 553 of Title 5, United States Code. As indicated previously, due to the interest of affected parties, a comment period is provided through June 18, 2009.

List of Subjects in 7 CFR Part 1150

Dairy Products, Milk, Promotion, Research.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be amended as follows:

PART 1150—DAIRY PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1150 continues to read as follows:

Authority: 7 U.S.C. 4501–4514 and 7 U.S.C. 7401

2. Section 1150.106 is revised to read as follows:

§ 1150.106 United States.

United States means all of the States, the District of Columbia, and the Commonwealth of Puerto Rico.

3. Section 1150.109 is revised to read as follows:

§ 1150.109 Qualified national, regional, or State program.

Qualified national, regional, or State program means any national, regional, or State dairy product promotion, research or nutrition education program which is certified as a qualified program pursuant to § 1150.153.

4. Section 1150.111 is revised to read as follows:

§ 1150.111 Milk.

Milk means any class of cow's milk.

5. Sections 1150.120 through 1150.122 are added to read as follows:

§ 1150.120 Imported Dairy Product.

Imported Dairy Product means any product that is imported into the United States under any of the Harmonized Tariff Schedule (HTS) classification numbers listed in § 1150.152(b)(1).

§ 1150.121 Importer.

Importer means a person that imports imported dairy products into the United States as a principal or as an agent, broker, or consignee of any person who produces or handles dairy products outside of the United States for sale in the United States, and who is listed as the importer of record for such dairy products.

§ 1150.122 CBP.

CBP means the United States Customs and Border Protection of the Department of Homeland Security.

6. Section 1150.131 is revised to read as follows:

§ 1150.131 Establishment and membership.

(a) There is hereby established a National Dairy Promotion and Research Board.

(b) Thirty-six members of the Board shall be United States producers. For purposes of nominating producers to the Board, the United States shall be divided into thirteen geographic regions and the number of Board members from each region shall be as follows:

(1) One member from region number one comprised of the following States: Alaska, Oregon and Washington.

(2) Eight members from region number two comprised of the following States: California and Hawaii.

(3) Four members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah and Wyoming.

(4) Four members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

(5) Two members from region number five comprised of the following States: Minnesota, North Dakota and South Dakota.

(6) Five members from region number six comprised of the following State: Wisconsin.

(7) Two members from region number seven comprised of the following States: Illinois, Iowa, Missouri and Nebraska.

(8) One member from region number eight comprised of the following States: Alabama, Kentucky, Louisiana, Mississippi and Tennessee.

(9) Three members from region number nine comprised of the following States: Indiana, Michigan, Ohio and West Virginia.

(10) One member from region number ten comprised of the following States: Commonwealth of Puerto Rico, District of Columbia, Florida, Georgia, North Carolina, South Carolina, and Virginia.

(11) Two members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Two members from region number twelve comprised of the following State: New York.

(13) One member from region number thirteen comprised of the following States: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island and Vermont.

(c) Two members of the Board shall be importers who are subject to assessments under § 1150.152(b).

(d) The Board shall be composed of milk producers and importers appointed by the Secretary either from nominations submitted pursuant to § 1150.133 or in accordance with § 1150.136. A milk producer may be nominated only to represent the region in which such producer's milk is produced.

(e) At least every five years, and not more than every three years, the Board shall review the geographic distribution of milk production volume throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of regions and/or a modification of the number of producer members from regions in order to best reflect the geographic distribution of milk production volume in the United States.

(f) At least once every three years, after the initial appointment of importer representatives on the Board, the Secretary shall review the average volume of domestic production of dairy products compared to the average

volume of imports of dairy products into the United States during the previous 3 years and, on the basis of that review, if warranted, reapportion the importer representation on the Board to reflect the proportional shares of the United States market served by domestic production and imported dairy products. The basis for comparison of domestic production of dairy products to imported products shall be estimated total milk solids. The calculation of total milk solids of imported dairy products for reapportionment purposes shall be the same as the calculation of total milk solids of imported dairy products for assessment purposes.

(g) In determining the volume of milk produced and total milk solids of dairy products produced in the United States, the Board and Secretary shall utilize the information received by the Board pursuant to § 1150.171(a) and data published by the Department.

7. In § 1150.132, paragraph (a) is revised to read as follows:

§ 1150.132 Term of Office.

(a) The members of the Board shall serve for terms of three years, except that:

(1) the members appointed to the initial Board shall serve proportionately, for terms of one, two and three years.

(2) the 2 importer members initially appointed to the Board shall serve until October 31, 2010, and October 31, 2011.

* * * * *

8. In § 1150.133, paragraphs (a), (c), and (d) are revised, and a new paragraph (e) is added to read as follows:

§ 1150.133 Nominations.

* * * * *

(a) The Secretary shall solicit nominations for producer representation on the Board from all eligible organizations. For nominations of producers, if the Secretary determines that a substantial number of producers are not members of, or their interests are not represented by, such eligible organizations, the Secretary shall also solicit nominations from such producers through general farmer organizations or by other means.

* * * * *

(c) An eligible producer organization may submit nominations only for positions on the Board that represent regions in which such eligible organization can establish that it represents a substantial number of producers. If there is more than one Board position for any such region, the organization may submit nominations for each position.

(d) Where there is more than one eligible organization representing producers in a specific geographic region, the organizations may caucus and jointly nominate producers for each position representing that region on the Board for which a member is to be appointed. If joint agreement is not reached with respect to any such nominations, or if no caucus is held, each eligible organization may submit to the Secretary nominations for each appointment to be made to represent that region.

(e) Nominations for representation of importers may be submitted by:

(1) Organizations that represent importers of dairy products, as approved by the Secretary. The primary considerations in determining if organizations adequately represent importers of dairy products shall be whether its membership consists primarily of importers of dairy products and whether a substantial interest of the organization is in the importation of fluid milk or dairy products and the promotion of the nutritional attributes of fluid milk or dairy products; and

(2) Individual importers of dairy products. Individual importers submitting nominations to represent importers on the Board must establish to the satisfaction of the Secretary that the persons submitting the nominations are importers of dairy products.

9. In § 1150.134, the introductory text and paragraph (b) are revised to read as follows:

§ 1150.134 Nominee's agreement to serve.

Any producer or importer nominated to serve on the Board shall file with the Secretary at the time of the nomination a written agreement to:

* * * * *

(b) Disclose any relationship with any organization that operates a qualified national, regional, or State program or has a contractual relationship with the Board; and

* * * * *

10. Section 1150.135 is revised to read as follows:

§ 1150.135 Appointments.

From the nominations made pursuant to § 1150.133, the Secretary shall appoint the members of the Board on the bases of representation provided for in §§ 1150.131(b) and 1150.131(c).

11. In § 1150.139, paragraph (e) is revised to read as follows:

§ 1150.139 Powers of the Board.

* * * * *

(e) To disseminate information to producers, producer organizations, importers, and importer organizations through programs or by direct contact utilizing the public postage system or other systems;

* * * * *

12. In § 1150.140, paragraphs (b) and (n) are revised to read as follows:

§ 1150.140 Duties of the Board.

* * * * *

(b) To appoint from its members an executive committee whose membership shall equally reflect each of the different geographic regions in the United States in which milk is produced and importer representation on the Board, and to delegate to the committee authority to administer the terms and provisions of this subpart under the direction of the Board and within the policies determined by the Board;

* * * * *

(n) To encourage the coordination of programs of promotion, research and nutrition education designed to strengthen the dairy industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for fluid milk and dairy products.

13. In § 1150.151, new paragraph (c) is added to read as follows:

§ 1150.151 Expenses.

* * * * *

(c) The Board is authorized to expend up to the amount of the assessments collected from United States producers to promote dairy products produced in the United States in foreign markets.

14. Section 1150.152 is revised to read as follows:

§ 1150.152 Assessments.

(a) *Domestic Assessments.*

(1) Each person making payment to a producer for milk produced in the United States and marketed for commercial use shall collect an assessment on all such milk handled for the account of the producer at the rate of 15 cents per hundredweight of milk for commercial use, or the equivalent thereof, and shall remit the assessment to the Board.

(2) Any producer marketing milk of that producer's own production in the form of milk or dairy products to consumers, either directly or through retail or wholesale outlets, shall remit to the Board an assessment on such milk at the rate of 15 cents per hundredweight of milk for commercial use or the equivalent thereof.

(3) In determining the assessment due from each producer pursuant to § 1150.152(a)(1) and (a)(2), a producer who is participating in a qualified national, regional, or State program(s)

shall receive a credit for contributions to such program(s), but not to exceed 10 cents per hundredweight of milk marketed.

(4) In order for a producer described in § 1150.152(a)(1) to receive the credit authorized in § 1150.152(a)(3), either the producer or a cooperative association on behalf of the producer must establish to the person responsible for remitting the assessment to the Board that the producer is contributing to a qualified national, regional, or State program. Producers who contribute to a qualified program directly (other than through a payroll deduction) must establish with the person responsible for remitting the assessment to the Board, with validation by the qualified program, that they are making such contributions.

(5) In order for a producer described in § 1150.152(a)(2) to receive the credit authorized in § 1150.152(a)(3), the producer and the applicable qualified national, regional, or State program must establish to the Board that the producer is contributing to a qualified national, regional, or State program.

(6) The collection of assessments pursuant to § 1150.152(a)(1) and (a)(2) shall begin with respect to milk marketed on and after the effective date of this section and shall continue until terminated by the Secretary. If the Board is not constituted by the date the first assessments are to be collected, the Secretary shall have the authority to receive the assessments on behalf of the Board. The Secretary shall remit such assessments to the Board when it is constituted.

(7) Each person responsible for the remittance of the assessment pursuant to § 1150.152(a)(1) and (a)(2) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.

(8) Money remitted to the Board shall be in the form of a negotiable instrument made payable to ''National Dairy Promotion and Research Board.'' Remittances and reports specified in § 1150.171(a) shall be mailed to the location designated by the Secretary or the Board.

(b) *Importer Assessments.*

(1) Each importer of dairy products identified in the following table, except for as provided for in § 1150.157, is responsible for paying 7.5 cents per hundredweight of U.S. milk, or equivalent thereof, as determined in (i) or (ii) below.

(i) If the importer has sufficient documentation, as stated in § 1150.172(b), to determine the milk solids content of the imported dairy product, the importer shall use the assessment rate of $0.01327 per kilogram (kg) of milk solids to calculate and pay the assessment. Milk solids of U.S. origin shall not be included in the calculation.

(ii) If the importer does not have sufficient documentation, as stated in § 1150.172(b), to determine the milk solids content of the imported dairy product, the importer shall pay a rate per kg of product volume as listed in the following table.

IMPORTED DAIRY PRODUCTS SUBJECT TO ASSESSMENT

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
0401.10.0000 ..	liter	0.001
0401.20.2000 ..	liter	0.002
0401.20.4000 ..	liter	0.002
0401.30.0500 ..	liter	0.007
0401.30.2500 ..	liter	0.007
0401.30.5000 ..	liter	0.009
0401.30.7500 ..	liter	0.009
0402.10.1000 ..	kg	0.013
0402.10.5000 ..	kg	0.013
0402.21.0500 ..	kg	0.013
0402.21.2500 ..	kg	0.013
0402.21.3000 ..	kg	0.013
0402.21.5000 ..	kg	0.013
0402.21.7500 ..	kg	0.013
0402.21.9000 ..	kg	0.013
0402.29.1000 ..	kg	0.012
0402.29.5000 ..	kg	0.012
0402.91.1000 ..	kg	0.005
0402.91.3000 ..	kg	0.005
0402.91.7000 ..	kg	0.005
0402.91.9000 ..	kg	0.005
0402.99.1000 ..	kg	0.004
0402.99.3000 ..	kg	0.004
0402.99.4500 ..	kg	0.004
0402.99.5500 ..	kg	0.004
0402.99.7000 ..	kg	0.009
0402.99.9000 ..	kg	0.009
0403.10.1000 ..	kg	0.013
0403.10.5000 ..	kg	0.013
0403.10.9000 ..	kg	0.002
0403.90.0400 ..	liter	0.004
0403.90.1600 ..	liter	0.004
0403.90.2000 ..	liter	0.006
0403.90.4110 ..	kg	0.013
0403.90.4190 ..	kg	0.013
0403.90.4500 ..	kg	0.013
0403.90.5100 ..	kg	0.013
0403.90.5500 ..	kg	0.013
0403.90.6100 ..	kg	0.013
0403.90.6500 ..	kg	0.013
0403.90.7400 ..	kg	0.013
0403.90.7800 ..	kg	0.013
0403.90.8500 ..	kg	0.002
0403.90.9000 ..	kg	0.009
0403.90.9500 ..	kg	0.009
0404.10.0500 ..	kg	0.013
0404.10.1100 ..	kg	0.013
0404.10.1500 ..	kg	0.013
0404.10.2000 ..	liter	0.008
0404.10.5010 ..	kg	0.013
0404.10.5090 ..	kg	0.013
0404.10.9000 ..	kg	0.013
0404.90.1000 ..	kg	0.013
0404.90.3000 ..	kg	0.013
0404.90.5000 ..	kg	0.013
0404.90.7000 ..	kg	0.013
0405.10.1000 ..	kg	0.013
0405.10.2000 ..	kg	0.013
0405.20.2000 ..	kg	0.011
0405.20.3000 ..	kg	0.011
0405.20.4000 ..	kg	0.007
0405.20.6000 ..	kg	0.011
0405.20.7000 ..	kg	0.011
0405.20.8000 ..	kg	0.011
0405.90.1020 ..	kg	0.013
0405.90.1040 ..	kg	0.013
0405.90.2020 ..	kg	0.013
0405.90.2040 ..	kg	0.013
0406.10.0400 ..	kg	0.006
0406.10.0800 ..	kg	0.006
0406.10.1400 ..	kg	0.008
0406.10.1800 ..	kg	0.008
0406.10.2400 ..	kg	0.009
0406.10.2800 ..	kg	0.009
0406.10.3400 ..	kg	0.008
0406.10.3800 ..	kg	0.008
0406.10.4400 ..	kg	0.008
0406.10.4800 ..	kg	0.008
0406.10.5400 ..	kg	0.010
0406.10.5800 ..	kg	0.010
0406.10.6400 ..	kg	0.009
0406.10.6800 ..	kg	0.009
0406.10.7400 ..	kg	0.005
0406.10.7800 ..	kg	0.005
0406.10.8400 ..	kg	0.011
0406.10.8800 ..	kg	0.011
0406.20.1500 ..	kg	0.007
0406.20.2400 ..	kg	0.012
0406.20.2800 ..	kg	0.012
0406.20.3110 ..	kg	0.012
0406.20.3190 ..	kg	0.012
0406.20.3300 ..	kg	0.012
0406.20.3600 ..	kg	0.012
0406.20.3900 ..	kg	0.012
0406.20.4400 ..	kg	0.012
0406.20.4800 ..	kg	0.012
0406.20.5100 ..	kg	0.012
0406.20.5300 ..	kg	0.012
0406.20.6100 ..	kg	0.012
0406.20.6300 ..	kg	0.012
0406.20.6500 ..	kg	0.012
0406.20.6700 ..	kg	0.012
0406.20.6900 ..	kg	0.012
0406.20.7100 ..	kg	0.012
0406.20.7300 ..	kg	0.012
0406.20.7500 ..	kg	0.012
0406.20.7700 ..	kg	0.012
0406.20.7900 ..	kg	0.012
0406.20.8100 ..	kg	0.012
0406.20.8300 ..	kg	0.012
0406.20.8500 ..	kg	0.012
0406.20.8700 ..	kg	0.012
0406.20.8900 ..	kg	0.012
0406.20.9100 ..	kg	0.012
0406.30.0500 ..	kg	0.008
0406.30.1400 ..	kg	0.008
0406.30.1800 ..	kg	0.008
0406.30.2400 ..	kg	0.009
0406.30.2800 ..	kg	0.009
0406.30.3400 ..	kg	0.008
0406.30.3800 ..	kg	0.008
0406.30.4400 ..	kg	0.008

IMPORTED DAIRY PRODUCTS SUBJECT TO ASSESSMENT—Continued

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
0406.30.4800 ..	kg	0.008
0406.30.5100 ..	kg	0.009
0406.30.5300 ..	kg	0.009
0406.30.6100 ..	kg	0.008
0406.30.6300 ..	kg	0.008
0406.30.6500 ..	kg	0.011
0406.30.6700 ..	kg	0.011
0406.30.6900 ..	kg	0.008
0406.30.7100 ..	kg	0.008
0406.30.7300 ..	kg	0.011
0406.30.7500 ..	kg	0.011
0406.30.7700 ..	kg	0.010
0406.30.7900 ..	kg	0.010
0406.30.8100 ..	kg	0.009
0406.30.8300 ..	kg	0.009
0406.30.8500 ..	kg	0.005
0406.30.8700 ..	kg	0.005
0406.30.8900 ..	kg	0.011
0406.30.9100 ..	kg	0.011
0406.40.4400 ..	kg	0.008
0406.40.4800 ..	kg	0.008
0406.40.5400 ..	kg	0.008
0406.40.5800 ..	kg	0.008
0406.40.7000 ..	kg	0.008
0406.90.0810 ..	kg	0.009
0406.90.0890 ..	kg	0.009
0406.90.1200 ..	kg	0.009
0406.90.1600 ..	kg	0.008
0406.90.1800 ..	kg	0.008
0406.90.3100 ..	kg	0.009
0406.90.3200 ..	kg	0.009
0406.90.3300 ..	kg	0.009
0406.90.3600 ..	kg	0.008
0406.90.3700 ..	kg	0.008
0406.90.4100 ..	kg	0.010
0406.90.4200 ..	kg	0.010
0406.90.4600 ..	kg	0.009
0406.90.4800 ..	kg	0.009
0406.90.4900 ..	kg	0.007
0406.90.5200 ..	kg	0.008
0406.90.5400 ..	kg	0.008
0406.90.6600 ..	kg	0.010
0406.90.6800 ..	kg	0.010
0406.90.7200 ..	kg	0.008
0406.90.7400 ..	kg	0.008
0406.90.7600 ..	kg	0.009
0406.90.7800 ..	kg	0.009
0406.90.8200 ..	kg	0.008
0406.90.8400 ..	kg	0.008
0406.90.8600 ..	kg	0.008
0406.90.8800 ..	kg	0.008
0406.90.9000 ..	kg	0.009
0406.90.9200 ..	kg	0.009
0406.90.9300 ..	kg	0.005
0406.90.9400 ..	kg	0.005
0406.90.9500 ..	kg	0.011
0406.90.9700 ..	kg	0.011
0406.90.9900 ..	kg	0.007
1517.90.5000 ..	kg	0.002
1517.90.6000 ..	kg	0.002
1702.11.0000 ..	kg	0.013
1702.19.0000 ..	kg	0.013
1704.90.5400 ..	kg	0.006
1704.90.5800 ..	kg	0.006
1806.20.2090 ..	kg	0.004
1806.20.2400 ..	kg	0.004
1806.20.2600 ..	kg	0.003
1806.20.2800 ..	kg	0.004

IMPORTED DAIRY PRODUCTS SUBJECT TO ASSESSMENT—Continued

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
1806.20.3400 ..	kg	0.004
1806.20.3600 ..	kg	0.003
1806.20.3800 ..	kg	0.004
1806.20.8100 ..	kg	0.013
1806.20.8200 ..	kg	0.003
1806.20.8300 ..	kg	0.013
1806.20.8500 ..	kg	0.004
1806.20.8700 ..	kg	0.003
1806.20.8900 ..	kg	0.004
1806.32.0400 ..	kg	0.004
1806.32.0600 ..	kg	0.003
1806.32.0800 ..	kg	0.004
1806.32.1400 ..	kg	0.004
1806.32.1600 ..	kg	0.003
1806.32.1800 ..	kg	0.004
1806.32.6000 ..	kg	0.003
1806.32.7000 ..	kg	0.003
1806.32.8000 ..	kg	0.003
1806.90.0500 ..	kg	0.005
1806.90.0800 ..	kg	0.003
1806.90.1000 ..	kg	0.005
1806.90.1500 ..	kg	0.003
1806.90.1800 ..	kg	0.003
1806.90.2000 ..	kg	0.003
1806.90.2500 ..	kg	0.003
1806.90.2800 ..	kg	0.003
1806.90.3000 ..	kg	0.003
1901.10.1500 ..	kg	0.009
1901.10.3000 ..	kg	0.009
1901.10.3500 ..	kg	0.009
1901.10.4000 ..	kg	0.009
1901.10.4500 ..	kg	0.001
1901.20.0500 ..	kg	0.003
1901.20.1500 ..	kg	0.003
1901.20.2000 ..	kg	0.003
1901.20.2500 ..	kg	0.003
1901.20.3000 ..	kg	0.003
1901.20.3500 ..	kg	0.003
1901.20.4000 ..	kg	0.003
1901.20.4500 ..	kg	0.003
1901.20.5000 ..	kg	0.003
1901.90.2800 ..	kg	0.013
1901.90.3400 ..	kg	0.005
1901.90.3600 ..	kg	0.005
1901.90.4200 ..	kg	0.007
1901.90.4300 ..	kg	0.007
1901.90.7000 ..	kg	0.003
1901.90.9082 ..	kg	0.001
2105.00.1000 ..	kg	0.005
2105.00.2000 ..	kg	0.005
2105.00.3000 ..	kg	0.003
2105.00.4000 ..	kg	0.003
2106.90.0600 ..	kg	0.002
2106.90.0900 ..	kg	0.002
2106.90.2400 ..	kg	0.010
2106.90.2600 ..	kg	0.010
2106.90.2800 ..	kg	0.007
2106.90.3400 ..	kg	0.006
2106.90.3600 ..	kg	0.006
2106.90.3800 ..	kg	0.002
2106.90.6400 ..	kg	0.013
2106.90.6600 ..	kg	0.013
2106.90.6800 ..	kg	0.001
2106.90.7200 ..	kg	0.001
2106.90.7400 ..	kg	0.001
2106.90.7600 ..	kg	0.001
2106.90.7800 ..	kg	0.002
2106.90.8000 ..	kg	0.002

IMPORTED DAIRY PRODUCTS SUBJECT TO ASSESSMENT—Continued

HTS No.	Unit of measure	Default rate per unit of product (in dollars)
2106.90.8200 ..	kg	0.003
2202.90.1000 ..	liter	0.001
2202.90.2400 ..	liter	0.001
2202.90.2800 ..	liter	0.001
3501.10.1000 ..	kg	0.013
3501.10.5000 ..	kg	0.012
3501.90.6000 ..	kg	0.013
3502.20.0000 ..	kg	0.013

(2) The assessment on imported dairy products shall be paid by the importer to CBP at the time of entry summary for any products identified in § 1150.152(b)(1).

(3) The assessments collected by CBP pursuant to § 1150.152(b)(2) of this section shall be transferred to the Board in compliance with an agreement between CBP and the Agricultural Marketing Service.

(4) The Board, at its discretion, shall verify the information reported by importers to CBP to determine if additional money is due the Board or an amount is due to an importer based on the quantity imported and the milk solids content per unit or the default assessment rate for the imported dairy product. In the case of money due to an importer from the Board, the Board will issue payment promptly to the importer. In the case of money due from the importer to the Board, the Board will send an invoice for payment directly to the importer. The invoice will be due upon receipt.

(5) At the designation of an importer, the Board shall remit to a qualified promotion program(s) assessments paid by the importer pursuant to § 1150.152(b)(2) not to exceed 2.5 cents per hundredweight of milk, or equivalent thereof, of the 7.5 cents per hundredweight of milk, or equivalent thereof, paid by the importer.

(6) Assessments collected on imported dairy products shall not be used for foreign market promotion of United States dairy products.

(c) The collection of assessments pursuant to § 1150.152(a) and (b) shall begin with respect to milk marketed or dairy products imported on and after the effective date of this section and shall continue until terminated by the Secretary.

(d) Each person responsible for the remittance of the assessment pursuant to § 1150.152(a) shall remit the assessment to the Board not later than the last day of the month following the month in which the milk was marketed.

(e) Money remitted to the Board shall be in the form of an electronic or negotiable instrument made payable to ''National Dairy Promotion and Research Board.'' Remittances and reports specified in § 1150.171(a) shall be mailed or otherwise transferred to the location designated by the Secretary or the Board.

(f) Any money received by the Board pursuant to § 1150.152(b)(1) before the Secretary appoints the initial importer representatives to the Board shall not be spent by the Board but shall be held in escrow until such appointment.

15. In § 1150.153, the section heading and paragraphs (a), (b)(3), and (b)(5) are revised to read as follows:

§ 1150.153 Qualified national, regional, or State dairy product promotion, research or nutrition education programs.

(a) Any organization which conducts a dairy product promotion, research or nutrition education program, authorized by Federal or State law or has been active and ongoing before enactment of the Act, may apply to the Secretary for certification of qualification so that:

(1) producers may receive credit pursuant to § 1150.152(a)(3) for contributions to such program; and

(2) the Board may remit payments designated by importers pursuant to § 1150.152(b)(5).

(b) * * *

(3) Be financed primarily by producers, either individually or through cooperative associations, and/or by importers;

* * * * *

(5) Certify to the Secretary that any requests from producers or importers for refunds under the program will be honored by forwarding to either the Board or a qualified national, regional or State program designated by the producer or importer that portion of such refunds equal to the amount of credit that otherwise would be applicable to that program pursuant to § 1150.152(a)(3) or (b)(5); and

* * * * *

16. In § 1150.153, paragraphs (c) introductory text, (c)(2), (c)(2)(i), (c)(2)(ii), and (c)(2)(iii), and (c)(2)(iv) replace the words ''State or regional'' with the words ''national, regional, or State''.

17. In § 1150.156, paragraph (a) is revised to read as follows:

§ 1150.156 Charges and penalties.

(a) *Late-payment charge.* Any unpaid assessments to the Board pursuant to § 1150.152 shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid.

(1) For the purpose of this section, any assessment pursuant to § 1150.152(a) that was determined at a date later than prescribed by this subpart because of a person's failure to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The timeliness of a payment to the Board shall be based on the applicable postmark date or the date actually received by the Board, whichever is earlier.

(2) For the purpose of this section, any assessment paid to CBP pursuant to § 1150.152(b) subsequent to the time entry summary documents are filed by the importer is considered to be past due.

* * * * *

18. Section 1150.157 is revised to read as follows:

§ 1150.157 Assessment exemption.

(a) A producer described in § 1150.152(a)(1) and (a)(2) who operates under an approved National Organic Program (NOP) (7 CFR part 205) system plan; produces only products that are eligible to be labeled as 100 percent organic under the NOP, except as provided for in paragraph (h) of this section; and is not a split operation shall be exempt from the payment of assessments.

(b) To apply for exemption under this section, a producer pursuant to § 1150.152(a)(1) and (a)(2) shall submit a request for exemption to the Board on a form provided by the Board at any time initially and annually thereafter on or before July 1 as long as the producer continues to be eligible for the exemption.

(c) A producer request for exemption shall include the following: the producer's name and address, a copy of the organic farm or organic handling operation certificate provided by a USDA-accredited certifying agent as defined in section 2103 of the Organic Foods Production Act of 1990 (7 U.S.C 6502), a signed certification that the applicant meets all of the requirements specified in paragraph (a) of this section for an assessment exemption, and such other information as may be required by the Board and with the approval of the Secretary.

(d) If a producer described in § 1150.152(a)(1) and (a)(2) complies with the requirements of this section, the Board will grant an assessment exemption and issue a Certificate of Exemption to the producer within 30 days. If the application is disapproved, the Board will notify the applicant of the reason(s) for disapproval within the same timeframe.

(e) The producer described in paragraph (c) of this section shall provide a copy of the Certificate of Exemption to each person responsible for remitting assessments to the Board on behalf of the producer pursuant to § 1150.152(a).

(f) The person responsible for remitting assessments to the Board pursuant to § 1150.152 shall maintain records showing the exempt producer's name and address and the exemption number assigned by the Board pursuant to § 1150.172(a).

(g) An importer who imports only products that are eligible to be labeled as 100 percent organic under the NOP (7 CFR part 205) and who is not a split operation shall be exempt from the payment of assessments. That importer may submit documentation to the Board and request an exemption from assessment on 100 percent organic dairy products—on a form provided by the Board—at any time initially and annually thereafter as long as the importer continues to be eligible for the exemption. This documentation shall include the same information required of producers in paragraph (c) of this section. If the importer complies with the requirements of this section, the Board will grant the exemption and issue a Certificate of Exemption to the importer. The Board will also issue the importer a 9-digit alphanumeric Harmonized Tariff Schedule (HTS) classification valid for 1 year from the date of issue. This HTS classification should be entered by the importer on the Customs entry documentation. Any line item entry of 100 percent organic dairy products bearing this HTS classification assigned by the Board will not be subject to assessments.

(h) The exemption will apply not later than the last day of the month following the Certificate of Exemption issuance date.

(i) Agricultural commodities produced and marketed under an organic system plan, as described in 7 CFR 205.201, but not sold, labeled, or represented as organic, shall not disqualify a producer from exemption under this section, except that producers who produce both organic and non-organic agricultural commodities as a result of split operations shall not qualify for exemption. Reasons for conventional sales include lack of demand for organic products, isolated use of antibiotics for

humane purposes, chemical or pesticide use as the result of State or emergency spray programs, and crops from a buffer area as described in 7 CFR part 205, provided all other criteria are met.

19. Section 1150.171 is revised to read as follows:

§ 1150.171 Reports.

(a) Each producer marketing milk of that producer's own production directly to consumers and each person making payment to producers and responsible for the collection of the assessment under § 1150.152(a) shall be required to report at the time for remitting assessments to the Board such information as may be required by the Board or by the Secretary. Such information may include but not be limited to the following:

(1) The quantity of milk purchased, initially transferred or which, in any other manner, are subject to the collection of the assessment;

(2) The amount of assessment remitted;

(3) The basis, if necessary, to show why the remittance is less than the number of hundredweights of milk multiplied by 15 cents; and

(4) The date any assessment was paid.

(b) Importers of dairy products shall submit reports as requested by the Dairy Board or the Department as necessary to verify that provisions pursuant to § 1150.152(b) have been carried out correctly, including verification that correct amounts were paid based upon milk solids content of the imported dairy products pursuant to § 1150.152(b)(1)(i) or volume of imported dairy products per HTS code pursuant to § 1150.152(b)(1)(ii).

20. Section 1150.172 is revised to read as follows:

§ 1150.172 Books and records.

(a) Each producer who is subject to this subpart, and other persons subject to § 1150.171(a), shall maintain and make available for inspection by employees of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such records shall be retained for at least two years beyond the fiscal period of their applicability.

(b) Each importer of dairy products shall maintain and make available for inspection by employees of the Board and the Secretary such books and records to verify that provisions pursuant to § 1150.152(b) have been carried out correctly, including verification that correct amounts were paid based upon milk solids content of the imported dairy products pursuant to § 1150.152(b)(1)(i) or volume of imported dairy products per HTS code pursuant to § 1150.152(b)(1)(ii). Such records shall be retained for at least two years beyond the calendar period of their applicability. Such information may include but not be limited to invoices, packing slips, bills of lading, and letters from the manufacturer on the manufacturer's letterhead stating the milk solids content of imported dairy products.

21. Section 1150.187 is revised to read as follows:

§ 1150.187 Paperwork Reduction Act assigned number.

The information collection and recordkeeping requirements contained in §§ 1150.133, 1150.152, 1150.153, 1150.171, 1150.172, 1150.202, 1150.204, 1150.205, 1150.211 and 1150.273 of these regulations (7 CFR Part 1150) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0147 as appropriate.

Dated: May 12, 2009.

Robert C. Keeney,

Acting Associate Administrator, Agricultural Marketing Service.

[FR Doc. E9–11492 Filed 5–18–09; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1314; Airspace Docket No. 08–AGL–21]

Proposed Amendment of Class E Airspace; Monee, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Monee, IL. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Bult Field Airport, Monee, IL. This action would also reflect the name change of the airport from Sanger Airport to Bult Field Airport and update the geographic coordinates. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at Bult Field Airport.

DATES: 0901 UTC. Comments must be received on or before July 6, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–1314/Airspace Docket No. 08–AGL–21, at the beginning of your comments. You may also submit comments through the Internet at *http://www.regulations.gov*. You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–1314/Airspace Docket No. 08–AGL–21.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov*. Recently published rulemaking documents can also be accessed through the FAA's web page at *http://www.faa.gov/airports_airtraffic/*

air_traffic/publications/airspace_amendments/.

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Bult Field Airport, Monee, IL. This action would also reflect the name change of the airport from Sanger Airport to Bult Field Airport and update the geographic coordinates. Controlled airspace is needed for the safety and management of IFR operations at the airport.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Bult Field Airport, Monee, IL.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Monee, IL [Amended]

Monee, Bult Field Airport, IL
(Lat. 41°22′39″ N., long. 87°40′47″ W.)
Peotone VORTAC
(Lat. 41°16′11″ N., long. 87°47′28″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Bult Field Airport and within 1.3 miles each side of the 037° radial of the Peotone VORTAC extending from the 6.4-mile radius to the VORTAC, excluding that airspace within the Chicago, IL, Class E airspace area.

* * * * *

Issued in Fort Worth, TX, on May 7, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–11595 Filed 5–18–09; 8:45 am]

BILLING CODE 4901–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2008–1272; Airspace Docket No. 08–ACE–4]

Proposed Amendment of Class E Airspace; Iowa Falls, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class E airspace at Iowa Falls, IA. Additional controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Iowa Falls Municipal Airport, Iowa Falls, IA. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) aircraft operations at Iowa Falls Municipal Airport.

DATES: Comments must be received on or before July 6, 2009.

ADDRESSES: Send comments on this proposal to the U.S. Department of Transportation, Docket Operations, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001. You must identify the docket number FAA–2008–1272/Airspace Docket No. 08–ACE–4, at the beginning of your comments. You may also submit comments on the Internet at *http://www.regulations.gov.* You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Office (telephone 1–800–647–5527), is on the ground floor of the building at the above address.

FOR FURTHER INFORMATION CONTACT: Scott Enander, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; *telephone:* (817) 321–7716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments

are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify both docket numbers and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket No. FAA–2008–1272/Airspace Docket No. 08–ACE–4.'' The postcard will be date/time stamped and returned to the commenter.

Availability of NPRMs

An electronic copy of this document may be downloaded through the Internet at *http://www.regulations.gov.* Recently published rulemaking documents can also be accessed through the FAA's Web page at *http://www.faa.gov/airports_airtraffic/air_traffic/publications/airspace_amendments/.*

Additionally, any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration (FAA), Office of Air Traffic Airspace Management, ATA–400, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify both docket numbers for this notice. Persons interested in being placed on a mailing list for future NPRMs should contact the FAA's Office of Rulemaking (202) 267–9677, to request a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

The Proposal

This action proposes to amend Title 14, Code of Federal Regulations (14 CFR), part 71 by adding additional Class E airspace extending upward from 700 feet above the surface for SIAPs operations at Iowa Falls Municipal Airport, Iowa Falls, IA.

Class E airspace areas are published in Paragraph 6005 of FAA Order 7400.9S, dated October 3, 2008, and effective October 31, 2008, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

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

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Iowa Falls Municipal Airport, Iowa Falls, IA.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

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

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

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

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Iowa Falls, IA [Amended]

Iowa Falls Municipal Airport, IA
(Lat. 42°28′15″ N., long. 93°16′12″ W.)
Iowa Falls NDB
(Lat. 42°28′36″ N., long. 93°15′56″ W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of Iowa Falls Municipal Airport and within 2.6 miles each side of the 154° bearing from the Iowa Falls NDB extending from the 6.3-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX on May 7, 2009.

Roger M. Trevino,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. E9–11596 Filed 5–18–09; 8:45 am]

BILLING CODE 4901–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[EPA–R09–OAR–2008–0860; FRL–8905–9]

Delegation of New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants for the States of Arizona, California, Hawaii, and Nevada

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve updates for delegation of certain federal standards to state and local agencies in Region IX for delegation of New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP).

DATES: Any comments on this proposal must arrive by June 18, 2009.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2008–0860, by one of the following methods:

1. *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions.

E-mail: steckel.andrew@epa.gov.

2. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *http://www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected

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

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

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal updates the delegation tables in 40 CFR parts 60 and 61, to allow easier access by the public to the status of local jurisdictions. In the Rules and Regulations section of this **Federal Register,** we are updating these delegation tables in a direct final action without prior proposal because we believe these delegations are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: April 17, 2009.

Allyn Stern,

Acting Director, Air Division, Region IX.

[FR Doc. E9–11523 Filed 5–18–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R03–RCRA–2009–0196; FRL–8906–7]

Pennsylvania: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule: Correction.

SUMMARY: The Environmental Protection Agency published in the **Federal Register** of April 29, 2009 (74 FR 19480), a document concerning Pennsylvania's Final Authorization of State Hazardous Waste Management Program Revisions. This document corrects the Docket Number.

FOR FURTHER INFORMATION CONTACT: Charles Bentley, Mailcode 3LC50, Office of State Programs, U.S. EPA Region III, 1650 Arch Street, Philadelphia, PA 19103–2029, *Phone number:* (215) 814–3379.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** of April 29, 2009 in FR Doc. E9–9790, on page 19480, the following corrections are made:

1. In the Heading of the document, the Docket Number is corrected to read ''EPA–R03–RCRA–2009–0196''.

2. In the sentence following ''**ADDRESSES**:'' in the second column, the docket number is corrected to read ''EPA–R03–RCRA–2009–0196''.

3. In the sentence following ''*Instructions:''* in the third column, the docket number is corrected to read ''EPA–R03–RCRA–2009–0196''.

Dated: May 7, 2009.

William C. Early,

Acting Regional Administrator, EPA Region III.

[FR Doc. E9–11655 Filed 5–18–09; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAR Case 2008–023; Docket 2009–0017; Sequence 1]

RIN 9000–AL29

Federal Acquisition Regulation; FAR Case 2008–023, Clarification of Criteria for Sole Source Awards to Service-disabled Veteran-owned Small Business Concerns

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and SpaceAdministration (NASA).

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the criteria that need to be met in order to conduct a sole source Service-disabled Veteran-owned Small Business (SDVOSB) concern acquisition.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before July 20, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAR case 2008–023 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''FAR Case 2008–023'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with FAR Case 2008–023. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your name, company name (if any), and ''FAR Case 2008–023'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite FAR case 2008–23 in all correspondence related to this case. All comments received will be posted

without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Rhonda Cundiff, Procurement Analyst, at (202) 501–0044 for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAR case 2008–023 in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Background

The United States Government Accountability Office's (GAO) decision in the matter of MCS Portable Restroom Service, B–299291, March 28, 2007, deals in part with the issue of when a sole source SDVOSB acquisition may be conducted. In this decision, GAO notes that the plain wording of FAR 19.1406 may be unintentionally inconsistent with the Veterans Benefit Act of 2003 and the Small Business Administration regulations that implement that Act. GAO concludes the intent of the FAR language is that one criterion for a sole source award is that the contracting officer does not have a reasonable expectation that two or more SDVOSBs will submit offers. The intent of the FAR language is not that a sole source acquisition is prohibited if more than one SDVOSB that could conceivably perform the work exists.

The Councils have reviewed the language in question, FAR 19.1406(a)(1). The Councils have determined that in order to lessen the possibility of misinterpretation, the language should be revised to more closely mirror the Veterans Benefit Act of 2003 (15 U.S.C. 657f). The proposed rule contains language that was revised accordingly.

The language in FAR 19.1306(a)(1), which deals with sole source awards to HUBZone small business concerns based on 15 U.S.C. 657a(b), is currently the same as the language in FAR 19.1406(a)(1). The Councils have determined that the language in 19.1306(a)(1) should be revised in the same manner as the language in 19.1406(a)(1). The intent in both cases is that one of the criterion for making a sole source award is that the contracting officer does not reasonably expect to receive offers from two or more concerns. Not revising the language in FAR 19.1306(a)(1) to match FAR 19.1406(a)(1) will lead to confusion. There could be a presumption that the intent is to convey different meanings, when that is not the intent. Therefore, the proposed rule contains language that has been revised accordingly.

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to 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 this revision is being done to clarify the intent of the existing language and is not a change in policy. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 19 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2008–023), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Part 19.

Government procurement.

Dated: May 12, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 19.1306 by revising paragraphs (a) and (a)(1) to read as follows:

19.1306 HUBZone sole source awards.

(a) A contracting officer may award contracts to HUBZone small business concerns on a sole source basis (see 19.501(c) and 6.302–5) without considering small business set-asides (see Subpart 19.5), provided—

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more HUBZone small business concerns;

* * * * *

3. Amend section 19.1406 by revising paragraphs (a)(1) and (a)(2) to read as follows:

19.1406 Sole source awards to service-disabled veteran owned small business concerns.

(a) * * *

(1) The contracting officer does not have a reasonable expectation that offers would be received from two or more service-disabled veteran-owned small business concerns;

(2) The anticipated award price of the contract, including options, will not exceed—

* * * * *

[FR Doc. E9–11648 Filed 5–18–09; 8:45 am]

BILLING CODE 6820–EP–S

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 541 and 552

[GSAR Case 2008–G511; Docket 2009–0008; Sequence 1]

RIN 3090–AI85

General Services Administration Acquisition Regulation; GSAR Case 2008–G511; Rewrite of Part 541, Acquisition of Utility Services

AGENCY: Office of the Chief Acquisition Officer, General Services Administration (GSA).

ACTION: Proposed rule.

SUMMARY: The General Services Administration (GSA) is proposing to amend the General Services Administration Acquisition Regulation (GSAR) to revise the section of GSAR Part 541 that provides requirements for the acquisition of utility services.

DATES: Interested parties should submit written comments to the Regulatory Secretariat on or before July 20, 2009 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by GSAR Case 2008–G511 by any of the following methods:

• *Regulations.gov: http://www.regulations.gov.*

Submit comments via the Federal eRulemaking portal by inputting ''GSAR Case 2008–G511'' under the heading ''Comment or Submission''. Select the link ''Send a Comment or Submission'' that corresponds with GSAR Case 2008–G511. Follow the instructions provided to complete the ''Public Comment and Submission Form''. Please include your

name, company name (if any), and ''GSAR Case 2008–G511'' on your attached document.

• *Fax:* 202–501–4067.

• *Mail:* General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW, Room 4041, ATTN: Hada Flowers, Washington, DC 20405.

Instructions: Please submit comments only and cite GSAR Case 2008–G511 in all correspondence related to this case. All comments received will be posted without change to *http://www.regulations.gov*, including any personal and/or business confidential information provided.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Lori Sakalos at (202) 208–0498. For information pertaining to the status or publication schedules, contact the Regulatory Secretariat (VPR), Room 4041, GS Building, Washington, DC 20405, (202) 501–4755. Please cite GSAR Case 2008–G511.

SUPPLEMENTARY INFORMATION:

A. Background

The GSA is amending the GSA Acquisition Regulation (GSAR) to update the text addressing GSAR Part 541, Acquisition of Utility Services, and Subpart 541.XX, Solicitation Provision and Contract Clauses. This rule is a result of the General Services Administration Acquisition Manual (GSAM) rewrite initiative undertaken by GSA to revise the GSAM to maintain consistency with the Federal Acquisition Regulation (FAR) and implement streamlined and innovative acquisition procedures that contractors, offerors, and GSA contracting personnel can utilize when entering into and administering contractual relationships. The GSAM incorporates the GSAR as well as internal agency acquisition policy.

The GSA will rewrite each part of the GSAR and GSAM, and as each GSAR part is rewritten, will publish it in the **Federal Register**.

This rule covers the GSAR portion of Part 541. Subpart 541.XX is identified as ''shaded'' for regulatory coverage. Currently, there are no GSA-unique clauses in Part 541. However, Subpart 541.XX, Solicitation Provisions and Contract Clauses, is added to prescribe two GSA—unique clauses. These clauses are outlined in section 541.501, Solicitation Provisions and Contract Clauses, and shall be inserted by contracting officers in all utility contracts and solicitations. The first clause, GSAR 552.241–XX, Availability of Funds for the Next Fiscal Year or Quarter, is added as regulatory text for inclusion in all GSA utility solicitations and contracts instead of FAR 52.232–19. The second clause, 552.241–YY/552.233–71, Disputes (Utility Contracts), was relocated from GSAM Part 533 and added to this subpart to specifically align with utility acquisitions.

There were no public comments received in response to the Advanced Notice of Proposed Rulemaking published in the **Federal Register** at 71 FR 7910 on February 15, 2006.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The General Services Administration does not expect this proposed rule to 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 revisions are not considered substantive. The revisions only update and reorganize existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The GSA will consider comments from small entities concerning the affected GSAR Parts 541 and 552 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (GSAR case 2008–G511), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the GSAM do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. Chapter 35, *et seq.*

List of Subjects in 48 CFR Parts 541 and 552

Government procurement.

Dated: May 5, 2009.

Al Matera,

Director, Office of Acquisition Policy.

Therefore, GSA proposes to amend 48 CFR Chapter 5 as set forth below:

1. Add Part 541 to read as follows:

PART 541—ACQUISITION OF UTILITY SERVICES

Subpart 541.XX—Solicitation Provision and Contract Clauses

Sec.

541.501 Solicitation provision and contract clauses.

2. The authority citation for 48 CFR part 541 reads as follows:

Authority: 40 U.S.C. 121(c).

541.501 Solicitation provision and contract clauses.

In addition to the solicitation terms, provisions and contract clauses at FAR 41.501(c), the contracting officer shall include the following clauses—

(a) *552.241–XX, Availability of Funds for the Next Fiscal Year or Quarter.* As prescribed in 541.501, insert the clause 552.241–XX, Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232–19, in all utility acquisitions.

(b) *552.241–YY, Disputes (Utility Contracts).* As prescribed in 541.501, insert clause 552.241–YY, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

PART 552—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. The authority citation for 48 CFR part 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

4. Add sections 552.241–XX and 552.241–YY to read as follows:

552.241–XX Availability of Funds for the Next Fiscal Year or Quarter.

As prescribed in 541.501, insert the clause 541.241–XX, Availability of Funds for the Next Fiscal Year or Quarter, instead of FAR 52.232–19, in all utility acquisitions.

AVAILABILITY OF FUNDS FOR THE NEXT FISCAL YEAR OR QUARTER (DATE)

Funds are not presently available for performance under this contract beyond _____. The Government's obligation for performance of this contract beyond that date is contingent upon the availability of appropriated funds from which payment for contract purposes can be made. No legal liability on the part of the Government for any payment may arise for performance under this contract beyond _____, until funds are made available to the Contracting Officer for performance and until the Contractor receives notice of availability, to be confirmed in writing by the Contracting Officer.

(End of clause)

552.241–YY Disputes (Utility Contracts).

As prescribed in 541.501, insert clause 552.241–YY, Disputes (Utility Contracts), in solicitations and contracts for utility services subject to the jurisdiction and regulation of a utility rate commission.

DISPUTES (UTILITY CONTRACTS) (DATE)

The requirements of the Disputes clause at FAR 52.233–1 are supplemented to provide that matters involving the interpretation of tariffed retail rates, tariff rate schedules, and tariffed terms provided under this contract are subject to the jurisdiction and regulation of the utility rate commission having jurisdiction.

(End of clause)

[FR Doc. E9–11654 Filed 5–18–09; 8:45 am]

BILLING CODE 6820–61–S

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R3–ES–2008–0030; 92210–1111–0000–FY09–B3]

Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Coaster Brook Trout as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the coaster brook trout (*Salvelinus fontinalis*) as endangered under the Endangered Species Act of 1973, as amended (Act). The petition also asked that critical habitat be designated for the species. After review of all available scientific and commercial information, we find that the coaster brook trout is not a listable entity under the Act, and therefore, listing is not warranted. We ask the public to continue to submit to us any new information that becomes available concerning the taxonomy, biology, ecology, and status of coaster brook trout and to support cooperative conservation of coaster brook trout within its historical range in the Great Lakes.

DATES: The finding announced in this document was made on May 19, 2009.

ADDRESSES: This finding is available on the Internet at *http://www.regulations.gov* at Docket Number [FWS–R3–ES–2008–0030]. Supporting documentation for this finding is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Region 3 Fish and Wildlife Service Regional Office, 1 Federal Drive, Bishop Henry Whipple Federal Building, Fort Snelling, MN 55111. Please submit any new information, materials, comments, or questions concerning this finding to the above address, Attention: Coaster brook trout.

FOR FURTHER INFORMATION CONTACT: Jessica Hogrefe, Region 3 Fish and Wildlife Service Regional Office (*see* **ADDRESSES**) (telephone 612–713–5346; facsimile 612–713–5292). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*) requires that, for any petition to revise the Lists of Endangered and Threatened Wildlife and Plants that contains substantial scientific and commercial information that listing may be warranted, we make a finding within 12 months of the date of our receipt of the petition on whether the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted, but the immediate proposal of a regulation implementing the petitioned action is precluded by other pending proposals to determine whether species are threatened or endangered, and expeditious progress is being made to add or remove qualified species from the List of Endangered and Threatened Species. Section 4(b)(3)(C) of the Act requires that we treat a petition for which the requested action is found to be warranted but precluded as though resubmitted on the date of such finding, that is, requiring that we make a subsequent finding within 12 months. Such 12-month findings must be published in the **Federal Register.** This notice constitutes our 12-month finding for the petition to list the U.S. population of coaster brook trout.

Previous Federal Action

The Sierra Club Mackinac Chapter, Huron Mountain Club, and Marvin J. Roberson filed a petition, dated February 22, 2006, with the Secretary of the Interior to list as endangered the ''naturally spawning anadromous (lake-run) coaster brook trout throughout its known historic range in the conterminous United States'' and to designate critical habitat under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioners, as required in 50 CFR 424.14(a). On behalf of the petitioners, Peter Kryn Dykema, Secretary of the Huron Mountain Club, submitted supplemental information, dated May 23, 2006, in support of the original petition. This supplemental information provided further information on the species' status and biology, particularly for brook trout in the Salmon Trout River.

On September 13, 2007, we received a 60-day notice of intent to sue over the Service's failure to determine, within 1 year of receiving the petition, whether the coaster brook trout warrants listing. Under section 4 of the Act, the Service is to make a finding, to the maximum extent practicable within 90 days of receiving a petition, that it does or does not present substantial scientific or commercial information indicating that the petitioned action may be warranted. Further, the Act requires that, within 12 months of receiving a petition found to present substantial information, the Service must determine whether the petitioned action is warranted. A complaint was filed in U.S. District Court in the District of Columbia on December 17, 2007, for failure to make a timely finding (*Sierra Club, et al.* v. *Kempthorne,* No. 1:07–cv–02261 (D.D.C. December 17, 2007)). The Service reached a negotiated settlement with the plaintiffs to submit the 90-day finding to the **Federal Register** by March 15, 2008. We published a ''substantial'' 90-day finding March 20, 2008. The negotiated settlement further required the Service to publish the 12-month finding in the **Federal Register** by December 15, 2008. The deadline for the 12-month finding was extended to April 15, 2009, by mutual consent. On April 15, 2009, we filed an unopposed motion to extend the deadline for the coaster brook trout 12-month finding to May 12, 2009.

Species Information

Species Description

Brook trout (*Salvelinus fontinalis*), also called brook char or speckled trout, is one of three species in the genus *Salvelinus* (chars) native to north and eastern North America; the others being lake trout (*S. namaycush*) and Arctic char (*S. alpinus*). The chars are a subgroup of fishes in the salmon and trout subfamily (Salmoninae) that is distinct from the ''true'' trout and salmon subgroups.

The brook trout throughout its range in eastern North America exhibits considerable variation in growth rate, color, and other features, but generally can be distinguished from other char and trout species by its olive-green to dark brown back with a light yellow-brown vermiculate pattern, sides with large yellow-brown spots and blue halos surrounding small, sporadic red and orange spots. Pectoral, pelvic, anal, and lower caudal fin have leading edges of white bordered by black with the

remainder predominantly reddish to orange. Sea-run brook trout become silver with purple iridescence and show red spots on the sides (Scott and Crossman 1973, p. 208).

Distribution

The historical range of native brook trout extends along Hudson Bay in Canada across the Provinces of Manitoba, Ontario and Quebec, to Newfoundland and Labrador and south to Nova Scotia and New Brunswick in Canada; and from eastern Iowa through northern Illinois, northern Ohio, and the Great Lakes drainage (Minnesota, Michigan, Wisconsin), through the New England States (New York, New Hampshire, Vermont, Maine, Massachusetts, Pennsylvania, New Jersey), large New England rivers (such as the Hudson River and Connecticut River), and through the Appalachian Mountains in Maryland, Virginia, West Virginia, North Carolina, South Carolina, Tennessee, south to Georgia (MacCrimmon and Campbell 1969, pp. 1700–1702; MacCrimmon *et al.* 1971, p. 452; Scott and Crossman 1973, pp. 209–210; Power 1980, p. 142). Naturalized populations of brook trout were established as early as the late 1800s beyond the historical native range by introductions to waters in western North America, South America, Eurasia, Africa, and New Zealand (MacCrimmon and Campbell 1969, p. 1699, pp. 1703–1717). The current range of native brook trout still extends through Canada and down to Georgia in the U.S., but in many locations, populations have been completely extirpated or have contracted within this range towards upper stream reaches, higher altitudes, or headwaters (EBJV 2006, p. 2).

Distribution of Brook Trout in the Great Lakes

According to Bailey and Smith (1981, p. 1549) and MacCrimmon and Campbell (1969, p. 1701), brook trout are native to the lakes and tributaries of Lakes Superior, Huron, Michigan, and the tributaries of Lakes Erie and Ontario. Brook trout are not believed to have been present in Minnesota streams above barrier falls to Lake Superior (Smith and Moyle 1944, p. 119) or throughout most of the lower peninsula of Michigan (MIDNR 2008a, pp. 1–2; MacCrimmon and Campbell 1969, p. 1704).

Habitat Requirements

Brook trout require clear, cold, well-oxygenated water to thrive. They are generally found in water ranging between 41–68° Fahrenheit (5–20° Celsius), with their likely preferred temperature falling near the middle of this range (Power 1980, p. 172). Thermal requirements within this range vary by life cycle phase and season (Scott and Crossman 1973, p. 211; Blanchfield and Ridgway 1997, p. 750; Baril and Magnan 2002, pp. 177–178).

The brook trout spawns in late summer or autumn, the date varying with latitude and temperature. Spawning takes place most often over gravel beds but may be successfully accomplished over a variety of substrates if there is spring upwelling or a moderate current (Scott and Crossman 1973, p. 210). Power (1980, p. 151) describes rangewide brook trout spawning, which occurs in the fall, when day length and temperature are decreasing. In northerly regions and at high elevations, brook trout may spawn as early as late August and spawning may be delayed until December in southern areas. As is typical for salmonids, females prepare redds (hollows scooped out for spawning) in suitable gravel substrate. The female then deposits her eggs in the redd where they are fertilized by a male. After spawning there is no further parental involvement with the young. The redd protects the eggs and allows an adequate exchange of dissolved gases and other materials during development.

Brook trout are carnivorous, feeding opportunistically upon a variety of prey, such as worms, leeches, crustaceans, aquatic insects, terrestrial insects, spiders, mollusks, and fish (Scott and Crossman 1973, p. 212). Anadromous (migrating from salt water to spawn in fresh water) forms vary their feeding behavior and prey items based on their age and the environment, marine or riverine, they are occupying (Newman and Dubois 1997, p. 9). Brook trout also show diverse foraging behaviors; some individuals may be sedentary, eating crustaceans from the lower portion of the water column, whereas others in the same system may be more active and eat insects from the upper portion of the water column (McLaughlin *et al.* 1999, p. 386). This resource polymorphism may play a supplementary role in the extensive adaptive radiation (evolution of ecological variability within a rapidly multiplying lineage; Smith and Skúlason 1996) observed in this species.

Genetics of Brook Trout

A large amount of genetic variation for brook trout is distributed among populations (large Fst values). This pattern is heavily influenced by the diverse ecological and life-history characteristics of brook trout populations (population connectivity or isolation, philopatric tendency). This pattern of highly differentiated populations of brook trout is found at small and large geographic scales. Population genetic structuring is common in brook trout throughout its range (Angers *et al.* 1999, pp. 1049–1050). Like many salmonids, brook trout tend to have a hierarchical population structure resulting from the hierarchical design of the networks of streams and lake or coastal areas in which they live, and a complicated life cycle that leads to strong local adaptations. Taxonomic resolution can be even more complicated at the lake level when lakes include sympatric (occupying the same or overlapping geographic area without interbreeding) but genetically divergent brook trout populations such as in Lake Mistassini in Canada (Fraser and Bernatchez 2008, p. 1197). This degree of genetic divergence that forms among populations is reflective of the reproductive connections (isolation) among the populations across the range of the taxon.

Six distinct genetic mitochondrial (mtDNA) clades have been identified throughout the range of brook trout in eastern North America (Danzmann *et al.* 1998, p. 1307). These mtDNA clades reflect historical isolation in glacial refugia or long periods of isolation in nonglacial areas in the southern part of the species' range. The Wisconsin glacial advance which covered portions of Canada covered all five Great Lakes 15,000 years ago (Bailey and Smith 1981, p. 1543). As these glaciers receded, brook trout recolonized the lakes from the Mississippi and Atlantic refugia (Danzmann *et al.* 1998, pp. 1308, 1312). Given this pattern of glaciation, genetic diversity is greatest at the southern portion of the species' range and gradually decreases northward (Danzmann *et al.* 1998, pp. 1310–1311). As the most geographically isolated (for tens of thousands of years), brook trout in the southern part of the species' range (along the Appalachian Mountains south to Georgia) are the most diverse, containing all six mtDNA clades. The Great Lakes contains three of the six mtDNA clades. Throughout the northern portion of their range in Canada, brook trout are the least genetically diverse, with only a single mtDNA clade present. Within each of these lineages, there is evidence to suggest that selection is driving rapid phenotypic divergence in some populations.

Results based on microsatellite DNA variation identified nine distinct genetic assemblages of brook trout in the U.S. (King 2009, unpub. data). Assemblages from the nonglacial southern part of the species' range (along the Appalachian Mountains from Pennsylvania to Georgia) in the U.S. are the most genetically divergent, and this divergence among the assemblages generally decreases as the range progresses northward.

Genetics of Brook Trout in the Great Lakes

Populations from Lake Superior and tributaries to Lake Erie form two of the nine genetic assemblages of brook trout in the U.S. The Lake Erie populations are the most divergent assemblage from the northern part of the species' range. Lake Superior populations are similar in the degree of genetic divergence to the remaining northern assemblages grouping with the average genetic distance between brook trout populations in the U.S. Samples from the rest of the Great Lakes were not available for analysis. Although brook trout in the Great Lakes do not contain any wholly unique mtDNA clades, they do contain a large amount of the genetic variation in a confined portion of the range (Danzmann *et al.* 1998, pp. 1310–1311).

Native populations of brook trout in Lake Superior in most cases have retained their native genetic characteristics despite the stocking of hatchery fish from sources outside and within the Lake Superior basin. In Lake Superior, the intensity and purpose of stocking has varied over time and space. For example, Minnesota tributaries to Lake Superior have been stocked with hatchery strains that originated from outside of the Great Lakes Basin to provide fishing opportunities above fish passage barriers (Wilson *et al.* 2008, p. 1312). Until the early 1990s, most of the stocked fish in Lake Superior were domesticated strains from outside the Great Lakes basin (Schreiner *et al.* 2008, p. 1357), although many stocking events were undocumented and records of early stocking events are incomplete (Wilson *et al.* 2008, p. 1312). These stocking efforts were not targeted at rehabilitation and from that perspective, results were poor. The stocked fish were not behaviorally or evolutionarily adapted to the environment in which they were planted, criteria known to limit survival and reproductive success (Schreiner *et al.* 2008, p. 1357). Burnham-Curtis (2001, p. 2) concluded that hatchery fish have had little reproductive success in Lake Superior streams based on her examination of 36 tributaries to Lake Superior and 9 hatchery stocks outplanted into the lake. However, the genetic methods used by Burnham-Curtis provided low power to detect genetic introgression of hatchery fish into native populations (Wilson *et al.* 2008, p. 1312). A recent study by D'Amelio and Wilson (2008, p. 1215) used genetic methods with high power to detect genetic introgression of hatchery fish into natural populations. This study documented only low levels of genetic introgression of Lake Nipigon hatchery fish into native populations of brook trout from six tributaries to Lake Superior's Nipigon Bay (D'Amelio and Wilson 2008, p. 1222), despite decades of stocking. A study by Scribner *et al.* (2006, pp. 3–4) examined nine brook trout populations from Lake Superior tributaries on the south shore of Michigan and four hatchery strains outplanted into those tributaries. This study used similar methods to D'Amelio and Wilson (2008). Scribner *et al.* (2006, p. 8) concluded that hatchery stocking appears to have minimal if any impact of on brook trout.

Brook Trout Life-History Diversity

An individual's ability to produce multiple phenotypes (visible or observable characteristics) in response to its environment is termed phenotypic plasticity (Scheiner 1993, p. 36). Recent studies have recognized the role of phenotypic plasticity as a major source of phenotypic variation in natural populations (Price *et al.* 2003, p. 1438). The brook trout exhibits remarkable phenotypic plasticity across its natural range. This plasticity allows it to thrive in a variety of environments, from cold subarctic regions, through temperate zones and in southern refugia in eastern North America, and in a range of places where it has been introduced (Power 1980, p. 142). Although primarily a stream-dwelling species, brook trout also occupy inland lakes and coastal waters. Because of the variety of the freshwater, estuary, and ocean environments, migratory plasticity is also favored. The brook trout's dispersal subsequent to receding glaciation, and separation into isolated breeding stocks in diverse habitats subject to an array of natural and man-made influences have all contributed to this variability (Power 1980, p. 142).

Brook trout display considerable life-history variation throughout their native range (Huckins and Baker 2008, p. 1229). Brook trout across its range exhibit a variety of life-history types (polymorphisms or ecotypes), including fluvial (stream-dwelling), adfluvial (migrating between lakes and streams), lacustrine (lake-dwelling), and anadromous (migrating from salt water to spawn in fresh water) forms. Understanding life-history diversity in a species requires knowledge of the evolutionary history, ecological setting, and reproductive relationships among ecotypes. Reproductive interactions between ecotypes are reflected by the magnitude and pattern of genetic differentiation observed between life-history phenotypes at neutral genetic markers. The expression of migratory behavior (expressed as the adfluvial and anadromous ecotypes) by any individual fish will be partially in direct response to its environment. Phenotypic expression of more than one form may be expected in a population located in a variable environment containing habitats for several ecotypes. The amount of phenotypic plasticity a population will exhibit for the migratory trait also has a heritable genetic basis and will be determined by the intensity and type of selective pressures that population experiences (Via and Lande 1985, pp. 517–519; Theriault *et al.* 2008, pp. 418–419).

Adoption of migratory adfluvial form or stream-resident life-history form in brook trout has been modeled under a conditional strategy framework where environmentally influenced threshold traits determine which ecotype a fish will adopt (Hendry *et al.* 2004, pp. 124–125). Growth rate efficiencies, body size, and concentration of juvenile hormone have all been identified as potential threshold traits (Theriault and Dodson 2003, pp. 1155–1157). Theoretical work by Ridgway (2008, p. 1185) and Uller (2008, pp. 436–437) also provide information to suggest parental effects are important to the expression of alternate ecotypes of brook trout. These parental effects describe an affect of the parental phenotype on the offspring's phenotype such as coaster females producing larger eggs and spawning in different locations from stream-resident ecotypes, influencing the habitat use (Morinville and Rasmussen 2006, pp. 701–702) and growth rate at the juvenile stage (Perry *et al.* 2005, p. 1358). These differences in growth rate and habitat use impact potential threshold traits.

Work on sympatric brook trout life forms at young ages largely comes from a few studies on anadromous populations. Morinville and Rasmussen (2003) studied the bioenergetics of young brook trout exhibiting anadromous migratory and stream-resident life tactics. They found that the anadromous migrants have higher metabolic costs and had consumption rates 1.4 times that of stream residents but growth efficiencies of the anadromous form were lower than that of residents. Spatial utilization of habitat differed among the life tactics as well, with migratory individuals occupying faster-flowing waters compared to the resident fish which used pool areas (p. 408). They concluded that migrant brook trout have noticeably different energy budgets than resident brook trout from the same system (p. 406). Morinville and Rasmussen (2008) also investigated morphological differences between life

tactics. The authors concluded that migrant brook trout were found to be more streamlined (narrower and shallower bodies) than resident brook trout, and these differences persisted into the marine life of the migrant fish (pp. 175, 183). The differences were powerful enough to derive discriminant functions using five of the measured traits allowing for accurate classification of juvenile brook trout as either migrant or resident with an overall correct classification rate of 87 percent.

A study by Theriault *et al.* (2007b, p. 61) found that sympatric anadromous and fluvial brook trout in the Sainte-Marguerite River in Quebec belonged to a single gene pool. Phenotypic plasticity is, therefore, a major force driving the expression of these two life histories from this population. Evolution of phenotypic plasticity in this population was influenced by mating systems with most of the mating between different morphotypes occurring between fluvial males and anadromous females. Additional work in this system demonstrated significant heritability for life-history tactic and for body size (Theriault *et al.* 2007a, pp. 7–8) indicating expression of life-history tactic in this population can be effected by natural or artificial selection.

Life-History Diversity in Great Lakes Brook Trout

Fish that complete their life cycle exclusively in tributaries to the Great Lakes exhibit the fluvial life history and are defined as stream residents. ''Coaster'' (the subject of the petition) is a regional term for a life-history variant of brook trout in the Great Lakes (Burnham-Curtis 2001, p. 2; Wilson *et al.* 2008, p. 1) which use lake waters of the Great Lakes for all or a portion of its life cycle (Becker 1983, p. 320). The coaster form can be further divided into an adfluvial ecotype that migrates from the stream to the lake and back into tributaries to spawn and a lacustrine ecotype that completes its life cycle entirely within the lake (Huckins *et al.* 2008, p. 1323). In the Great Lakes region, spawning usually occurs from mid-September through mid-November. Distinct life histories associated with the coaster and stream-resident types result in different physical, demographic, and ecological characteristics for the forms (Huckins *et al.* 2008, p. 1337; Huckins and Baker 2008, p. 1241; Ridgway 2008, p. 1185). Specifically, coasters tend to live longer than stream residents (5–8 years versus less than 5 years), reach maturation later (females at 2–4 years versus 1–2 years), attain larger length and weight as adults (12–25 inches and 0.75–8 pounds (30–64 centimeters (cm) and 341–3632 grams (g)) versus (5–15 inches (13–38 cm) and (less than 1 pound (<454 g), be more fecund (1500–3000 eggs per female versus 100–1500 eggs per female), and move greater distances (up to 19–217 miles (30–350 kilometers (km)) versus less than 19 miles (30 km)) (Scott and Crossman 1973, pp. 208, 210, 211; Power 1980, p. 157; Becker 1983, pp. 318, 320; Ritchie and Black 1988, pp. 19, 50, 51; Quinlan 1999, pp. 11, 12, 14, 16, 17, 20; Swainson 2001, pp. 40, 41, 60, 64; WIDNR and USFWS 2005, p. 16; Huckins and Baker 2008, pp. 1239, 1241; Huckins *et al.* 2008, pp. 1328, 1329, 1337; Mucha and Mackereth 2008, p. 1210; Schram 2008a, pers. comm.; Chase 2008, pers. comm.).

Coasters have been historically documented in Lakes Superior, Huron, and Michigan brook trout populations (Bailey and Smith 1981, p. 1549; Dehring and Krueger 1985, p. 1; Enterline 2000, p. 1; MIDNR 2008a, pp. 1–2). However, Lake Superior is the only Great Lake with extant coaster forms of brook trout, and all available literature is from this area. Coasters in the Great Lakes are found in Canada and the U.S. in substantially fewer locations than they were historically (Newman *et al.* 2003, p. 39). Populations in the Great Lakes basin with these life-history forms are documented within Canada in tributaries to Nipigon and Black Bays, the Nipigon River, Lake Nipigon and the Pancake River in the eastern part of Lake Superior (Newman *et al.* 2003, p. 39; Chase and Swainson 2009, pers. comm.). Within the U.S. portion of the Great Lakes basin, populations that express the coaster form occur in Isle Royale National Park in Tobin Harbor, Big and Little Siskiwit Rivers, and Washington Creek as well as on the south shore of Lake Superior in the Salmon Trout River (Newman *et al.* 2003, p. 39).

As previously stated, brook trout populations within the upper Great Lakes exhibit fluvial, adfluvial, and lacustrine life-history forms, coasters comprising the latter two forms. Populations of brook trout in Lake Superior likely function as types of metapopulations, with the coaster life forms serving as dispersers (D'Amelio and Wilson 2008, p. 1222; Sloss *et al.* 2008, p. 1249). The viability of a metapopulation is strongly contingent upon maintaining dispersal among populations. Although brook trout exhibit spawning site fidelity, individuals exhibiting the adfluvial life forms in Lake Superior have also been shown to stray or disperse among streams (D'Amelio and Wilson 2008, p. 1222; Mucha and Mackereth, p. 1211). The long-term persistence of a metapopulation requires a balance between local extinction and recolonization of constituent populations (*see* Hanski 1998 for a review of metapopulations). Dispersing individuals offset local population extinction by providing a means for recolonization (Brown and Kodric-Brown 1977, p. 448; Reeves *et al.* 1995, p. 340). Dispersing individuals also provide for gene flow among discrete populations, countering losses of genetic fitness while still allowing the development and distribution of unique adaptive traits (Ingvarsson 2001, p. 63; Tallmon *et al.* 2004, p. 494). Thus, the coaster life-history forms are important to the long-term viability of brook trout populations throughout Lake Superior.

Genetic studies of stream-resident (fluvial life form) brook trout show substantial genetic structuring among populations in Michigan, Wisconsin, Minnesota, and Canada characterized by distinct regional groupings or metapopulations (Burnham-Curtis 1996, pp. 10–11; Burnham-Curtis 2001, p. 10; Sloss *et al.* 2008, p. 1249; Wilson *et al.* 2008, p. 1312; Scribner *et al.* 2008, p. 9). In studies aimed at determining genetic differences between the coaster polymorphism and stream-resident fish occupying tributaries connected to the lake, molecular genetic work in Lake Superior indicates that coasters and stream-resident brook trout occupying tributaries to the first barrier are parts of the same population (D'Amelio and Wilson. 2008, p. 1221; Scribner *et al.* 2008, p. 9; Stott 2008, p. 5). Work investigating the genetic differences of various tributaries to the lake found distinct differences among populations of brook trout in each tributary to Lake Superior (Burnham-Curtis 1996, p. 10; Burnham-Curtis 2000, p. 7; Burnham-Curtis 2001, p. 10; D'Amelio and Wilson 2008, p. 1222; Sloss *et al.* 2008, p. 1249; Scribner *et al.* 2008, p. 9). Within Lake Superior, regional genetic differences are evident between brook trout populations in Nipigon Bay, Isle Royale, and Lake Nipigon-Grand Portage (Wilson *et al.* 2008, p. 1313). Adfluvial brook trout are thought to be the mechanism providing genetic communication among these regional aggregations and straying of a coaster was documented in Nipigon Bay and at Isle Royale (D'Amelio *et al.* 2008, p. 1347; Stott 2008, p. 4). Sloss *et al.* (2008) investigated genetic differentiation among four Wisconsin populations of stream-resident brook trout. His work found significant differentiation among populations to the point the authors observed that for these populations,

there appears to be a near complete lack of gene flow among them resulting in genetic drift (Sloss *et al.* 2008, p. 1249). None of these isolated populations are thought to currently have adfluvial ecotypes as part of the population. This observation is consistent with the contemporary lack of an adfluvial form that historically provided the regional genetic connection for the three metapopulations previously mentioned.

As characterized in the entire brook trout species, phenotypic plasticity and adaptive radiation (Schluter 2000, p. 1) appear to represent the continuum of evolutionary processes underlying the expression of life-history variation in populations of brook trout in Lake Superior (Ardren 2008, pp. 1–2). As stated above, plastic responses allow individuals to obtain high fitness in new environments. Alternatively, adaptive genetic differentiation among populations may provide evolutionary advantages. First, there are fitness costs to being highly plastic. For example, plastic genotypes need to maintain sensory and developmental pathways in order to induce plastic responses that are not required by nonplastic genotypes (Relyea 2002, pp. 272–273). Secondly, if the plastic response to a new environment is insufficient and directional selection favors an extreme phenotype, there will be genetic evolution of the trait (adaptive radiation). Therefore, if a population of brook trout experiences divergent selection in stable environments, we would expect the ecotypes to evolve genetic differences and nonplastic forms because the cost of maintaining the phenotypic plasticity would be too high. Findings in the Salmon Trout River indicate phenotypic plasticity plays a major role in the expression of the adfluvial and fluvial ecotypes while information from Isle Royale indicates adaptive radiation has occurred separating adfluvial and lacustrine coaster ecotypes. Migratory plasticity could be favored in situations where adfluvial and stream-resident brook trout co-occur because the environments they occupy are highly variable (Huckins *et al.* 2008, p. 1324; Ridgway 2008, pp. 1186–1187). The alternating selection patterns associated with these diverse and variable environments create a fitness advantage for plastic genotypes over nonplastic genotypes. In addition, the metapopulation structure mediated by coaster brook trout (D'Amelio and Wilson 2008, p. 1222; Ridgway 2008, p. 1181) favors plasticity over adaptive genetic differences among populations because dispersal among populations increases environmental heterogeneity and favors an increase in trait reaction norm (the pattern of visible characteristics produced by a given genetic makeup of an organism under different environmental conditions; Sultan and Spencer 2002, p. 281). Alternatively, the adfluvial and lacustrine ecotypes on Isle Royale are physically isolated and in this situation, adaptive radiation would be favored over the evolution of phenotypic plasticity (Price 2003, pp. 1437–1438).

If phenotypic plasticity is the source of differences observed between stream-resident and brook trout, then these ecotypes are expressed in a single population and represent the extremes of the reaction norm for migratory behavior. Scribner *et al.* (2008, p. 10) did not observe genetic differences between sympatric adfluvial brook trout and presumed stream-resident ecotypes in the Salmon Trout River on the south shore of Lake Superior. Analysis of microsatellite DNA provided high statistical power to detect genetic differences between ecotypes. In fact, the authors did observe highly significant genetic differences between brook trout sampled above and below the impassable waterfall in this system. In addition, when collections from the Salmon Trout River were compared with native brook trout populations sampled from 10 other nearby tributaries, the lowest pairwise measure of genetic distinction was observed between the resident and adfluvial ecotypes sampled below the waterfall in the Salmon Trout River. D'Amelio and Wilson (2008, p. 1221) used similar methods to document that adfluvial brook trout in the Nipigon Bay were not genetically distinct from presumed resident brook trout sampled from tributaries to the bay. These findings in the Salmon Trout River and the Nipigon Bay area indicate phenotypic plasticity likely plays a major role in the expression of the adfluvial and fluvial ecotypes.

Theriault *et al.* (2008, pp. 417–419) used an eco-genetic model to demonstrate that intensive harvest of anadromous fish reduces the probability of migration in brook trout over the course of 100 years. This study provides a basic framework for understanding how fisheries-induced selection (mortality from fishing) influences the evolution of alternate life-history tactics that are expressed by phenotypic plasticity. For example, directional selection imposed by fishing-induced mortality on coaster brook trout confers high fitness to the survivors of the fishery but not necessarily with respect to natural selection. There is also uncertainty regarding the rate of recovery for expression of the adfluvial form after fishing selection is reduced or eliminated because there is not automatically equal directional selection in the opposite direction for expression of the adfluvial form. In the case of the coaster, habitat degradation and competition from nonnative salmon may exclude brook trout from habitats that would allow juvenile brook trout to achieve growth rates necessary to express the adfluvial coaster ecotype (Huckins *et al.* 2008, pp. 1337–1339). Additionally, metapopulation structure mediated by coaster brook trout (D'Amelio *et al.* 2008, p. 1348) favors plasticity over adaptive genetic differences among populations (Sultan and Spencer 2002, p. 281). Loss of coasters in most populations in Lake Superior has reduced migration among populations (Sloss *et al.* 2008, p. 1249) resulting in a reduction in environmental heterogeneity favoring a decrease in the reaction norm of traits. These studies demonstrate that human-induced selective forces can alter the reaction norm for a population which can result in the loss of plasticity needed to express the coaster life-history forms.

Brook trout experts contend that if environmental conditions are suitable (*i.e.,* threats are abated), the adfluvial life form of brook trout populations in Lake Superior can be readily reconstituted from purely resident stock (USFWS 2009, p. 8); this is believed unlikely for other salmonids (*e.g., Oncorhynchus mykiss*). This assertion is predicated on three premises. First, adult brook trout of one ecotype may produce offspring of the other ecotype. For example, two resident fish could breed and produce offspring that exhibit both the adfluvial and fluvial life-history strategies. Further, stream-resident and adfluvial ecotypes from the same population interbreed. This means that within a stream, individuals that exhibit the resident and adfluvial forms reside within and are drawn from the same population. Second, the chars (genus *Salvelinus*), including brook trout, show greater phenotypic plasticity than most other salmonids. Adfluvial brook trout do not require substantial physiological changes (for example, smoltification) to successfully migrate and survive in the lake environment. Thus, the fitness costs to maintain the genetic code for plasticity are likely less relative to saltwater-dwelling salmonids. Hence, it is reasonable to expect a brook trout population will maintain the ability (genetic code) to express the full array of life forms over time. Third, life-history strategy for

brook trout is strongly controlled by environmental conditions or triggers. As such, the experts believe that, provided the necessary environmental conditions or triggers exist, life forms can be expressed even if temporally lost from a population.

Current Population Status of Brook Trout

The current range of native brook trout remains generally unchanged, extending through much of eastern North America, from eastern Canada, south through the Great Lakes and northeast to Georgia in the U.S. However, populations throughout this range have experienced significant declines. The current range of native brook trout started diminishing over the past 200 years as a result of ecosystem disruption following European settlement of North America (Newman and DuBois 1997). Habitat destruction by forestry, agricultural practices, industrial water use, dams, and pollution were responsible for this decline (Power 1980, p. 141). Brook trout were once present in nearly every coldwater stream and river in the eastern U.S. and Canada, but populations began to disappear as early agriculture, timber, and textile practices and industries cleared the region's protective forests and degraded the streams with sediment and pollution (Power 1980, p. 141; EBJV 2006, p. 1).

Throughout much of their natural range, remaining stream populations have retreated into extreme headwater, high elevation, or upstream reaches (EBJV 2006, p. 2). In the eastern U.S., healthy stream populations of brook trout (wild brook trout occupying 90–100 percent of their historical habitat) exist in only 5 percent of subwatersheds (EBJV 2006, p. 2). Anadromous stocks along the U.S. coast and in many Canadian rivers have been decimated by dams and estuarine pollution (Power 1980, p. 195). In the southern portion of its range (southern Appalachian Mountains), brook trout populations have declined by 75 percent, persisting now only in isolated headwater reaches (EBJV 2006, p. 6).

Various threats are persistent across the brook trout range. Most of them involve habitat loss and degradation, such as poor land management, high water temperature, sedimentation (roads), urbanization, degraded riparian habitat, stream fragmentation (roads), dam inundation/fragmentation, and forestry practices (EBJV 2006, pp. 3, 5). Poor land management associated with agriculture (such as clearing streamside vegetation, over-grazing sensitive areas, ineffectively managing nutrients, and ditching small streams) ranks as the most widely distributed impact to brook trout across the eastern U.S. (EBJV 2006, p. 2). Climate change presents a significant threat to brook trout, with some southern portions predicted to lose between 53–97 percent of their brook trout habitat due to high water temperatures (Flebbe 2006, p. 1379). While some uncertainty remains about the exact temperature increase that will result from climate change, the present range of brook trout is predicted to shrink, particularly in the southern Appalachians (Hudy *et al.* 2005, p. 5). Nonnative species are now present throughout most of the range (Parsons 1973, p. 5). Interactions with these nonnatives are considered to be among the most significant biological threats to brook trout rangewide (Peck 2001, p.13; Hudy *et al.* 2005, p. 3; EBJV 2006, pp. 2–3, 5). Brown trout have been shown to displace or reduce stream populations of brook trout throughout their natural range (Nyman 1970, p. 348; Fausch and White 1981, p. 1226; Waters 1983, p. 144). Encroachment by rainbow trout has also been documented in the contraction of the range of native brook trout across their native range (Kelly *et al.,* 1980, pp. 9–10; Power 1980, p. 195; Larson and Moore 1985, p. 200). Species such as small mouth bass and yellow perch are considered to be significant competitors with lake-dwelling brook trout (EBJV 2006, pp. 22, 28, 34).

Current Population Status of Brook Trout in the Upper Great Lakes

Brook trout populations throughout the upper Great Lakes region are relatively common and geographically widespread, although distribution and abundance is much reduced from historical levels (Power 1980, p. 195; Becker 1983, pp. 321–322; WIDNR and USFWS 2005, p. 17). Dramatic declines in abundance and distribution of both coaster and stream-resident ecotypes of brook trout occurred in the upper Great Lakes from the 1850s to mid-1900s (Goodier 1982, pp. 110, 112; Ritchie and Black 1988, p. 15; Newman and Dubois 1997, pp. 4–6; Enterline 2000, p. 1; WIDNR and USFWS 2005, pp. 17–18; Schreiner *et al.* 2008, p. 1305; Schreiner *et al.* 2008, p. 1351; Huckins *et al.* 2008, p. 1322).

There are presently at least 200 streams with documented brook trout populations in the upper Great Lakes (Moore and Bream 1965, p. 19; Goodier 1982, p. 110; Enterline 2000, p. 30; Newman *et al.* 2003, pp. 31–37; Quinlan 2004, unpub. data; Bassett 2009, unpub. data; Ward 2007, p. 16; Schram 2008b, pers. comm.; Scott 2008, pers. comm.; Chase 2009, pers. comm.; OMNR 2009, unpub. data). The current specific status of most of these populations is not known, but they are described by the Michigan, Minnesota, and Wisconsin natural resource agencies as stable and self-sustaining in the upper Great Lakes (Holtz 2008, p. 2; MIDNR 2008a, p. 49; Schreiner and Ebbers 2008, pers. comm.).

In coldwater tributaries to the upper Great Lakes, brook trout were historically distributed from the river mouth upstream to the headwaters or to impassible barriers (Smith and Moyle 1944, p. 119; Moore and Braem 1965, p. 19; Goodier 1982, p. 111; Becker 1983, p. 321; WIDNR and USFWS 2005). The brook trout numbers in these stream reaches once numbered in the hundreds to thousands (Huckins and Baker 2008, p. 1231). A 30-year data set from Wisconsin tributaries shows that, in streams historically occupied solely by brook trout, brook trout have contracted into upstream sections and are now nearly absent in lower reaches (WIDNR 2008, unpub. data). Brook trout abundance has declined despite the persistence of suitable conditions for brook trout and high numbers of juvenile nonnative salmonids (WIDNR 2008, unpub. data). In Wisconsin tributaries to Lake Superior, the distribution of stream-resident brook trout populations has declined by nearly 50 percent from historical levels (WIDNR and USFWS 2005, p. 17).

Historically, 119 tributaries to Lake Superior and purportedly 6 Lake Huron streams supported populations of brook trout with coaster ecotypes (Newman *et al.* 2003, pp. 31–38; Enterline 2000, p. 30). Once abundant and widespread throughout the northern portions of the Great Lakes, populations of brook trout that still exhibit the coaster ecotypes are presently limited to a few locations (Dehring and Krueger 1985, p. 1; Bailey and Smith 1981, p. 1549; Goodyear *et al.* 1982, pp. 63–65; Enterline 2000, p. 30; Newman *et al.* 2003, p. 39; Schreiner *et al.* 2008, p. 1351; Mucha and Mackereth 2008, p. 1). Although self-sustaining populations of stream-resident brook trout are currently present in 56 of 58 U.S. streams and in all 61 Canadian streams identified in the *Brook Trout Rehabilitation Plan for Lake Superior* as historically supporting populations with coaster ecotypes (Newman *et al.* 2003, pp. 31–37; Quinlan 2008, unpub. data; Schreiner 2008, pers. comm.; Schram 2008c, pers. comm.; Scott 2008, pers. comm.; Chase 2009, pers. comm.), only 18 populations with coaster ecotypes still persist there (15 stream-spawning–adfluvial, and 3 lake-spawning–lacustrine) (Goodyear 1982, pp. 63–65; Quinlan 1999, p. 19; Ritchie and Black

1988, p. 15; Swainson 2001, p. 41; Newman *et al.* 2003, pp. 28–39; Enterline 2000, p. 30; Chase 2009, pers. comm.).

Over the last decade, the presence of coaster brook trout has been confirmed in other locations within the upper Great Lakes. Surveys, and in some cases genetic analysis, have confirmed the presence of brook trout with coaster ecotypes in the following locations; Minnesota tributaries to Lake Superior (Newman *et al.* 1999, p. 2; Burnham-Curtis 2000, p. 4; Pranckus and Ostazeski 2003, p. 5; Ward 2007, p. 16), three Michigan tributaries to Lake Superior (Stimmel 2006, p. 56; MIDNR 2008a, p. 2; Leonard 2009, pers. comm.), along the shoreline of the Red Cliff Indian Reservation, Wisconsin (Stott and Quinlan 2008, p. 21), and in Little Todd Harbor and Rock Harbor, Isle Royale (Gorman *et al.* 2008, p. 1257). The origin of these fish is unknown and natural reproduction of fish exhibiting the coaster ecotype has not been confirmed, therefore these locations are not identified as supporting self-sustaining populations. However, they have potential to be self-sustaining populations, as outlined by Schreiner *et al.* (2008).

Abundance of individuals in populations exhibiting the coaster ecotypes is stable or increasing in several regions of Lake Superior. In the Salmon Trout River, Michigan, abundance as determined by video surveillance increased from 118 to 243 in the period from 2004 to 2006 (MIDNR 2008a, p. 6). In the Nipigon River, angler catch per hour has increased from the late 1980s to the present, while harvest has decreased substantially (Houle 2004, p. 13). In South Bay, Lake Nipigon, estimates of spawner abundance continue to increase and currently number about 600 fish—up from fewer than 100 in the recent past, but still fewer than the estimated 2,500 present in the mid-1900s (Swainson 2009, pers. comm.). In Tobin Harbor, Isle Royale National Park, Michigan, estimates of adult brook trout from 1996, 2001, and 2008 has remained around 200–250 fish (USFWS unpublished data). Relative abundance based on shoreline electrofishing index surveys in Tobin Harbor from 1997 to 2008 has fluctuated from 0.3 per hour to 16.7 per hour (USFWS 2008, unpub. data).

There are reintroduction stocking efforts ongoing in several streams on the Grand Portage Indian Reservation (Newman and Johnson 1996, p. 4), Red Cliff Indian Reservation, Keweenaw Bay Indian Community Reservation (Donofrio 2002, p. 1), and in Whittlesey Creek, Wisconsin (USFWS and WIDNR 2003, p. 5). Supplementation stocking occurred in Siskiwit Bay, Isle Royale, from 1999 to 2005. Data collected to date indicates limited success with these efforts (Newman *et al.* 1999, p. 2; Quinlan 2008, pers. comm.; Stott and Quinlan 2008, p. 22). Reintroduction efforts in Michigan have recently been terminated in the Gratiot, Little Carp, Hurricane, and Mosquito Rivers and Sevenmile Creek (Scott 2007, pers. comm.; Loope 2007, pers. comm.).

Threats to brook trout across its native range are also acting on brook trout within the upper Great Lakes. A primary impact is the presence of introduced fishes (*e.g.,* non-native salmonids). Introduced salmonids have competitive and predatory impacts on brook trout, although the precise mechanisms may not be fully understood and the magnitude of impact may vary by species, population size, and environmental conditions. The decline or loss of the migratory coaster form has diminished connectivity among populations that once operated as metapopulations. Populations that occur in such isolated patches can be lost, increasing the possibility of extirpation. As a species, brook trout are known to be highly susceptible to exploitation by anglers (Newman and Dubois 1996, p. 3; Newman *et al.* 2003, p. 11; Huckins *et al.* 2008, p. 1322). Overharvest was a primary cause of the decline of Great Lakes brook trout populations by the early 1900s, especially the coaster ecotype, and continues to threaten some populations within the region (Newman and Dubois 1996, p. 1; Huckins *et al.* 2008, p. 1322; Schreiner *et al.* 2008, p. 1356). Climate change also presents a threat to upper Great Lakes brook trout, through increased water temperatures, leading to increased presence of nonnative competitors and predators along with a decrease in habitat suitability. Although the enormous coldwater reservoir within the lake environment represents a potential refuge for Great Lakes brook trout, predicted impacts in both stream and lake environments still represent a potential threat to their long-term viability.

Defining a Species Under the Act

Section 3(16) of the Act defines ''species'' to include ''any species or subspecies of fish and wildlife or plants, and any distinct vertebrate population segment of fish or wildlife that interbreeds when mature'' (16 U.S.C. 1532 (16)). Our implementing regulations at 50 CFR 424.02 provide further guidance for determining whether a particular taxon or population is a species or subspecies for the purposes of the Act: ''The Secretary shall rely on standard taxonomic distinctions and the biological expertise of the Department and the scientific community concerning the relevant taxonomic group'' (50 CFR 424.11). As previously discussed, coaster brook trout are classified as *Salvelinus fontinalis,* the same as other brook trout, and as such we do not consider the coaster form of the brook trout to constitute a distinct species or subspecies. Since the coaster brook trout is not a distinct species or subspecies, we then evaluated whether the coaster brook trout is a distinct vertebrate population segment to determine whether it would constitute a listable entity under the Act.

To interpret and implement the distinct vertebrate population segment (DPS) provisions of the Act and Congressional guidance, the Service and the National Marine Fisheries Service (now the National Oceanic and Atmospheric Administration—Fisheries), published the *Policy Regarding the Recognition of Distinct Vertebrate Population Segments* (DPS Policy) in the **Federal Register** on February 7, 1996 (61 FR 4722). Under the DPS Policy, three elements are considered in the decision regarding the establishment and classification of a population of a vertebrate species as a possible DPS. These are applied similarly for additions to and removals from the List of Endangered and Threatened Wildlife and Plants. These elements are (1) the discreteness of a population in relation to the remainder of the species to which it belongs, (2) the significance of the population segment to the species to which it belongs, and (3) the population segment's conservation status in relation to the Act's standards for listing, delisting, or reclassification.

Distinct Vertebrate Population Segment Analysis

In accordance with our DPS Policy, this section details our analysis of the first two elements used to assess whether a vertebrate population segment under consideration for listing may qualify as a DPS. These elements are (1) the population segment's discreteness from the remainder of the species to which it belongs and (2) the significance of the population segment to the species to which it belongs. Discreteness refers to the ability to circumscribe a population segment from other members of the taxon based on either (1) physical, physiological, ecological, or behavioral factors or (2) international boundaries that result in

significant differences in control of exploitation, habitat management, conservation status, or regulatory mechanisms in light of section 4(a)(1)(B) of the Act.

Under our DPS Policy, if we have determined that a vertebrate population segment is discrete, we consider its biological and ecological significance to the larger taxon to which it belongs in light of Congressional guidance (*see* Senate Report 151, 96th Congress, 1st Session) that the authority to list DPSs be used ''sparingly'' while encouraging the conservation of genetic diversity. To evaluate whether a discrete vertebrate population may be significant to the taxon to which it belongs, we consider the best available scientific evidence. This evaluation may include, but is not limited to: (1) Evidence of the persistence of the discrete population segment in an ecological setting that is unusual or unique for the taxon; (2) evidence that loss of the population segment would result in a significant gap in the range of the taxon; (3) evidence that the population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historical range; and (4) evidence that the discrete population segment differs markedly in its genetic characteristics from other populations of the species.

The first step in our DPS analysis was to identify population segments of the brook trout to evaluate. The petition asked us to (1) ''list as 'endangered' the naturally spawning anadromous (lake-run) Coaster Brook Trout (*Salvelinus fontinalis*) throughout its known historic range in the conterminous United States'' (including designation of critical habitat) and (2) ''determine whether the Salmon Trout River (STR) coaster is a DPS'' and (3) ''whether the south shore of Lake Superior population of coasters (which are known to breed today only in the STR) is 'endangered.' '' Although brook trout in the Great Lakes exhibit three life-history forms (fluvial, adfluvial, and lacustrine), the petition specifically focused on the coaster, or adfluvial and lacustrine, forms.

To address the entity identified in the first petition request (coaster brook trout throughout their historical range in the U.S.), we identified two approaches to analyzing a potential population segment: (1) Describe and analyze an upper Great Lakes ''all brook trout'' population segment, which includes all brook trout life forms—fluvial, adfluvial, and lacustrine ecotypes, inclusive of coaster brook trout—present throughout the documented historical range of brook trout in the Great Lakes basin, and (2) describe and analyze an upper Great Lakes ''coaster-only'' population segment, which includes only the coaster forms—adfluvial and lacustrine ecotypes—of brook trout throughout the documented historical range of brook trout in the Great Lakes basin.

We find that neither of the population segments analyzed constitute a valid DPS, and therefore the first petitioned entity, coaster brook trout throughout their historical range in the U.S., is not a valid DPS. To address the second and third petition requests, we focused on the brook trout population in the Salmon Trout River and evaluated whether it qualified as a DPS per our policy. We find that the brook trout population in the Salmon Trout River also does not constitute a valid DPS. The remainder of this section details the evaluation of these population segments as DPSs per our 1996 DPS Policy.

Upper Great Lakes All Brook Trout Population Segment

This population segment encompasses the range of brook trout populations within the Great Lakes basin that currently or historically occupied both the tributary and lake environments (including stream-resident, adfluvial, and lacustrine ecotypes of brook trout). Although technically not one of the ''Great Lakes,'' we include Lake Nipigon in Canada in this population because it is part of the Great Lakes drainage. The best available information indicates the known historical range of brook trout within the basin included all of Lake Superior and its drainage (including Lake Nipigon), and the northern portions of Lakes Michigan and Huron—specifically, that portion of Lake Michigan north of a line from the Sheboygan River, Wisconsin to Grand Traverse Bay, Michigan, and that portion of Lake Huron north of Thunder Bay, Michigan, eastward to include Manitoulin Island to the 81°30′ longitudinal demarcation and west of 81°30′ longitude (MacCrimmon and Campbell 1969, p. 1701; Dehring and Krueger 1985, p. 1; Enterline 2000, pp. 29–30).

Discreteness

Marked Separation

As previously described, the Upper Great Lakes brook trout population segment we have evaluated encompasses the range of brook trout populations that currently or historically occupied both the tributary and lake environments within the Great Lakes basin. Brook trout within this population segment are physically isolated from other populations of brook trout as the result of the physical separation between the drainage of the Great Lakes basin and neighboring drainages. Consequently, brook trout in the Great Lakes basin meet the discreteness criterion of being markedly separate from other members of the brook trout taxon.

International Border

We presently do not find that the brook trout in the Upper Great lakes on either side of the international United States border with Canada are discrete due to differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms that are significant in light of section 4(a)(1)(D) of the Act.

Conclusion for Discreteness

In conclusion, we determine that the Upper Great Lakes brook trout population segment, as defined here, is discrete from the remainder of the brook trout taxon. This discreteness arises from the population segment's physical isolation from the remainder of the taxon. Therefore, we will now consider the potential significance of this discrete population segment to the remainder of the taxon.

Significance

We have determined that the population of brook trout in the Upper Great Lakes meets the discreteness elements of the DPS policy, and as such, we will now evaluate whether this specific population is significant to the taxon as a whole (*i.e.,* native brook trout in eastern North America). A discrete population is considered significant under the DPS policy if it meets one of four of the elements identified in the policy under significance or can otherwise be reasonably justified as being significant.

We discuss further below our evaluation of the significance of the population of brook trout in the Upper Great Lakes relative to the taxon as a whole.

Evidence of the Persistence of the Discrete Population Segment in an Ecological Setting That Is Unusual or Unique for the Taxon

On the basis of an evaluation of the best available scientific information, we have determined that the habitat for brook trout in the Upper Great Lakes does not represent an ecological setting that is unusual or unique for the native brook trout relative to the habitat available to it throughout the entire

taxon's range in eastern North America. A summary of our evaluation is below.

Brook trout exhibiting differing life-history forms occupy a variety of ecosystems from subarctic regions of the Hudson Bay coast, to temperate areas bordering and east of the Great Lakes, and southern coldwater habitats in the Appalachian Mountains of Tennessee and Georgia (Power 1980, p. 142). They have been successfully naturalized in western North America, South America, Eurasia, Africa, and New Zealand (MacCrimmon and Campbell 1969, p. 1699, pp. 1703–1717). Within their large native range in eastern North America, brook trout habitat includes coastal areas and various-sized lakes, streams, and rivers at varying altitudes. Most populations inhabit coldwater streams, but lake-dwelling and lake-spawning (lacustrine form) populations also occur throughout the range, in spring-fed ponds, small- to medium-sized lakes, and a few large, oligotrophic (containing relatively little plant life or nutrients, but rich in dissolved oxygen) lakes. Anadromous populations (''salters'') of brook trout use marine habitats in Hudson Bay and along the Atlantic coast.

The upper Great Lakes represent a complex ecological setting for brook trout. The very large size of the Great Lakes watershed creates an environment that more closely resembles oceanic physical conditions (available to the anadromous forms of brook trout) than conditions in smaller lakes (available to other forms of brook trout). With approximately 1,500 tributaries and almost 2,800 miles (4,506 km) of shoreline, Lake Superior also provides brook trout access to a very large freshwater habitat network. Although the Great Lakes are the largest freshwater water bodies occupied by brook trout, there are thousands of lakes in its range including large postglacial lakes further north in Canada that contain populations of the adfluvial and lacustrine forms (*e.g.,* Fraser and Bernatchez 2008, p. 1193).

If predicted rising water temperatures in response to climate change are realized over the entire range of brook trout, the distributions of brook trout populations would probably shift toward cooler waters at higher latitudes and altitudes (Meisner 1990b, p. 1068; Magnuson *et al.* 1997, p. 859; Kling *et al.* 2003, pp. 53–54). The greatest effects would likely begin in populations located at the margins of the taxon's hydrologic and geographic distributions (Meisner *et al.* 1990a, p. 282, Kling *et al.* 2003, p. 54). Although the upper Great Lakes have already experienced some impacts of climate change (*see* Kling *et al.* 2003, pp. 14–16) and will not be immune to future impacts (*see* Kling *et al.* 2003, pp. 21–25), they may provide substantial coldwater habitat for brook trout in the future. However, brook trout have abundant coldwater habitat available in the northern latitudes of its range, and habitat in northern North America which is presently too cold may develop into appropriate brook trout habitat under a warming scenario. We will further evaluate the extent that this may be the case in the range-wide assessment of native brook trout that we plan to conduct (*see* **Finding** section).

Although the upper Great Lakes represent a diverse and complex ecological setting which may offer potential coldwater habitat for brook trout, we must evaluate the breadth of ecological diversity of brook trout habitat rangewide in our assessment of this population segment's significance to the rest of the taxon. First, available information indicates that the large area and wide geographical range of brook trout habitats, which vary in latitude and altitude and water form, contain a vast diversity of habitats for brook trout. The ecological setting of the upper Great Lakes is a small portion of the brook trout range, and based on available information, its relative significance to the brook trout species is limited. Second, although we expect that the Great Lakes may offer substantial coldwater habitat, there are other large, deep, oligotrophic lakes, and numerous lakes and streams at higher latitudes that may buffer the species from potential climate change impacts. Given the available information on the diversity and extent of ecological settings of brook trout in the rest of its range, we conclude at this time that the upper Great Lakes is a not unique or unusual setting of significance for the native brook trout in eastern North America.

Evidence That Loss of the Population Segment Would Result in a Significant Gap in the Range of the Taxon

Loss of brook trout, including any or all life forms, in the upper Great Lakes, when considered in relation to brook trout throughout the remainder of the species' range in eastern North America, would mean the loss of a small geographic portion (approximately ten percent) of the entire range of the taxon. Further, the number of streams with populations in the upper Great Lakes (about 200) are a small proportion of the amount of streams and lakes with brook trout populations in the rest of the native range in eastern North America. Due to the broad geographic range of brook trout, the wide diversity of habitats available to it, and its plasticity, and the fact that the upper Great Lakes are at the western periphery of its natural range, we find that the gap in the range resulting from the loss of brook trout in the upper Great Lakes would not be significant.

Evidence That the Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Elsewhere as an Introduced Population Outside Its Historical Range

This criterion from the DPS policy does not apply to the brook trout in the upper Great Lakes because it is not a population segment representing the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range. Consequently, this population of brook trout does not meet the significance element of this factor.

Evidence That the Discrete Population Segment Differs Markedly in Its Genetic Characteristics From Other Populations of the Species

A large amount of rangewide genetic variation for brook trout is distributed among brook trout populations (large Fst values, values in a fixation index which describe the degree of population differentiation based on genetic polymorphisms). This pattern is heavily influenced by the ecological and life-history characteristics of brook trout populations (population connectivity or isolation, philopatric tendency).

We find that, based on the genetic information currently available (outlined under the Brook Trout Genetics section above), the brook trout in the upper Great Lakes, including all life forms, do not differ markedly from other populations of the species in their genetic characteristics (such as exhibiting unique alleles or a proportion of genetic variability beyond the norm of distribution) such that they should be considered biologically or ecologically significant based simply on genetic characteristics. They do not show any more genetic distinctiveness in comparison to the remainder of the taxon than other populations demonstrate. With the additional consideration that the authority to list DPSs be used ''sparingly,'' we conclude that this population segment of brook trout does not meet the significance element of this factor.

DPS Conclusion—Upper Great Lakes All Brook Trout Population Segment

On the basis of the best available information, we conclude that the all-

brook-trout population segment in the Upper Great Lakes is discrete due to marked separation as a consequence of physical, ecological, physiological, or behavioral factors according to the 1996 DPS Policy. However, on the basis of an evaluation of brook trout in the Great Lakes relative to the four significance elements of the 1996 DPS Policy, we conclude that this discrete population segment is not significant to the taxon to which it belongs, and therefore, does not qualify as a DPS under 1996 policy. As such, we find that population of brook trout in the Great Lakes basin is not a listable entity under the Act.

Upper Great Lakes Coaster-Only Brook Trout Population Segment

This population segment encompasses the historical range of brook trout populations in the Great Lakes basin exhibiting the coaster ecotypes, which includes northern portions of the Lakes Michigan and Huron and all of Lake Superior, including Lake Nipigon (*see* Discreteness analysis for the Upper Great Lakes All Brook Trout Population Segment below for more detailed range description).

Discreteness

Hubbs and Lagler (1949, p. 44) and Becker (1983, p. 320) described coasters as brook trout that spend a portion of their life cycle in the Great Lakes. Coaster brook trout have long been recognized by local and scientific communities (Newman and Dubois 1997, p. 4).

Marked Separation

As described previously, coasters are adfluvial and lacustrine life forms of brook trout that occupy the nearshore zone of the Great Lakes. Coasters, being a subset of brook trout within the Great Lakes basin, are markedly separate from all other brook trout outside of the Great Lakes Basin as the result of the physical separation between the drainage of the Great Lakes basin and neighboring drainages. Thus, brook trout within this population segment are markedly separate from other members of the brook trout taxon outside the Great Lakes basin because they are physically isolated.

Isolation also exists within the Great Lakes basin, among brook trout populations in Lakes Huron, Michigan, Erie, and Ontario. The best available information indicates that adfluvial brook trout likely did not historically occupy lake waters of southern Lakes Michigan and Huron (boundary as previously defined in this section) or Lakes Erie and Ontario (MacCrimmon and Campbell 1969, p. 1700; Bailey and Smith 1981, p. 1549; Dehring and Krueger 1985, p. 1; MIDNR 2008a, pp. 2–3). Brook trout found within these lake areas in the last 100 years are likely the result of stocking as no known adfluvial, migratory or lake dwelling populations exist. The reason that brook trout never occupied these lake areas is unknown; we suspect that unidentified environmental conditions preclude brook trout use of these habitats. Regardless, without brook trout use of the lake environment, natural dispersal between stream populations cannot occur. This absence of adfluvial and lacustrine ecotypes in these populations effectively restricts populations with coaster brook trout forms to the distribution previously defined, namely the watershed and lake habitats of all of Lake Superior, and the northern portions of Lakes Michigan and Huron.

Within the Great Lakes basin, coasters are ecologically, behaviorally, and physiologically discrete from stream-resident brook trout. Coasters are markedly separate from resident brook trout in their lake-dwelling and adfluvial behavior (Hubbs and Lagler 1949, p. 44; Becker 1983, p. 320; Huckins and Baker 2008, p. 1229; Schreiner *et al.* 2008, p. 1350). Lake-dwelling coasters spend their entire life within the lake environment (Huckins *et al.* 2008, p. 1323; Schreiner *et al.* 2008, p. 1350); adfluvial coasters move between streams and the lake (Huckins *et al.* 2008, p. 1323). Stream-resident brook trout remain within the river system. These differences mark an ecological (*i.e.*, lake versus stream habitat) and a behavioral (*i.e.*, migratory) separation between the two forms.

Coaster ecotypes and stream-resident ecotypes of brook trout also differ physiologically in adult size, longevity, age at maturity, and fecundity. As stated in the Species Description section above, adult coasters range in size from 12 to 25 in (30 to 64 cm), and commonly reach lengths of 16 in (41 cm) (Ritchie and Black 1988, pp. 50–51; Quinlan 1999, p. 17; Huckins and Baker 2008, p. 1239; Huckins *et al.* 2008, p. 1337). The body mass of adult coasters typically ranges from 0.75 to 8 pounds (341 to 3632 g) (Quinlan 1999, p. 16; Swainson 2001, p. 60; Huckins and Baker 2008, p. 1239; WIDNR and USFWS 2005, p. 16) with a maximum measurement of 14.5 pounds (6577 g) (Scott and Crossman 1973, p. 211). Adult resident brook trout typically range in size from 5 to 15 in (13 to 38 cm) (Scott and Crossman 1979, p. 208; Becker 1983, pp. 318, 320; WIDNR and USFWS 2005, p. 16; Schram 2008a pers. comm.) and usually weigh less than a pound (<454 g) (WIDNR and USFWS 2005, p. 16). Most female coasters do not reach maturity until they are 2 to 4 years old and 12 to 15 in. (30 to 38 cm) in length (Ritchie and Black 1998, p. 19; Quinlan 1999, p. 11; Huckins and Baker 2008, p. 1241; Huckins *et al.* 2008, p. 1329), and live 5 to 8 years (Quinlan 1999, p. 11; Huckins *et al.* 2008, p. 1328). Whereas most female stream-resident brook trout mature by age 1 or 2 (Becker 1983, p. 318), and typically live to age 3 and rarely reach ages of 4 or 5 years (Scott and Crossman 1973, p. 211, Becker 1983, p. 318). Coaster females produce around 1,500 to 3,000 eggs (Quinlan 1999, p. 20; Swainson 2001, p. 41), while stream-resident brook trout fecundity ranges from 100 to 1,500 eggs per female (Scott and Crossman 1973, p. 210; Power 1980, p. 157; Becker 1983, p. 318).

We recognize that many of the ecological, physiological, and behavioral characteristics discussed here are influenced to varying extents by environmental factors. For example, fish exhibit indeterminate growth, where adults can reach larger sizes in larger habitats with more favorable growth conditions or greater prey availability, but may be more diminutive under less favorable habitat conditions (Huckins *et al.* 2008, p. 1323). To this effect, many physiological characteristics of coasters would be expected to differ from their stream-resident counterparts, with coasters being larger than residents, simply because coasters access the more productive lake environments. In addition, many of the characteristics we evaluate are interrelated, with one characteristic influencing or determining one or more of the other characteristics. For example, fecundity is largely a function of the size and condition of the fish. Also, prey selection will be influenced by the prey availability in different habitat types. We rely on all the characteristics taken together to describe the phenotypic characteristics of each type. Regardless of the source of the phenotypic characteristics of the types, be they controlled by genetic heritability, environmental influences, or both, they accumulate to form a description of each form and that defines either their similarity or separation.

We further recognize that upper Great Lakes brook trout display a continuum of traits in most of the characteristics described. However, the range of overlap is small in comparison to the broader range of difference between the two forms, with the majority of adult coasters and stream-residents clearly

occupying nonoverlapping portions of the continuum. Further, at the end of the continuum of traits, coasters are markedly separate in their use of Great Lakes habitat. As we stated in adopting the DPS Policy in 1996, ''logic demands a distinct population recognized under the Act be circumscribed in some way that distinguishes it from other representatives of its species. The standard established for discreteness is simply an attempt to allow an entity given DPS status under the Act to be adequately defined and described'' (61 FR 4721, at 4724; February 7, 1996). In the case of brook trout in the Great Lakes, there is a group that can be clearly distinguished by a variety of characteristics, particularly its use of the Great Lakes habitat, which leads to or results from marked separation in the other characteristics.

Despite the apparent reproductive exchange and genetic similarity between stream-resident forms and coaster forms of brook trout, the life forms remain markedly separated physiologically, ecologically, and behaviorally. The DPS Policy states that ''the standard adopted [for discreteness] does not require absolute separation of a DPS from other members of its species, because this can rarely be demonstrated in nature for any population of organisms * * * [T]he standard adopted allows for some limited interchange among population segments considered to be discrete, so that loss of an interstitial population could well have consequences for gene flow and demographic stability of a species as a whole'' (61 FR 4722; February 7, 1996). Coasters are a group of organisms that can be distinguished from stream-resident brook trout by a variety of characteristics, particularly its migratory life strategy and use of the Great Lakes.

Thus, given marked separation in physical, physiological, ecological, and behavioral factors, we conclude that the coaster-only population segment is discrete from Great Lakes stream-resident brook trout. Further, as stated above, given its marked separation from all other brook trout outside of the Great Lakes Basin as the result of the physical separation between the drainage of the Great Lakes basin and neighboring drainages, the coaster-only population segment is discrete from brook trout outside the Great Lakes basin. Consequently, we find that the coaster-only population satisfies the element of marked separation under the 1996 DPS Policy, and is therefore considered to be a discrete population per our policy.

International Border

We presently do not find that this population segment of the brook trout on either side of the international United States border with Canada is discrete due to differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms that are significant in light of section 4(a)(1)(D) of the Act.

Significance

We must next evaluate whether the coaster brook trout population segment is significant to the larger brook trout taxon. We find that, although we determined that coaster brook trout are a discrete population segment, they co-occur with and are a subset of the same population as other brook trout types (stream residents) in the upper Great Lakes (*see* Species Information section above). Review of the best available scientific information does not suggest that the coaster and resident life forms in these populations are genetically distinct from each other, indicating that they are part of one breeding population (D'Amelio and Wilson 2008, p. 1221; Scribner *et al.* 2008, p. 10). Thus, similar to our Upper Great Lakes All Brook Trout population segment, the loss of coasters would not create a significant gap in the range of the taxon, they are not the only remaining natural occurrence of the taxon, and they do not show significant genetic distinctiveness in comparison to the remainder of the taxon. In addition, coasters occupy a smaller portion of the same ecological setting as other brook trout in the upper Great Lakes. Although, as discussed above, coasters may be important to the long-term viability of brook trout populations throughout Lake Superior, the relevant question is whether coasters are significant to the taxon as a whole, here, all native brook trout. Given this, the significance analysis documented for the all brook trout population segment (*see* Upper Great Lakes All Brook Trout DPS section above) also applies to the coaster-only population segment, and we similarly conclude that the coaster-only population segment does not meet the significance elements of the DPS Policy.

DPS Conclusion—Coaster-Only Population Segment

On the basis of the best available information, we conclude that the coaster-only population segment in the Upper Great Lakes is discrete due to marked separation as a consequence of physical, ecological, physiological, or behavioral factors according to the 1996 DPS policy. However, on the basis of the four significance elements in the 1996 DPS Policy, we conclude that this discrete population segment is not significant to the rest of the taxon, and therefore, does not qualify as a valid DPS under our 1996 DPS Policy. As such, we find that the coaster-only population in the upper Great Lakes is not a listable entity under the Act.

Salmon Trout River/South Shore Lake Superior Brook Trout Population Segment

This section evaluates whether the Salmon Trout River-South Shore Lake Superior brook trout population segment qualifies as a DPS. Since the Salmon Trout River contains the only known brook trout population with naturally reproducing coaster on the South Shore of Lake Superior, we addressed these two petition requests in one analysis.

Discreteness

Markedly Separate

The brook trout population segment that occupies the Salmon Trout River is markedly separate from other members of the brook trout taxon because it is genetically or reproductively isolated. This physical isolation is supported by recent evidence from Scribner *et al.* (2008, pp. 12–13), which found no genetic evidence of Salmon Trout River fish in neighboring streams, indicating that Salmon Trout River coasters are not a source of gene flow among streams.

International Border

Since the Salmon Trout River population segment does not cross an international border, this basis for finding discreteness is not applicable.

In conclusion, the Salmon Trout River brook trout population segment, as defined here, meets the element for discreteness under our 1996 DPS Policy and is considered discrete from the remainder of the brook trout taxon. This discreteness arises from the population segment's genetic or reproductive isolation from the remainder of the taxon which is supported by evidence of genetic discontinuity.

Significance

Evidence of the Persistence of the Discrete Population Segment in an Ecological Setting That Is Unique for the Taxon

The ecological setting for the Salmon Trout River discrete population segment is similar to that of other brook trout populations throughout the upper Great Lakes region. We are unaware of any features that make the Salmon Trout River unique or unusual in terms of

brook trout habitat. There is nothing about the ecological setting that is unique or unusual for the species, particularly in light of the other occurrences within Lake Superior. Consequently, this population of brook trout does not meet the significance element of this factor.

Evidence That Loss of the Population Segment Would Result in a Significant Gap in the Range of the Taxon

This criterion from the DPS policy does not apply to the Salmon Trout River discrete population segment because this population is one of thousands of brook trout populations existing throughout the range of the taxon and its loss would represent an extremely small portion of the range. Consequently, this population of brook trout does not meet the significance element of this factor.

Evidence That the Population Segment Represents the Only Surviving Natural Occurrence of a Taxon That May Be More Abundant Elsewhere as an Introduced Population Outside Its Historical Range

This criterion from the DPS policy does not apply to the Salmon Trout River discrete population segment because it is not a population segment representing the only surviving natural occurrence of the taxon that may be more abundant elsewhere as an introduced population outside its historical range. Consequently, this population of brook trout does not meet the significance element of this factor.

Evidence That the Discrete Population Segment Differs Markedly in Its Genetic Characteristics From Other Populations of the Species

Scribner *et al.* (2008, p. 9) indicates that Lake Superior brook trout populations, including the Salmon Trout River, are highly genetically structured with low levels of gene flow among populations. The Salmon Trout River contains two genetically distinct populations that are separated by impassable waterfalls (Scribner *et al.* 2008, p. 10). Both populations in the Salmon Trout River were equally genetically diverged from the other populations included in the study (Scribner *et al.* 2008, p. 7). This pattern of population genetic structuring is common in brook trout throughout the species' range because, like many salmonids, this species likely exhibits some degree of spawning site fidelity (Angers *et al.* 1999, p. 1044; D'Amelio *et al.* 2008, pp. 1347–1348; Mucha and Mackereth 2008, p. 1211). This degree of genetic divergence that forms among populations is reflective of the reproductive connections (isolation) among the populations across the range of the taxon.

We are unaware of any information indicating that this population segment differs from the species in its genetic characteristics (such as exhibiting unique alleles or a proportion of genetic variability beyond the norm of distribution) such that it should be considered biologically or ecologically significant to the taxon based on genetic characteristics. Consequently, this population of brook trout does not meet the significance element of this factor.

DPS Conclusion—Salmon Trout River/South Shore Lake Superior Population Segment

On the basis of the best available information, we conclude that the Salmon Trout River brook trout population segment is ''markedly separated'' from all other populations of the same taxon as a consequence of physical factors, supported by genetic evidence. Consequently, the Service concludes that the petitioned entity is discrete according to the 1996 DPS Policy. However, on the basis of an evaluation of the four significance elements of the 1996 DPS Policy, we conclude that this discrete population segment is not significant to the species to which it belongs. Therefore, we find that the Salmon Trout River brook trout population does not qualify as a DPS under our DPS Policy and is consequently not a listable entity under the Act.

Significant Portion of the Range Analysis

The Act defines an endangered species as one ''in danger of extinction throughout all or a significant portion of its range,'' and a threatened species as one ''likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Having determined that the northern Great Lakes population segment of brook trout and the Salmon Trout River/South Shore Lake Superior populations of the coaster brook trout do not meet the elements of our 1996 DPS Policy as being valid DPSs, we then assessed whether the upper Great Lakes brook trout is a significant portion of the range (SPR) of the native brook trout where the species is in danger of extinction or likely to become so in the foreseeable future.

On March 16, 2007, a formal opinion was issued by the Solicitor of the Department of the Interior, ''The Meaning of 'In Danger of Extinction Throughout All or a Significant Portion of Its Range' '' (DOI 2007). We have summarized our interpretation of that opinion and the underlying statutory language below. A portion of a species' range is significant if it is part of the current range of the species and is important to the conservation of the species because it contributes meaningfully to the representation, resiliency, or redundancy of the species. The contribution must be at a level such that its loss would result in a decrease in the ability of the species to persist.

The first step in determining whether a species is endangered in an SPR is to identify any portions of the range of the species that warrant further consideration. The range of a species can theoretically be divided into portions in an infinite number of ways. However, there is no purpose to analyzing portions of the range that are not reasonably likely to be significant and threatened or endangered. To identify those portions that warrant further consideration, we determine whether there is substantial information indicating that (i) the portions may be significant and (ii) the species may be in danger of extinction there. In practice, a key part of this analysis is whether the threats are geographically concentrated in some way. If the threats to the species are essentially uniform throughout its range, no portion is likely to warrant further consideration. Moreover, if any concentration of threats applies only to portions of the range that are unimportant to the conservation of the species, such portions will not warrant further consideration.

The petition specified two portions of the range of brook trout: (1) The historical range of coaster brook trout in the contiguous U.S., namely the upper Great Lakes, and (2) the Salmon Trout River/South Shore Lake Superior. In our SPR analysis, we assessed threats to brook trout in these portions in comparison to threats acting on other portions of the range. Information on threats within the upper Great Lakes region included primarily habitat degradation, overutilization, nonnative fishes, and loss of connectivity and life-history diversity. We had comparatively less detailed information on the threats acting throughout the rest of the range. The best information available to us regarding other portions of the brook trout range was found in analyses completed for the Eastern Brook Trout Joint Venture (*see* Hudy *et al.* 2005, TU 2006). Given the information available to us on threats to brook trout across its range, we conclude that threats to this species were similar throughout its range, that the conservation status of the species is similar throughout its range,

and that there is no area within the range of the upper Great Lakes and the Salmon Trout River/South Shore Lake Superior portions of the coaster brook trout where potential threats to this species are significantly concentrated or are substantially greater than in other portions of the range. We found no evidence that more threats were geographically concentrated within the upper Great Lakes than in any other part of the range; according to the findings of Hudy *et al.* (2005), it seems that threats may be greater in portions of the Northeastern U.S. populations than in the Great Lakes.

Therefore, we find that the brook trout is not threatened or endangered solely in any significant portion of its range within the upper Great Lakes. As stated in the **Finding** section below, we plan to initiate a range-wide assessment of the native brook trout that will enable us to better understand the status of the native brook trout across the range of species, including a determination of whether the threats to the species, which are not concentrated in the upper Great Lakes, warrant listing the native brook trout rangewide.

Finding

In making this finding, we considered information provided by the petitioners, as well as other information available to us concerning coaster brook trout. We have carefully assessed the best scientific and commercial information available regarding the status of and threats to coaster brook trout in the upper Great Lakes. We reviewed the petition, and available published and unpublished scientific and commercial information. We also consulted with Federal and State land managers, along with recognized experts in conservation and population genetics and brook trout and salmonid biology. This 12-month finding reflects and incorporates information that we received from the public following our 90-day finding or that we obtained through consultation, literature research, and field visits.

On the basis of this review, we have determined that the coaster brook trout in the upper Great Lakes does not meet the elements of our 1996 DPS Policy as being a valid DPS. We also find that the coaster brook trout is not an SPR of the native brook trout and does not warrant further consideration as such under the Act. Therefore, we find that the coaster brook trout is not a listable entity under the Act, and that listing is not warranted.

Although we find that population segments analyzed above are not listable entities, we found enough information concerning the diversity, habitats, population structure, threats, and trends of the native brook trout in its entire range to initiate a range-wide assessment that will enable us to better understand the status of the native brook trout across the range of species. Completing a range-wide assessment will allow us to better evaluate if any population would meet the elements of the DPS policy or constitute an SPR of the taxon. We will also continue to assess the status of and threats to both the upper Great Lakes and Salmon Trout River/South Shore Lake Superior populations of the coaster brook trout.

We request that you submit any new information concerning the taxonomy, biology, ecology, and status of the brook trout in its entire native range. Send this information to the Region 3 Fish and Wildlife Service Regional Office (*see* **ADDRESSES** section) whenever it becomes available. We will accept additional information and comments from all concerned governmental agencies, the scientific community, industry, or any other interested party concerning this finding; and will reconsider this determination with new information as appropriate. The Service continues to strongly support the cooperative conservation and restoration of the coaster brook trout in the upper Great Lakes.

References

A comprehensive list of the referenced materials is available upon request (*see* **ADDRESSES** section above).

Author

The primary authors of this document are staff located at the Region 3 Fish and Wildlife Service Regional Office (*see* **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Guertin,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–11527 Filed 5–18–09; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 74, No. 95
Tuesday, May 19, 2009

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Resume the Fruit Chemical Use Survey Along With Its Associated Publication

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice of resumption of data collection and publication.

SUMMARY: This notice announces the intention of the National Agricultural Statistics Service (NASS) to resume a currently approved information collection, the Fruit Chemical Use Survey, and its associated publication.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Resource Management (ARMS), Chemical Use, and Post-harvest Chemical Use Surveys.

OMB Control Number: 0535–0218.

Expiration Date of Approval: December 31, 2011.

Type of Request: To resume a currently approved information collection.

Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Fruit Chemical Use Survey collects data regarding chemical usage (herbicides, insecticides, and fungicides) and pest management practices used on targeted fruit crop(s). Information from these data collection efforts is used extensively by government agencies in planning, farm policy analysis, scientific research, and program administration. This collection was suspended on April 4, 2007 due to budget constraints. NASS will resume this information collection and will publish the Agricultural Chemical Usage 2009 Fruit Summary on July 28, 2010.

Authority: These data are collected under authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Signed at Washington, DC, March 17, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9–11634 Filed 5–18–09; 8:45 am]

BILLING CODE 3410–20–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Opportunity To Submit Content Request for the 2012 Census of Agriculture

AGENCY: National Agricultural Statistics Service.

ACTION: Notice and request for stakeholder input.

SUMMARY: The National Agricultural Statistics Service (NASS) is currently accepting stakeholder feedback in the form of content requests for the 2012 Census of Agriculture. This census is required by law under the ''Census of Agriculture Act of 1997,'' Public Law No. 105–113 (7 U.S.C. 2204g).

DATES: Comments on this notice must be received by August 28, 2009 to be assured of consideration.

ADDRESSES: Requests *must* address items listed in comments section below. Please submit requests online at *http://www.agcensus.usda.gov/2012/* or via mail to: USDA–NASS, Census Content Team, 1400 Independence Ave., SW., Rm. 6436B, MS 2052, Washington, DC 20250.

If you have any questions, send an e-mail to *censusdatacontentteam@nass.usda.gov* or call 1–800–727–9540.

FOR FURTHER INFORMATION CONTACT: Joseph T. Reilly, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333, *Fax:* 202–720–9013, or *e-mail: HQ_OA@nass.usda.gov.*

SUPPLEMENTARY INFORMATION: The results of the 2007 Census of Agriculture were released on February 4, 2009. For more information, visit *http://www.agcensus.usda.gov.* The U.S. Department of Agriculture's National Agricultural Statistics is in the process of planning the content of the 2012 Census of Agriculture. We are seeking input on ways to improve the Census of Agriculture. Recommendations or any other ideas concerning the census would be greatly appreciated. The 2007 Census of Agriculture questionnaire may be viewed on-line at: *http://www.agcensus.usda.gov/2007questionnaire.*

The following justification categories must be addressed when proposing a new line of questioning for the 2012 Census of Agriculture:

1. What data are needed?
2. Why are the data needed?
3. At what geographic level are the data needed? (U.S., State, County, other)
4. Who will use these data?
5. What decisions will be influenced with these data?
6. What surveys have used the proposed question before; what testing has been done on the question; and what is known about its reliability and validity.
7. Draft of the recommended question.

All responses to this notice will become a matter of public record and be summarized and considered by NASS in preparing the 2012 Census of Agriculture questionnaire for OMB approval.

Signed at Washington, DC, March 20, 2009.

Joseph T. Reilly,

Associate Administrator.

[FR Doc. E9–11622 Filed 5–18–09; 8:45 am]

BILLING CODE 3410–20–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kentucky Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission), and the Federal Advisory Committee Act (FACA), that a meeting of the Kentucky Advisory Committee (Committee) to the Commission will convene at 1:30 p.m. and adjourn at 3:30 p.m. on Thursday, May 28, 2009, in Room 340, Gardiner Hall, University of Louisville, Louisville, Kentucky. The purpose of

the meeting is for the Committee to discuss its report on voting rights for ex-felons and discuss activity plans for 2010.

Members of the public are entitled to submit written comments. The address is 61 Forsyth St., SW., Suite 18T40, Atlanta, Georgia 30303. Persons wishing to e-mail their comments, present their comments at the meeting, or who desire additional information should contact Dr. Peter Minarik, Regional Director, at (404) 562–7000 or 800–877–8339 for individuals who are deaf, hearing impaired, and/or have speech disabilities or by e-mail to *pminarik@usccr.gov.*

Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

Records generated from this meeting may be inspected and reproduced at the Southern Regional Office, as they become available, both before and after the meeting. Persons interested in the work of this advisory committee are advised to go to the Commission's Web site, *http://www.usccr.gov,* or to contact the Southern Regional Office at the above e-mail or street address.

The meeting will be conducted pursuant to the rules and regulations of the Commission and FACA.

Dated in Washington, DC, May 13, 2009.

Christopher Byrnes,

Chief, Regional Programs Coordination Unit.

[FR Doc. E9–11614 Filed 5–18–09; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; NMFS Alaska Region Vessel Monitoring System (VMS) Program

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 July 20, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Patsy A. Bearden, 907–586–7008 or *patsy.bearden@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

Under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*)., National Marine Fisheries Service (NMFS), Alaska Region, directs a satellite-based vessel monitoring program to locate fishing vessels and monitor compliance with area restrictions in the Gulf of Alaska, Bering Sea, and Aleutian Islands. The Vessel Monitoring System (VMS) allows the NMFS Office for Law Enforcement to monitor and survey vessels over vast expanses of open-water while maintaining the confidentiality of fishing positions.

II. Method of Collection

Automatic Global Positioning System (GPS) position reporting starts after VMS transceiver installation and power activation onboard the vessel. The unit is pre-configured and tested for NMFS VMS operations. VMS check-in with NMFS, by fax, is required one time from participants upon VMS installation on a vessel. Thereafter, submittal is automatic by satellite.

III. Data

OMB Control No: 0648–0445.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Individuals or households; business or other for-profit organizations.

Estimated Number of Respondents: 1,842.

Estimated Time per Response: 12 minutes for VMS check-in report; 6 hours for VMS installation; 4 hours for VMS maintenance.

Estimated Total Annual Burden Hours: 7,640.

Estimated Total Annual Cost to Public: $858,151.

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: May 13, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–11566 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Northwest Region Logbook Family of Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

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 July 20, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Gary Rule, (503) 230–5424 or *Gary.Rule@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Marine Fisheries Service (NMFS), Northwest Region manages the

U.S. groundfish fisheries of the Exclusive Economic Zone (EEZ) off Washington, Oregon, and California under the Pacific Coast Groundfish Fishery Management Plan (FMP). The Pacific Fishery Management Council prepared the FMP pursuant to the Magnuson-Stevens Fishery Conservation and Management Act. The regulations implementing the FMP are at 50 CFR part 660.

This collection contains certain reporting and recordkeeping requirements for vessels in the Pacific Coast Groundfish Fishery in the Exclusive Economic Zone off the states of Washington Oregon and California. These requirements affect fish processing vessels over 125 feet in length and catcher vessels that deliver their catch to motherships. The information collected is needed to monitor catch, effort, and production for fishery management purposes.

II. Method of Collection

Paper forms are used for most requirements. The paper forms are submitted by facsimile machine. Some vessels have chosen to compose an identical electronic form in Microsoft Excel which is accepted via e-mail.

III. Data

OMB Number: 0648–0271.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Respondents: 56.

Estimated Time per Response: 13 minutes per day for a Daily Fishing and Cumulative Production Log (DFCPL) from a catcher vessel; 26 minutes per day for a DFCPL from a catcher-processor; 13 minutes per day for a Daily Report of Fish Received and Cumulative Production Log from a mothership; 4 minutes per day for a Weekly/Daily Production Report; 1 minute per day for a Product Transfer/Offloading Logbook; and 1 minute for a Start or Stop Notification Report.

Estimated Total Annual Burden Hours: 1,136.

Estimated Total Annual Cost to Public: $2,653.

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: May 13, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–11563 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–847]

Certain Cut-to-Length Carbon-Quality Steel Plate From Japan: Notice of Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On March 24, 2009, the Department of Commerce (the Department) published in the **Federal Register** a notice announcing the initiation of an administrative review of the antidumping duty order on certain cut-to-length carbon-quality steel plate (CTL CQ plate) from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 74 FR 12310 (*Initiation Notice*). The period of review (POR) is February 1, 2008 to January 31, 2009, and covers sales or entries of CTL CQ plate by Kawasaki Steel Corporation (Kawasaki) and its alleged successor-in-interest, JFE Steel Corporation (JFE). We are rescinding this review because there were no entries of CTL CQ plate associated with either Kawasaki or JFE Steel during the POR.

EFFECTIVE DATE: May 19, 2009.

FOR FURTHER INFORMATION CONTACT: David Goldberger, Office of AD/CVD Operations, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4136.

Scope of the Order:

The products covered by this order are certain hot-rolled carbon-quality steel: (1) Universal mill plates (i.e., flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils). Steel products to be included in the scope of this order are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (i.e., products which have been ''worked after rolling'') - for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within the scope of this order. Also, specifically included in the scope of this order are high strength, low alloy (HSLA) steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Steel products included in this scope, regardless of Harmonized Tariff Schedule of the United States (HTSUS) definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope of this order unless otherwise specifically excluded.

The following products are specifically excluded from this order: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.*, USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. The following additional exclusions apply with respect to abrasion-resistant steels: NK–EH–360 (NK Everhard 360) and NK–EH–500 (NK Everhard 500). NK–EH–360 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; (b) Heat Treatment: controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max. NK–EH–500 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max.

The merchandise subject to this order is classified in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise covered by this order is dispositive.

SUPPLEMENTARY INFORMATION:

Background

On February 4, 2009, the Department published in the **Federal Register** a notice of opportunity to request an administrative review of the antidumping duty order on CTL CQ plate from Japan for the period February 1, 2008 to January 31, 2009. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 74 FR 6013 (February 4, 2009). In accordance with 19 CFR 351.213(b)(1), on February 27, Nucor Corporation, a domestic producer of CTL CQ plate, requested a review of this order with respect to Kawasaki Steel Corporation (Kawasaki). On March 9, 2009, Nucor filed a letter clarifying its February 27, 2009, request for an administrative review of Kawasaki to include any successors-in-interest to Kawasaki, such as JFE.

The Department initiated the administrative review on March 24, 2009. *See Initiation Notice*. On April 7, 2009, JFE notified the Department that it had not made sales or exports of the subject merchandise during the POR. In addition, we reviewed the U.S. Customs and Border Protection (CBP) import database and found no entries of subject merchandise associated with either JFE or Kawasaki. We invited interested parties to comment on this information. *See* ''No Shipments for Review and Intent to Rescind,'' memorandum to the file dated April 16, 2009. We received no comments.

Rescission of Review

Under 19 CFR 351.213(d)(3), the Secretary may rescind an administrative review in whole or only with respect to a particular exporter or producer if the Secretary concludes that there were no entries, exports, or sales of the subject merchandise during the POR. As only Kawasaki and its alleged successor-in-interest JFE are subject to this administrative review, and there were no entries, exports, or sales of the subject merchandise by either Kawasaki or JFE during the POR, we are rescinding this review of the antidumping duty order on CTL CQ plate from Japan in its entirety pursuant to 19 CFR 351.213(d)(3). We intend to issue assessment instructions to CBP 15 days after the date of publication of this notice of rescission of administrative review.

This notice is published in accordance with section 751 of the Tariff Act of 1930, as amended, and 19 CFR 351.213(d)(4).

Dated: May 12, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–11666 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Notice of Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: (May 19, 2009.

SUMMARY: In response to requests by interested parties, the Department of Commerce (''the Department'') initiated an administrative review of the antidumping duty order on certain pasta (''pasta'') from Italy for the period of review (''POR'') July 1, 2007, through June 30, 2008.[1] As a result of timely withdrawals of request for review, we are rescinding this review, in part, with respect to Pasta Zara SpA (''Zara''), Pastificio Felicetti S.r.L. (''Felicetti''), F. Divella SpA (''Divella''), Pastificio Di Martino Gaetano & F.lli S.r.L. (''Di Martino''), and Arrighi S.p.A. (''Arrighi'').

FOR FURTHER INFORMATION CONTACT: Christopher Hargett, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161.

SUPPLEMENTARY INFORMATION:

Background

On August 26, 2008, the Department initiated the instant review of certain pasta from Italy with respect to Arrighi, Domenico Paone fu Erasmo S.p.A., Divella, Industria Alimentare Colavita, S.p.A., P.A.M. S.p.A., Pasta Lensi, Pasta Zara, Di Martino, Felicetti, Pastificio Fratelli Pagani S.p.A., Pastificio Labor S.r.L., Pastificio Lucio Garafalo, Pastificio Riscossa F.Illi Mastromauro S.r.L., Rummo S.p.A. Molino e Pastificio, and Rustichella d'Abruzzo S.p.A.[2] On September 15, 2008, petitioners[3] withdrew their request for review with respect to Arrighi. Arrighi did not self-request review.

On October 20, 2008, Zara, Felicetti, Divella, and Di Martino withdrew their requests for review. Petitioners did not request review of Zara, Felicetti, Divella or Di Martino.

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation*, 73 FR 50308 (August 26, 2008) (''Initiation Notice'').

[2] *See Initiation Notice*.

[3] Petitioners are the New World Pasta Company, American Italian Pasta Company, and Dakota Growers Pasta Company.

Scope of Order

Imports covered by the antidumping duty order on pasta from Italy include shipments of certain non-egg dry pasta in packages of five pounds (2.27 kilograms) or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this order is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of this order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non-egg dry pasta containing up to two percent egg white. Also excluded from the order on pasta from Italy are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia or by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Instituto per la Certificazione Etica e Ambientale (''ICEA'') are also excluded from this order.

The merchandise subject to the antidumping duty order on pasta from Italy is currently classifiable under item 1902.19.20 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and Customs purposes, the written description of the merchandise subject to the order is dispositive.

Partial Rescission of Review

If a party that requested a review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review, the Secretary will rescind the review pursuant to 19 CFR 351.213(d)(1). In this case, petitioners, withdrew their request with respect to Arrighi within 90 days of initiation of this review. Additionally, Zara, Felicetti, Divella, and Di Martino withdrew their requests for administrative reviews within 90 days from the date of initiation. No other party requested review of these five companies. Therefore, we are rescinding this review of the antidumping duty order on certain pasta from Italy, in part, with respect to Arrighi, Zara, Felicetti, Divella, and Di Martino. This administrative review will continue with respect to Domenico Paone fu Erasmo S.p.A., Industria Alimentare Colavita, S.p.A., P.A.M. S.p.A., Pasta Lensi, Pastificio Fratelli Pagani S.p.A., Pastificio Labor S.r.L., Pastificio Lucio Garafalo, Pastificio Riscossa F.Illi Mastromauro S.r.L., Rummo S.p.A. Molino e Pastificio, and Rustichella d'Abruzzo S.p.A

The Department will issue appropriate assessment instructions directly to U.S. Customs and Border Protection (''CBP'') 15 days after the publication of this notice. The Department will direct CBP to assess antidumping duties at the cash deposit rate in effect on the date of entry for entries during the period July 1, 2007, through June 30, 2008.

This notice is in accordance with section 777(i)(1) of the Tariff Act of 1930, as amended, and 19 CFR 251.213(d)(4).

Dated: May 12, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–11669 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

University of Utah, Consortium for Astro-Particle Research, Notice of Decision on Application for Duty-Free Entry of Scientific Instruments

This is a decision pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Ave, NW, Washington, D.C.

Comments: None received. Decision: Approved. We know of no instruments of equivalent scientific value to the foreign instruments described below, for such purposes as this is intended to be used, that was being manufactured in the United States at the time of its order.

Docket Number: 09–007. Applicant: University of Utah, Consortium for Astro-Particle Research, Salt Lake City, UT 84111. Instrument: Electron Light Source (ELS) accelerator. Manufacturer: University of Tokyo, Japan. Reasons: The instrument will be used as a component of a large ground Telescope Array, which will allow the scientists to calibrate the telescopes by generating a particle beam that accurately simulates a cosmic ray shower. Specifically, this instrument generates a precise amount of air fluorescence for the calibration of the Telescope Array's fluorescence telescopes. A unique feature of this instrument is that it must be able to calibrate the telescope with well time and energy characteristics of a cosmic ray generated extensive air shower and must be measured and stable at the 2–3% level.

Dated: May 13, 2009.

Christopher Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–11646 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before June 8, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–022. Applicant: Princeton University, Department of Chemical Engineering, A217 Engineering Quadrangle, Princeton, NJ 08544. Instrument: SWAXS Dual 1D Position-Sensitive-Detector (PSD) System. Manufacturer: Hecus X-Ray System GmbH, Austria. Intended Use: The instrument will be used to acquire information regarding block copolymer microstructures. The dual system allows simultaneous acquisition of time resolved small-angle and wide-angle x-ray scattering data, which provides information regarding the morphology of both amorphous and semi-crystalline block copolymers. Justification for Duty-Free Entry: Use of any other detector system would potentially require considerable reconfiguration of the entities current x-ray system. Application accepted by Commissioner of Customs: April 28, 2009.

Dated: May 13, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–11670 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

Application(s) for Duty-Free Entry of Scientific Instruments

Pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States. Comments must comply with 15 CFR 301.5(a)(3) and (4) of the regulations and be postmarked on or before June 8, 2009. Address written comments to Statutory Import Programs Staff, Room 3720, U.S. Department of Commerce, Washington, D.C. 20230. Applications may be examined between 8:30 A.M. and 5:00 P.M. at the U.S. Department of Commerce in Room 3720.

Docket Number: 09–014. Applicant: Miami University, 500 E. High Street, Oxford, OH 45056. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: The instrument will be used to characterize materials such as minerals, nano-materials, metals, ceramics, semiconductors, catalysts, and biological materials. This instrument provides improved resolution and contrast that will increase the types of samples that can be analyzed. Justification for Duty-Free Entry: No instrument of the same general category is manufactured within the United States. Application accepted by Commissioner of Customs: April 6, 2009.

Docket Number: 09–018. Applicant: Texas A & M University, College Station, TX 77843–4458. Instrument: Electron Microscope. Manufacturer: FEI Company, Czech Republic. Intended Use: The instrument will be used to perform ultrastructural analysis of a variety of animal cells and tissues involved in research investigations and for more limited diagnostic purposes. The materials to be investigated will be fixed and embedded animal tissues and cells. Justification for Duty-Free Entry: No instrument of the same general category is manufactured within the United States. Application accepted by Commissioner of Customs: April 27, 2009.

Docket Number: 09–020. Applicant: Columbia University, Department of Biochemistry, 650 W. 168th St., New York, NY 10032. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: The instrument will be used study in cell-free in vitro systems, the structure and binding constellations of macromolecules and their ligands engaged in complex processes in the cell, such as translation, transcription, splicing, etc. Justification for Duty-Free Entry: No instrument of the same general category is manufactured within the United States. Application accepted by Commissioner of Customs: April 24, 2009.

Dated: May 13, 2009.

Christopher Cassel,

Acting Director, IA Subsidies Enforcement Office.

[FR Doc. E9–11676 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21–2009]

Foreign-Trade Zone 124—Gramercy, LA, Application for Subzone, Excalibar Minerals LLC (Barite Milling), New Iberia, LA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of South Louisiana, grantee of Foreign-Trade Zone (FTZ) 124, requesting special-purpose subzone status for the barite milling facility of Excalibar Minerals LLC (Excalibar), located in New Iberia, Louisiana. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on May 6, 2009.

The Excalibar facility (20 employees, 16 acres, 350,000 ton capacity for ground barite) is located at 4602 South Lewis Street, in New Iberia. The facility is used for activities related to the milling (heating, grinding, crushing), storage and distribution of ground barite, primarily for the U.S. market. The material that would be purchased from abroad (representing approximately 75 to 85 percent of the finished product's value) is raw barite (HTSUS number 2511.10), dutiable at $1.25 per metric ton.

FTZ procedures could exempt the company from customs duty payments on the foreign component used in export production. The company anticipates that less than 1 percent of the plant's shipments will be exported. On its domestic sales, Excalibar would be able to choose the duty rate during customs entry procedures that applies to the ground barite (duty-free) for the foreign input noted above. FTZ designation would further allow Excalibar to realize logistical benefits through the use of weekly customs entry procedures, as well as savings from the elimination of duties on materials that become scrap/waste during manufacturing. The application indicates that the FTZ-related savings would help improve the facility's international competitiveness.

In accordance with the Board's regulations, Christopher Kemp of the FTZ staff is designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address listed below. The closing period for their receipt is July 20, 2009. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to August 3, 2009).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 2111, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *http://www.trade.gov/ftz.* For further information, contact Christopher Kemp at *Christopher_Kemp@ita.doc.gov* or (202) 482–0862.

Dated: May 6, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–11671 Filed 5–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

University of North Carolina at Charlotte, et al.

Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational,

Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, as amended by Pub. L. 106–36; 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 A.M. and 5:00 P.M. in Room 3705, U.S. Department of Commerce, 14th and Constitution Avenue., NW, Washington, D.C.

Docket Number: 09–009. Applicant: University of North Carolina at Charlotte, Charlotte, NC 28223. Instrument: Electron Microscope. Manufacturer: JEOL, Japan. Intended Use: See notice at 74 FR 18350, April 22, 2009.

Docket Number: 09–010. Applicant: Indiana University, Bloomington, IN 47408. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 18350, April 22, 2009.

Docket Number: 09–011. Applicant: Carnegie Mellon University, Pittsburgh, PA 15213. Instrument: Electron Microscope. Manufacturer: FEI Company, the Netherlands. Intended Use: See notice at 74 FR 18350, April 22, 2009.

Docket Number: 09–012. Applicant: Ohio State University Medical Center, Columbus, OH 43210. Instrument: Electron Microscope. Manufacturer: JEOL, Ltd., Japan. Intended Use: See notice at 74 FR 18350, April 22, 2009.

Comments: None received. Decision: Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. Reasons: Each foreign instrument is an electron microscope and is intended for research or scientific educational uses requiring an electron microscope.

We know of no electron microscope, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of each instrument.

Dated May 13, 2009.

Christopher Cassel,

Acting Director, Subsidies Enforcement Office, Import Administration.

[FR Doc. E9–11677 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1618]

Grant of Authority for Subzone Status, Shin-Etsu Handotai America, Inc. (Semiconductor-Grade Silicon Wafers), Vancouver, WA

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''* * * the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and when the activity results in a significant public benefit and is in the public interest;

Whereas, the Cowlitz County Economic Development Council, grantee of Foreign-Trade Zone 120, has made application to the Board for authority to establish a special-purpose subzone at the semiconductor-grade silicon wafer manufacturing and distribution facility of Shin-Etsu Handotai America, Inc., located in Vancouver, Washington, (FTZ Docket 63–2008, filed 10/30/2008);

Whereas, notice inviting public comment has been given in the **Federal Register** (73 FR 66838–66839, 11/12/2008) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's report, and finds that the requirements of the FTZ Act and Board's regulations are satisfied, and that the proposal is in the public interest;

Now, therefore, the Board hereby grants authority for subzone status for activity related to the manufacturing and distribution of semiconductor-grade silicon wafers at the facility of Shin-Etsu Handotai America, Inc., located in Vancouver, Washington (Subzone 120A), as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 7th day of May 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Import Administration, Alternate Chairman, Foreign-Trade Zones Board.

Attest:

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–11653 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Travel and Tourism Advisory Board: Meeting of the U.S. Travel and Tourism Advisory Board

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The U.S. Travel and Tourism Advisory Board (Board) will hold a meeting to discuss topics related to the travel and tourism industry. The Board was re-chartered on September 21, 2007, to advise the Secretary of Commerce on matters relating to the travel and tourism industry.

DATES: June 9, 2009.

Time: 10 a.m. EDT.

ADDRESSES: Department of Commerce, 1401 Constitution Avenue, NW., Room 4830, Washington, DC 20230. Because of building security, all non-government attendees must pre-register. This program will be physically accessible to people with disabilities. Seating is limited and will be on a first come, first served basis. Requests for sign language interpretation, other auxiliary aids, or pre-registration, should be submitted no later than June 1, 2009, to J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, telephone 202–482–4501, *Marc.Chittum@mail.doc.gov.*

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, U.S. Travel and Tourism Advisory Board, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230, *telephone:* 202–482–4501, *e-mail: Marc.Chittum@mail.doc.gov.*

Dated: May 14, 2009.

J. Marc Chittum,

Executive Secretary, U.S. Travel and Tourism Advisory Board.

[FR Doc. E9–11688 Filed 5–15–09; 11:15 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

RIN 090318324–9911–02

Technology Innovation Program (TIP) Notice of Availability of Funds; Amendment

AGENCY: National Institute of Standards and Technology (NIST), Department of Commerce.

ACTION: Notice of availability of funds; amendment.

SUMMARY: On March 31, 2009, the National Institute of Standards and Technology (NIST) published a notice in the **Federal Register** announcing the solicitation of proposals for a single fiscal year 2009 Technology Innovation Program (TIP) competition. NIST is issuing this notice to clarify the eligibility criteria in that notice.

DATES: The due date for submission of proposals for the single fiscal year 2009 TIP competition is 3 p.m. Eastern Time, Tuesday, June 23, 2009. This deadline applies to any mode of proposal submission, including paper and electronic. Do not wait until the last minute to submit a proposal. TIP will not make any allowances for late submissions, including incomplete Grants.gov registration or delays by guaranteed overnight couriers. To avoid any potential processing backlogs due to last minute registrations, proposers are strongly encouraged to start their Grants.gov registration process at least four weeks prior to the proposal submission due date. Review, selection, and award processing is expected to be completed by the end of November 2009.

ADDRESSES: Proposals must be submitted to TIP as follows:

Paper submission: Send to National Institute of Standards and Technology, Technology Innovation Program, 100 Bureau Drive, Stop 4701, Gaithersburg, MD 20899–4701.

Electronic submission: http://www.grants.gov.

FOR FURTHER INFORMATION CONTACT: Barbara Cuthill at 301–975–3273 or by e-mail at *barbara.cuthill@nist.gov.*

SUPPLEMENTARY INFORMATION:

Additional Information. On March 31, 2009, NIST published a notice announcing the solicitation of proposals for a single fiscal year 2009 TIP competition (74 FR 14524–31). NIST is issuing this notice to clarify the Eligibility Criteria section of the notice (74 FR 14529) by adding the following sentence at the end of that section: ''Nonprofit organizations must meet the eligibility criteria set forth in 15 CFR 296.5(a)(2) which explains the eligibility criteria for companies.'' The purpose of this addition is to clarify the eligibility treatment of nonprofit organizations.

The entire revised Eligibility Criteria section is restated below for the public's convenience.

Eligibility Criteria. Single companies and joint ventures may apply for TIP funding as provided in 15 CFR 296.2, 296.4, and 296.5. Nonprofit organizations must meet the eligibility criteria set forth in 15 CFR 296.5(a)(2) which explains the eligibility criteria for companies.

Administrative Procedure Act and Regulatory Flexibility Act. Prior notice and comment are not required under 5 U.S.C. 553, or any other law, for rules relating to public property, loans, grants, benefits or contracts (5 U.S.C. 553(a)). Because prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. *et seq.*) are inapplicable. Therefore, a regulatory flexibility analysis is not required and has not been prepared.

E.O. 12866 (Regulatory Planning and Review). This notice is determined to be not significant under Executive Order 12866.

Dated: May 13, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–11627 Filed 5–18–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0069]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Defense Logistics Agency is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on June 18, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Defense Logistics Agency, Privacy and FOIA Officer HQ Defense Logistics Agency *Attn:* General Counsel 8725 John J. Kingman Road, Stop 2533 Fort Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Mr. Lewis Oleinick at (703) 767–6194.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's system of record 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 new or altered systems reports.

Dated: May 13, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S370.10 CAHS

SYSTEM NAME:

Labor Management Relations Records System (September 21, 1999, 64 FR 51103).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with ''S370.10'' from entry.

* * * * *

SYSTEM LOCATION:

Delete and replace entry with ''Human Resources, Labor and Employee Relations (J–13), Headquarters, Defense Logistics Agency (DLA), 8725 John J. Kingman Road, Suite 3630, Fort Belvoir, VA 22060–6221.

Defense Logistics Agency Human Resources Center-Columbus (DHRC–C), 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Defense Logistics Agency Human Resources Center-New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency Human Resources Center (DHRC–D), 3990 East Broad Street, Building 306, Columbus, OH 43218–25260.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Director, Human Resources Office, Headquarters, Defense Logistics Agency, *Attn:* J–13, 8725 John J. Kingman Road, Suite 3630, Fort Belvoir, VA 22060–6221.

Director, Defense Logistics Agency Human Resources Center-Columbus

(DHRC–C), 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Director, Defense Logistics Agency Human Resources Center-New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency Human Resources Center (DHRC–D), 3990 East Broad Street, Building 306, Columbus, OH 43218–25260.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Privacy Act Office, Headquarters, Defense Logistics Agency, *Attn:* DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221.

Written inquiry should contain the subject individual's full name and Social Security Number, and case subject and case number, if known.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''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.

Written inquiry should contain the subject individual's full name and Social Security Number, and case subject and case number, if known.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''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:

Delete entry and replace with ''The individual; Servicing Human Resources Director, arbitrator's office, the Federal Labor Relations Authority Headquarters and Regional Offices, and union officials.''

* * * * *

S370.10

SYSTEM NAME:

Labor Management Relations Records System.

SYSTEM LOCATION:

Human Resources, Labor and Employee Relations (J–13), Headquarters, Defense Logistics Agency (DLA), 8725 John J. Kingman Road, Suite 3630, Fort Belvoir, VA 22060–6221.

Defense Logistics Agency Human Resources Center-Columbus (DHRC–C), 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Defense Logistics Agency Human Resources Center-New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency Human Resources Center (DHRC–D), 3990 East Broad Street, Building 306, Columbus, OH 43218–25260.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DLA or other third party employees and individuals of other Federal agencies who receive personnel support from DLA who are involved in labor grievances, disputes, or complaints which have been referred to an arbitrator for resolution.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains the subject individual's name, Social Security Number, addresses, telephone numbers, background papers, and details pertaining to the case or issue.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Chapter 71 of Title 5 of the U.S. Code, Labor-Management Relations and E.O. 9397 (SSN).

PURPOSE(S):

Records are maintained incident to the administration, processing, and resolution of unfair labor complaints, grievance-arbitrations, negotiability, and representation issues. Statistical data, with personal identifiers removed, may be used by management for reporting or policy evaluation 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 of 1974, these records contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Representatives of the U.S. Office of Personnel Management (OPM) on matters relating to the inspection, survey, audit or evaluation of Civilian Personnel Management Programs.

To the Comptroller General or any of his authorized representatives, in the course of the performance of duties of the Government Accountability Office relating to the Labor-Management Relations Program.

To the Federal Labor Relations Authority to respond to inquiries from that office regarding complaints referred to or filed with that office.

To arbitrators, examiners, or other third parties appointed to inquire into, review, or negotiate labor-management issues.

The DoD ''Blanket Routine Uses'' also 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 paper and/or electronic storage media.

RETRIEVABILITY:

Records are retrieved by case subject, case numbers, and/or individual employee names and Social Security Numbers.

SAFEGUARDS:

Records are maintained in areas accessible only to DLA personnel who must access the records to perform their duties. The computerized files are password protected with access restricted to authorized users. Records are secured in locked or guarded buildings, locked offices, or locked cabinets during non duty hours.

RETENTION AND DISPOSAL:

Records will be destroyed 5 years after final resolution of the case.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Human Resources Office, Headquarters, Defense Logistics Agency, *Attn:* J–13, 8725 John J. Kingman Road, Suite 3630, Fort Belvoir, VA 22060–6221,

Director, Defense Logistics Agency Human Resources Center-Columbus (DHRC–C), 3990 East Broad Street, Building 11, Section 3, Columbus, OH 43213–0919.

Director, Defense Logistics Agency Human Resources Center-New Cumberland (DHRC–N), 2001 Mission Drive, Suite 3, New Cumberland, PA 17070–5042.

Defense Logistics Agency Human Resources Center (DHRC–D), 3990 East Broad Street, Building 306, Columbus, OH 43218–25260.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is 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.

Written inquiry should contain the subject individual's full name and Social Security Number, and case subject and case number, if known.

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.

Written inquiry should contain the subject individual's full name and Social Security Number, and case subject and case number, if known.

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:

The individual; Servicing Human Resources Director, arbitrator's office, the Federal Labor Relations Authority Headquarters and regional offices, and union officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–11619 Filed 5–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Wednesday, June 4, 2009, 6 p.m.

ADDRESSES: Ohio State University, South Center, 1864 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: David Kozlowski, Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–2759, *David.Kozlowski@lex.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda:

- Call to Order, Introductions, Review of Agenda.
- Approval of April Meeting Minutes.
- Approval of May Meeting Minutes.
- Public Comments.
- Deputy Designated Federal Officer's Comments.
- Federal Coordinator's Comments.
- Liaisons' Comments.
- Presentations.
- Administrative Issues:
  - Committee Updates.
  - Motions.
- Public Comments.
- Final Comments.
- Adjourn.

Breaks taken as appropriate.

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact David Kozlowski at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact David Kozlowski at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling David Kozlowski at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.org/publicmeetings.html.*

Issued at Washington, DC, on May 13, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–11615 Filed 5–18–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, June 4, 2009, 9 a.m.–5 p.m. Friday, June 5, 2009, 8:30 a.m.–4 p.m.

ADDRESSES: Red Lion Hotel, 1101 North Columbia Center Boulevard, Kennewick, Washington 99336, Phone: (509) 783–0611 or (800) 733–5466, Fax: (509) 374–0391.

FOR FURTHER INFORMATION CONTACT: Paula Call, Federal Coordinator, Department of Energy Richland Operations Office, 825 Jadwin Avenue, P.O. Box 550, A7–75, Richland, WA, 99352; Phone: (509) 376–2048; or e-mail: *Paula_K_Call@rl.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

- Agency Updates (Department of Energy Office of River Protection and Richland Operations Office; Washington State Department of Ecology; and the U.S. Environmental Protection Agency).
- Committee Updates, including: Tank Waste Committee; River and Plateau Committee; Health, Safety and Environmental Protection Committee; Public Involvement Committee; and Budgets and Contracts Committee.
- Richland Operations Office Systems Criteria Letter.
- Board Self-Evaluation.
- Draft Advice on the Environmental Remediation Disposal Facility Record of Decision and the Fiscal Year 2010 Budget.
- Leadership Retreat Debrief.
- Board Business: Vice-Chair Selection, Member Roles and Responsibilities, Process Manual Updates.

Public Participation: The meeting is open to the public. The EM SSAB, Hanford, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Paula Call at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Paula Call at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Paula Call's office at the address or phone number listed above. Minutes will also be available at the following Web site: *http://www.hanford.gov/?page=413&parent=397.*

Issued at Washington, DC, on May 13, 2009.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. E9–11616 Filed 5–18–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 606–027–CA]

Kilarc-Cow Creek Hydroelectric Project; Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, Recommendations, and Terms and Conditions

May 12, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Surrender of License.

b. *Project No.:* 606–027.

c. *Date Filed:* March 13, 2009.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Kilarc-Cow Creek Hydroelectric Project.

f. *Location:* Old Cow Creek and South Cow Creek in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Randal S. Livingston, Vice-President of Power Generation, Pacific Gas and Electric Company, P.O. Box 770000, MC–N11E, San Francisco, CA 94177–0001. Phone (415) 973–7000.

i. *FERC Contact:* Robert Bell, (202) 502–6062.

j. Deadline for filing motions to intervene and protests, comments, recommendations, and preliminary terms and conditions, is 60 days from the issuance date of this notice; reply comments are due 105 days from the issuance date of this notice. All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please include the project number (P–606) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the applicant specified in a particular application.

k. *Description of Request:* The applicant proposes to surrender the license for the Kilarc-Cow Creek Hydroelectric Project. In addition, the applicant proposes to decommission and remove project facilities, as described in its proposed decommissioning plan. In general, the licensee proposes to (1) remove diversion dams stop water diversions and to allow for free passage of fish and sediment; (2) leave in place some diversion dam abutments and foundations to protect stream banks and provide grade control; (3) secure and leave in place powerhouse structures (keeping an option for future reuse of the powerhouse structures be preserved); (4) remove electric generators, turbines and other equipment; (5) grade and fill forebays; and (6) leave in place, breach, or fill in canal segmentsin consultation with affected landowners, and remove metal and wood flume structures. The applicant consulted with federal, state, local agencies, and other parties with potential interest, during the license surrender application process.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3676 or e-mail *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. *Mailing list:* Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application (see item (j) above).

o. *Filing and Service of Responsive Documents:* All filings must (1) bear in all capital letters the title ''PROTEST'', ''MOTION TO INTERVENE'', ''COMMENTS,'' ''REPLY COMMENTS,'' ''RECOMMENDATIONS,'' or ''TERMS AND CONDITIONS''; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene or

protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

p. As provided for in 18 CFR 4.34(b)(5)(i), the applicant must file, no later than 60 days following the date of issuance of this notice of acceptance and ready for environmental analysis: (1) A copy of the water quality certification; (2) a copy of the request for certification, including proof of the date on which the certifying agency received the request; or (3) evidence of waiver of water quality certification.

q. *e-Filing:* Comments, motions to intervene, protests, recommendations, or terms and conditions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the ''e Filing'' link. The Commission strongly encourages electronic filings.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11571 Filed 5–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2985–006]

MeadWestvaco Corporation; Notice of Application Tendered for Filing With the Commission and Establishing Procedural Schedule for Licensing and Deadline for Submission of Final Amendments

May 12, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Subsequent Minor License.

b. *Project No.:* 2985–006.

c. *Date Filed:* April 29, 2009.

d. *Applicant:* MeadWestvaco Corporation.

e. *Name of Project:* Willow Mill Hydroelectric Project.

f. *Location:* On the Housatonic River in the Town of Stockbridge, Berkshire County, Massachusetts. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Thomas A. Beebe, Senior Engineering Project Manager, MeadWestvaco, MW Custom Papers, LLC, P.O. Box 188, South Lee, MA 01260, (413) 243 5938, *thomas.beebe@mwv.com.*

i. *FERC Contact:* Kristen Murphy, (202) 502–6236 or *kristen.murphy@ferc.gov.*

j. This application is not ready for environmental analysis at this time.

k. The existing Willow Mill Project consists of: (1) A 14-foot-high, 150-foot-wide stone masonry gravity dam; (2) an 11-acre impoundment; (3) a 10-foot-deep, 18-foot-wide, 50-foot-long rubble and masonry canal connected to a 10-foot-deep, 18-foot-wide, 260-foot-long rubble and masonry underground headrace; (4) two 5.5-foot-long, 8-foot diameter steel penstocks; (5) a 100-kW turbine generating unit; and (6) a 210-foot-long discharge pipe releasing water back into the Housatonic River. The turbine generating unit is located in the basement of MeadWestvaco's paper mill. There are no transmission lines associated with the project as all of the power is used for internal use at the Willow Mill.

The applicant proposes to continue to operate the project in run-of-river mode with an increase in minimum flow in the 700-foot-long bypass reach from 1.4 cubic feet per second (cfs) to 122 cfs or inflow, whichever is less. The applicant estimates that the total average annual generation, with the proposed minimum flow, would be approximately 256 megawatt-hours.

l. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. *Procedural Schedule:* The application will be processed according to the following Hydro Licensing Schedule. The Commission staff proposes to issue a single Environmental Assessment (EA) rather than issuing a draft and final EA. The schedule allows 30 days for entities to comment on the EA, and 60 days for agencies to file modified mandatory terms and conditions. Staff will take into consideration all comments and terms and conditions received on the EA before final action is taken on the license application. Revisions to the schedule may be made as appropriate.

Milestone	Target date
Notice of Acceptance and Ready for Environmental Analysis	June 28, 2009.
Filing interventions, comments, recommendations, preliminary terms and conditions, and fishway prescriptions	August 27, 2009.
Notice of availability of the EA	December 25, 2009.
Filing comments on EA	January 24, 2010.
Filing modified terms and conditions	March 25, 2010.

o. Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11570 Filed 5–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QM09–4–000]

Wolverine Power Supply Cooperative, Inc.; Notice of Filing

May 12, 2009.

Take notice that on May 8, 2009, Wolverine Power Supply Cooperative, Inc. filed an application requesting authorization to terminate the mandatory purchase obligation from qualifying facilities with net capacity over twenty megawatts on a service territory-wide basis, pursuant to section 292.310(a).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on June 5, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11568 Filed 5–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER09–88–002]

Southern Company Services, Inc.; Notice of Filing

May 12, 2009.

Take notice that on April 23, 2009, the Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Southern Power Company (collectively Southern Companies), filed tariff sheets to its Market Based Rate Tariff, to be effective April 23, 2009, pursuant to the Commission's, March 25, 2009, Order, *Southern Co. Svcs., Inc.,* 126 FERC ¶ 61,274 (2009) (March 25 Order).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov*, or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 15, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11569 Filed 5–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL07–56–008; EL07–58–008]

Organization of PJM States, Inc. v. PJM Interconnection, L.L.C.; Notice of Filing

May 12, 2009.

Take notice that on May 11, 2009, the Pennsylvania Public Utility Commission filed a State of Certification as required by sections 18.17.4 of the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. and the Commission's Order, *Organization of PJM States, Inc.* v. *PJM Interconnection, L.L.C.,* 123 FERC ¶ 61,235 (2008).

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov*, using the ''eLibrary'' link and is available for review in the Commission's Public

Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5 p.m. Eastern Time on May 26, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–11572 Filed 5–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting Notice

May 14, 2009.

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 21, 2009, 10 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note: Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on-line at the Commission's Web site at *http://www.ferc.gov* using the eLibrary link, or may be examined in the Commission's Public Reference Room.

948TH—Meeting

Regular Meeting May 21, 2009. 10 a.m.

Item No.	Docket No.	Company
	Administrative	
A–1	AD02–1–000	Agency Administrative Matters.
A–2	AD02–7–000	Customer Matters, Reliability, Security and Market Operations.
A–3	AD06–3–000	Energy Market Update.
	Electric	
E–1	OA08–21–001	Maine Public Service Company.
E–2	OA08–32–002	PJM Interconnection, L.L.C.
E–3	OA08–35–002	Xcel Energy Services, Inc.—Southwestern Public Service Company.
E–4	OA08–41–001	MidAmerican Energy Company.
E–5	OA08–53–001	Midwest Independent Transmission System Operator, Inc.
	OA08–42–001	Midwest Independent Transmission System Operator, Inc. and American Transmission Company, LLC.
E–6	OA08–58–002	ISO New England Inc.
E–7	OA08–61–001	Southwest Power Pool, Inc.
E–8	OA08–62–002, OA08–62–003, ≤OA08–62–004.	California Independent System Operator Corporation.
E–9	NJ08–3–001	Southwestern Power Administration.
E–10	EC09–32–000	Exelon Corporation.
E–11	OMITTED.	
E–12	RM04–7–006	Market-Based Rates For Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities.
E–13	RM08–13–000	Transmission Relay Loadability Reliability Standard.
E–14	RM08–12–000	Western Electricity Coordinating Council Regional Reliability Standard Regarding Automatic Time Error Correction.
E–15	OMITTED.	
E–16	RM07–21–002	Blanket Authorization Under FPA Section 203.
E–17	RM08–16–000	Electric Reliability Organization Interpretations of Specific Requirements of Frequency Response and Bias and Voltage and Reactive Control Reliability Standards.
E–18	AD09–7–000	Material Changes in Facts Underlying Waiver of Order No. 889 Part 358 of the Commission's Regulations.
E–19	OA08–116–000	Wolverine Power Supply Cooperative, Inc.
E–20	ER09–864–000	ISO New England Inc. and New England Power Pool Participants Committee.
E–21	ER09–241–001	California Independent System Operator Corporation.
E–22	ER01–2636–005	ALLETE, Inc.
E–23	OMITTED.	
E–24	EL09–21–000	PacifiCorp.
E–25	EL00–95–000	San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation.
	EL00–98–000	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation.
E–26	EL02–18–002	NEO California Power LLC.
	EL00–95–223	San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation.
	EL00–98–208	Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange Corporation.

Item No.	Docket No.	Company
E–27	ER08–1317–001	California Independent System Operator Corporation.
E–28	ER08–140–001	California Independent System Operator Corporation.
E–29	OMITTED.	
E–30	ER08–1281–002	New York Independent System Operator, Inc.
E–31	OMITTED.	
E–32	ER02–2001–011	Electric Quarterly Reports.
	ER06–250–000	Knedergy, LLC.
	ER05–294–000	Westbank Energy Capital, LLC.
E–33	EL09–20–000	Northeast Utilities Service Company and NSTAR Electric Company.
Gas		
G–1	RP08–295–001	Columbia Gas Transmission Company.
G–2	RP09–282–002, ≤RP09–282–001	Tennessee Gas Pipeline Company.
G–3	RP07–504–000, RP07–504–001, RP07–504–002.	Algonquin Gas Transmission, LLC.
Hydro		
H–1	EL06–91–002, P–12252–029, P–12252–030.	Albany Engineering Corporation v. Hudson River-Black River Regulating District. Hudson River-Black River Regulating District.
H–2	P–13282–001	Renaissance Ketchikan Group, LLC.
H–3	P–2145–092	Public Utility District No. 1 of Chelan County, Washington.
Certificates		
C–1	OMITTED.	
C–2	CP08–463–000	CenterPoint Energy Gas Transmission Company.
C–3	OMITTED.	
C–4	OMITTED.	
C–5	CP09–25–000	New Mexico Gas Company, Inc. and Public Service Company of New Mexico.
C–6	CP09–34–001	ConocoPhillips Alaska Natural Gas Corporation and Marathon Oil Company.
C–7	CP08–6–001	Midcontinent Express Pipeline LLC.
	CP08–9–001	Enogex Inc.
C–8	CP08–441–001	CenterPoint Energy Gas Transmission Company.
	CP08–444–001	Texas Eastern Transmission, LP.
C–9	CP08–100–001	Texas Eastern Transmission, LP.

Kimberly D. Bose,

Secretary.

A free Webcast of this event is available through *http://www.ferc.gov*. Anyone with Internet access who desires to view this event can do so by navigating to *http://www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its Webcast. The Capitol Connection provides technical support for the free Webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://www.CapitolConnection.org* or contact Danelle Springer or David Reininger at 703–993–3100.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

[FR Doc. E9–11694 Filed 5–15–09; 11:15 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–RCRA–2008–0914, FRL–8907–5]

Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; EPA's National Partnership for Environmental Priorities (Renewal), EPA ICR Number 2076.03, OMB Control Number 2050–0190

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 an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing approved collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

DATES: Additional comments may be submitted on or before June 18, 2009.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–RCRA–2008–0914, to (1) EPA, either online using *http://www.regulations.gov* (our preferred method), or by e-mail to *rcra-docket@epa.gov,* or by mail to: RCRA Docket (28221T), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and (2) OMB, by mail to: Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *Attention:* Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Newman Smith, Office of Resource Conservation and Recovery (5306P), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; *telephone number:* 703–308–8757; *fax number:* 703–308–8433; *e-mail address: smith.newman@epa.gov.*

SUPPLEMENTARY INFORMATION: EPA has submitted the following ICR to OMB for review and approval according to the procedures prescribed in 5 CFR 1320.12. On January 23, 2009 (74 *FR* 4189), EPA sought comments on this ICR pursuant to 5 CFR 1320.8(d). EPA received no comments. Any additional comments on this ICR should be submitted to EPA and OMB within 30 days of this notice.

EPA has established a public docket for this ICR under Docket ID No. EPA–HQ–RCRA–2008–0914, which is available for online viewing at *http://www.regulations.gov,* or in person viewing at the Resource Conservation and Recovery Act (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 EPA's electronic docket and comment system at *http://www.regulations.gov,* to submit or view public comments, access the index listing of the contents of the docket, and to access those documents in the docket that are available electronically. Once in the system, select ''docket search,'' then key in the docket ID number identified above. Please note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing at *http://www.regulations.gov* as EPA receives them and without change, unless the comment contains copyrighted material, confidential business information (CBI), or other information whose public disclosure is restricted by statute. For further information about the electronic docket, go to *http://www.regulations.gov*.

Title: EPA's National Partnership for Environmental Priorities (Renewal).

ICR numbers: EPA ICR No. 2076.03, OMB Control No. 2050–0190.

ICR Status: This ICR is scheduled to expire on May 31, 2009. Under OMB regulations, the Agency may continue to conduct or sponsor the collection of information while this submission is pending at OMB. 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: EPA has established a national program, called the National Partnership for Environmental Priorities (NPEP), to encourage improved chemical management through source reduction, use of environmentally preferable alternatives, and recycling. An organization's decision to participate in the program is completely voluntary. The primary purpose of the program is to serve as a ''clearing house'' of information on the availability of technical assistance, project ideas, and production-related success stories. By distributing this information, EPA hopes to stimulate additional chemical management activities and to present innovative technologies and production success stories to prospective partners. EPA uses three forms to collect information from partners. These forms can be prepared and submitted by hard copy or electronically.

Burden Statement: The annual burden for the enrollment form is estimated to average 22 hours per response; the annual burden for the Champion Enrollment form is estimated to average 22 hours per response; the annual burden for the success stories is expected to average 10 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.

Respondents/Affected Entities: Business or other for-profit.

Estimated Number of Respondents: 423.

Frequency of Response: On occasion.

Estimated Total Annual Hour Burden: 2,358.

Estimated Total Annual Cost: $185,598. This includes an estimated $0 capital investment and $88 operation and maintenance costs.

Changes in the Estimates: There is an increase of 1,716 hours in the total estimated burden currently identified in the OMB Inventory of Approved ICR Burdens. This is due to the increase in program enrollment, as well as the addition of the Champions Form.

Dated: May 14, 2009.

John Moses,

Director, Collection Strategies Division.

[FR Doc. E9–11635 Filed 5–18–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 1:30 p.m. on Friday, May 22, 2009, to consider the following matters:

Summary Agenda: No substantive discussion of the following item is anticipated. This matter will be resolved with a single vote unless a member of the Board of Directors requests that the item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' meetings.

Discussion Agenda: Memorandum and resolution re: Final Rule on Special Assessment.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC.

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *http://www.vodium.com/goto/fdic/boardmeetings.asp* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (703) 562–6067 (Voice or TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–7043.

Dated: May 15, 2009.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. E9–11784 Filed 5–15–09; 4:15 pm]

BILLING CODE P

FEDERAL ELECTION COMMISSION

Sunshine Act Notices

DATE AND TIME: Thursday, May 14, 2009, at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

THE FOLLOWING ITEM HAS BEEN ADDED TO THE AGENDA: Report of the audit division on Friends of Weiner.

Individuals who plan to attend and require special assistance, such as sign language interpretation or other reasonable accommodations, should contact Mary Dove, Commission Secretary, at (202) 694–1040, at least 72 hours prior to the hearing date.

PERSON TO CONTACT FOR INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. E9–11479 Filed 5–18–09; 8:45 am]

BILLING CODE 6715–01–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at *www.ffiec.gov/nic/*.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 12, 2009.

A. Federal Reserve Bank of Atlanta (Steve Foley, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309:

1. Three Shores Bancorporation, Inc., Orlando, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Seaside National Bank & Trust, Orlando, Florida.

Board of Governors of the Federal Reserve System, May 14, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–11620 Filed 5–18–09; 8:45 am]

BILLING CODE 6210–01–S

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0204]

General Services Administration Acquisition Regulation; Submission for OMB Review; Commercial Delivery Schedule Clause and Notice of Shipment

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding commercial delivery schedule clause and notice of shipment. A request for public comments was published at 73 FR 78800, December 23, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 18, 2009.

FOR FURTHER INFORMATION CONTACT: Suzanne Neurauter, Procurement Analyst, Contract Policy Division, at telephone (202) 208–0310 or via e-mail at *Suzanne.neurauter@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0204, Commercial Delivery Schedule Clause and Notice of Shipment in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Commercial Delivery Schedule (Multiple Award Schedule) clause required offerors to provide their commercial delivery terms and conditions. FSS awards contracts to commercial firms under terms and conditions that mirror commercial practices for the supplies and services. In order to ensure the Government obtains the supplies within the offeror's commercial delivery timeframe, the offeror must provide the information requested in the GSAR clause, Commercial Delivery Schedule (Multiple Award Schedule). Such a notice is necessary when preparations need to be made for docking arrangements, storage, trans-shipment of materials handling equipment of supplies and equipment upon delivery, labor and inside delivery at destination.

B. Annual Reporting Burden

Total Responses annually: 10,305

Hours per Response: .26

Total Burden Hours: 2741

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0204, Commercial Delivery Schedule Clause and Notice of Shipment, in all correspondence.

Dated: May 12, 2009.

Al Matera,

Director, Office of Acquisitions Policy .

[FR Doc. E9–11578 Filed 5–18–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0061]

Federal Acquisition Regulation; Submission for OMB Review; Transportation Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR), Regulatory Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Transportation Requirements. A request for public comments was published in the **Federal Register** at 73 FR 75402, December 11, 2008. No comments were received.

Public comments are particularly invited on: Whether this collection of information is necessary; whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit comments on or before June 18, 2009.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: General Services Administration (GSA) Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and send a copy to the Regulatory Secretariat (VPR), 1800 F Street NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Jeritta Parnell, Procurement Analyst, Contract Policy Division, GSA (202) 501–4082.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR Part 47 and related clauses contain policies and procedures for applying transportation and traffic management considerations in the acquisition of supplies and acquiring transportation or transportation-related services. Generally, contracts involving transportation require information regarding the nature of the supplies, method of shipment, place and time of shipment, applicable charges, marking of shipments, shipping documents and other related items. This information is required to ensure proper and timely shipment of Government supplies.

B. Annual Reporting Burden

Respondents: 65,000.
Responses per respondent: 21.32.
Annual Responses: 1,385,800.
Hours per Response: .048.
Total Burden Hours: 66,518.
Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0061, Transportation Requirements, in all correspondence.

Dated: May 12, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–11581 Filed 5–18–09; 8:45 am]

BILLING CODE 6820–EP–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0252]

General Services Administration Acquisition Regulation; Submission for OMB Review; Preparation, Submission, and Negotiation of Subcontracting Plans

AGENCY: Office of the Chief Acquisition Officer, GSA.

ACTION: Notice of request for comments regarding a renewal to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration will be submitting to the Office of Management and Budget (OMB) a request to review and approve a renewal of a currently approved information collection requirement regarding preparation, submission, and negotiation of subcontracting plans. A request for public comments was published at 74 FR 446, January 6, 2009. No comments were received.

This information collection will ensure that small and small disadvantaged business concerns are afforded the maximum practicable opportunity to participate as subcontractors in construction, repair, and alteration or lease contracts. Preparation, submission, and negotiation of subcontracting plans requires for all negotiated solicitations having an anticipated award value over $500,000 ($1,000,000 for construction), submission of a subcontracting plan with other than small business concerns when a negotiated acquisition meets all four of the following conditions.

1. When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

2. When the award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1.

3. The acquisition is not a commercial item acquisition.

4. The acquisition offers more than minimal subcontracting opportunities.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

DATES: Submit comments on or before: June 18, 2009.

FOR FURTHER INFORMATION CONTACT: Rhonda Cundiff, Procurement Analyst, Contract Policy Division, at telephone (202) 501–0044 or via e-mail to *rhonda.cundiff@gsa.gov.*

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to the Regulatory Secretariat (VPR), General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSAR provision at 552.219–72 requires a contractor (except small business concerns) to submit a subcontracting plan when a negotiated acquisition including construction, repair, and alterations and lease contracts (except those solicitations using simplified procedures) meets all four of the following conditions.

1. When the contracting officer anticipates receiving individual subcontracting plans (not commercial plans).

2. When award is based on trade-offs among cost or price and technical and/or management factors under FAR 15.101–1.

3. The acquisition is not a commercial item acquisition.

4. The acquisition offers more than minimal subcontracting opportunities.

B. Annual Reporting Burden

Respondents: 1,020.

Responses per Respondent: 1.

Hours per Response: 12.

Total Burden Hours: 12,240.

Obtaining Copies of Proposals: Requesters may obtain a copy of the information collection documents from the General Services Administration, Regulatory Secretariat (VPR), 1800 F Street, NW., Room 4041, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 3090–0252, Preparation, Submission, and Negotiation of Subcontracting Plans, in all correspondence.

Dated: May 12, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–11588 Filed 5–18–09; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the National Coordinator for Health Information Technology

ACTION: Announcement of grant award.

Recipient: American Hospital Association.

Purpose of Award: ONC announces the award of a grant to the American Hospital Association to fund a supplement to the Association's national survey of hospitals that will measure the adoption and use of electronic health records by these providers.

Amount of Award: $101,973.

Project Period: 12 months with option for four additional years of funding at the same level.

Justification for Exception to Competition: The American Hospital Association, has many years of experience conducting surveys with a high response rate across all United States hospitals.

Name and Address of Awarding Office Official: Marc Weisman, Executive Director, Office of the National Coordinator for Health Information Technology, Department of Health and Human Services, 200 Independence Avenue, SW., Washington DC 20201.

Dated: May 13, 2009.

Marc Weisman,

Executive Director, Office of the National Coordinator for Health Information Technology.

[FR Doc. E9–11672 Filed 5–18–09; 8:45 am]

BILLING CODE 4150–45–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

President's Advisory Council for Faith-based and Neighborhood Partnerships

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the President's Advisory Council for Faith-based and Neighborhood Partnerships announces the following meetings:

Name: President's Advisory Council for Faith-based and Neighborhood Partnerships Council meetings

Times and Dates: Thursday, June 4th at 2 p.m. Eastern; and Tuesday, June 16th at 4 p.m. Eastern.

Place: Meetings will be held via conference call.

Status: Open to the public, limited only by the space available.

Purpose: The Council brings together leaders and experts in fields related to the work of faith-based and neighborhood organizations in order to: Identify best practices and successful modes of delivering social services; evaluate the need for improvements in the implementation and coordination of public policies relating to faith-based and other neighborhood organizations; and make recommendations for changes in policies, programs, and practices.

Contact Person for Additional Information: Mara Vanderslice, 202–205–2419, *mara.vanderslice@hhs.gov.*

Supplementary Information: The meetings will be held via conference call. There is limited capacity to join the call and will be listen-only mode. Please contact Mara Vanderslice for more information about how to join the call.

Agenda: Topics to be discussed include updates from Council subcommittees on Reform of the Faith-based and Neighborhood Partnerships Office, Economic Recovery, Fatherhood and Healthy Families, Inter-religious Dialogue and Cooperation, Environment and Climate Change and Global Poverty and Development.

Dated: May 13, 2009.

Mara Vanderslice,

Special Assistant.

[FR Doc. E9–11610 Filed 5–18–09; 8:45 am]

BILLING CODE 4154–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0211]

Novartis Pharmaceuticals Corp. et al.; Withdrawal of Approval of 92 New Drug Applications and 49 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 92 new drug applications (NDAs) and 49 abbreviated new drug applications (ANDAs) from multiple applicants. The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective: June 18, 2009.

FOR FURTHER INFORMATION CONTACT: Florine P. Purdie, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6366, Silver Spring, MD 20993–0002, 301–796–3601.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their requests, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 6–403	Priscoline (tolazoline hydrochloride (HCl)	Novartis Pharmaceuticals Corp., One Health Plaza, East Hanover, NJ 07936–1080
NDA 8–303	Apresoline (hydralazine HCl)	Do.
NDA 9–087	Hydergine (ergoloid mesylates) Sublingual Tablets	Do.
NDA 9–509	Aramine (metaraminol bitartrate) Injection, 10 milligrams (mg)/milliliter (mL)	Merck & Co., Inc., UG2C–50, P.O. Box 1000, North Wales, PA 19454–1099
NDA 9–987	Delta-Cortef (prednisolone) Tablets	Pharmacia & Upjohn Co., c/o Pfizer, Inc., 235 East 42d St., New York, NY 10017
NDA 10–060	Florinef (fludrocortisone acetate) Tablets	King Pharmaceuticals, Inc., 501 5th St., Bristol, TN 37620
NDA 10–392	Atarax (hydroxyzine HCl) Tablets	Pfizer, Inc., 235 East 42d St., New York, NY 10017
NDA 10–485	Atarax (hydroxyzine HCl) Syrup	Roerig Pharmaceuticals, c/o Pfizer, Inc.
NDA 10–571	Compazine (prochlorperazine maleate) Tablets	GlaxoSmithKline, 1250 South Collegeville Rd., UP4110, Collegeville, PA 19426
NDA 10–611	Halotestin (fluoxymesterone) Tablets, 2 mg, 5 mg, and 10 mg	Pharmacia & Upjohn Co., c/o Pfizer, Inc.
NDA 10–686	Moderil (rescinnamine) Tablets, 0.25 mg and 0.5 mg	Pfizer, Inc.
NDA 10–742	Compazine (prochlorperazine edisylate) Injection	GlaxoSmithKline
NDA 10–976	Enovid/Enovid-E/Enovid-E 21 (norethynodrel and mestranol) Tablets	G.D. Searle LLC, c/o Pfizer, Inc.
NDA 11–000	Compazine (prochlorperazine maleate) Extended-Release Capsules	GlaxoSmithKline
NDA 11–111	Vistaril (hydroyzine HCl) Injection	Pfizer, Inc.
NDA 11–127	Compazine (prochlorperazine) Suppositories	GlaxoSmithKline
NDA 11–188	Compazine (prochlorperazine edisylate) Syrup	Do.
NDA 11–556	Anturane (sulfinpyrazone) Tablets and Capsules	Novartis Pharmaceuticals Corp.
NDA 11–635	Diupres (chlorothiazide and reserpine) Tablets	Merck & Co., Inc.
NDA 11–793	Esidrix (hydrochlorothiazide) Tablets	Novartis Pharmaceuticals Corp.
NDA 11–838	Tofranil (imipramine HCl) Injection	Do.
NDA 12–193	Ser-Ap-Es (reserpine, hydralazine HCl, and hydrochlorothiazide) Tablets	Do.
NDA 12–329	Ismelin (guanethidine monosulfate) Tablets	Do.
NDA 12–753	Torecan (thiethylperazine maleate) Tablets, 10 mg	Do.
NDA 12–754	Torecan (thiethylperazine maleate) Injection, 5 mg/mL	Do.
NDA 12–791	Hypertensin (angiotensin amide) Injection	Do.
NDA 12–845	Renese (polythiazide) Tablets, 1 mg, 2 mg, and 4 mg	Pfizer, Inc.
NDA 13–636	Renese-R (polythiazide and reserpine) Tablets, 2 mg/0.25 mg	Do.
NDA 15–500	Tolinase (tolazamide) Tablets	Pharmacia & Upjohn Co., c/o Pfizer, Inc.
NDA 16–029	Ovulen (ethynodiol diacetate and mestranol) Tablets	G.D. Searle LLC, c/o Pfizer, Inc.
NDA 16–126	Primatene (epinephrine bitartrate) Mist, 0.2 mg, and Bronitin (epinephrine bitartrate) Mist, 0.3 mg	Wyeth Consumer Healthcare, Five Giralda Farms, Madison, NJ 07940
NDA 16–635	Cyanocobalamin CO–57 Schilling Test Kit	Mallinckrodt Medical, c/o Mallinckrodt, Inc., 675 McDonnell Blvd., Hazelwood, MO 63042

Application No.	Drug	Applicant
NDA 16–705	Ovulen-28 (ethynodiol diacetate and mestranol) Tablets	G.D. Searle LLC, c/o Pfizer, Inc.
NDA 16–709	Ortho-Novum 1/50–28 (norethindrone and mestranol) Tablets	Ortho-McNeil-Janssen Pharmaceutical, Inc., c/o Johnson & Johnson Pharmaceutical Research & Development, LLC, 920 Rt. 202, P.O. Box 300, Raritan, NJ 08869
NDA 16–758	Navane (thiothixene HCl) Oral Concentrate	Pfizer, Inc.
NDA 16–834	Lithane (lithium carbonate) Tablets	Do.
NDA 16–904	Navane (thiothixene HCl) Injection	Do.
NDA 17–059	TechneColl (technetium Tc-99m sulfur colloid kit)	Mallinckrodt Medical, c/o Mallinckrodt, Inc.
NDA 17–247	Sanorex (mazindol) Tablets	Novartis Pharmaceuticals Corp.
NDA 17–476	Slow-K (potassium chloride) Extended-Release Tablets	Do.
NDA 17–543	Ludiomil (maprotiline HCl) Tablets, 25 mg, 50 mg, and 75 mg	Novartis Pharmaceuticals Corp.
NDA 17–551	Perchloracap (potassium perchlorate) Capsules	Mallinckrodt Medical, c/o Mallinckrodt, Inc.
NDA 17–842	TechneScan MAA (technetium Tc-99m albumin aggregate kit)	Do.
NDA 17–844	Radioiodinated Serum Albumin (Human) IHSA I–125 (iodinated I–125 albumin injection)	Do.
NDA 17–851	Lioresal (baclofen) Tablets, 10 mg and 20 mg	Novartis Pharmaceuticals Corp.
NDA 17–971	Eskalith (lithium carbonate) Tablets, 300 mg	JDS Pharmaceuticals, LLC, c/o Noven Pharmaceuticals, Inc., 11960 SW. 44th St., Miami, FL 33186
NDA 17–986	Minizide (prazosin HCl and polythiazide) Capsules, 1 mg, 2 mg, and 5 mg	Pfizer, Inc.
NDA 18–006	Meclomen (meclofenamate sodium) Capsules, 50 mg and 100 mg	Parke-Davis, a subsidiary of Pfizer, Inc.
NDA 18–152	Eskalith CR (lithium carbonate) Controlled-Release Tablets, 450 mg	JDS Pharmaceuticals, LLC, c/o Noven Pharmaceuticals, Inc.
NDA 18–202	Cytadren (aminoglutethimide) Tablets	Novartis Pharmaceuticals Corp.
NDA 18–245	Syntocinon (oxytocin) Injection	Do.
NDA 18–249	Sodium Lactate Injection USP	Hospira, Inc., 275 North Field Dr., Lake Forest, IL 60045–5046
NDA 18–272	Technescan Gluceptate (technetium Tc-99m gluceptate kit)	Draximage, a division of DRAXIS Specialty Pharmaceuticals, Inc., 16751 Autoroute TransCanada Highway, Kirkland, Qu. Canada H9H 4J4
NDA 18–285	Visken (prindolol) Tablets	Novartis Pharmaceuticals Corp.
NDA 18–535	Diulo (metolazone) Tablets, 2.5 mg, 5 mg, and 10 mg	G.D. Searle LLC, c/o Pfizer, Inc.
NDA 18–536	Xenon Xe-127 Gas	Mallinckrodt, Inc.
NDA 18–904	Urologic G (citric acid, sodium carbonate, and magnesium oxide) Irrigation in Plastic Containers	Hospira, Inc.
NDA 19–650	Flumadine (rimantadine HCl) Syrup	Forest Laboratories, Inc., Harborside Financial Center III, suite 602, Jersey City, NJ 07311
NDA 19–672	Efidac 24 Pseudoephedrine/Brompheniramine (pseudoephedrine HCl and brompheniramine maleate) Extended-Release Tablets	Alza Corp., 1900 Charleston Rd., P.O. Box 7210, Mountain View, CA 94039–7210
NDA 19–721	Norditropin (somatropin recombinant) for Injection	Novo Nordisk Inc., 100 College Rd. West, Princeton, NJ 08540
NDA 19–746	Efidac 24 Chlorpheniramine (chlorpheniramine maleate) Extended-Release Tablets	Alza Corp.

Application No.	Drug	Applicant
NDA 19–753	Ethmozine (moricizine HCl) Tablets	Shire Development, Inc., 725 Chesterbrook Blvd., Wayne, PA 19087
NDA 19–762	Testoderm (testosterone) and Testoderm with Adhesive	Alza Corp.
NDA 19–775	Minipress XL (prazosin HCl) Extended-Release Tablets	Pfizer, Inc.
NDA 19–794	Depakote CP (divalproex sodium) Delayed-Release Tablets	Abbott Laboratories, 200 Abbott Park Rd., Abbott Park, IL 60664–6157
NDA 19–863	Geref Diagnostic (sermorelin acetate) for Injection	EMD Serono, Inc., One Technology Dr., Rockland, MA 02370
NDA 19–983	Prostep (nicotine) Transdermal System, 11 mg/24 hour (h) and 22 mg/24 h	Aveva Drug Delivery Systems, Inc., 3250 Commerce Pkwy., Miramar, FL 33025
NDA 20–013	Maxaquin (lomefloxacin HCl) Tablets	Pharmacia & Upjohn Co., c/o Pfizer, Inc.
NDA 20–044	Exosurf Neonatal (colfosceril palmitate, cetyl alcohol, and tyloxapol) Powder for Suspension	GlaxoSmithKline, P.O. Box 13398, Five Moore Dr., Research Triangle Park, NC 27709–3398
NDA 20–087	Floxin (ofloxacin) Solution for Injection	Ortho-McNeil Pharmaceutical, Inc., c/o Johnson & Johnson Pharmaceutical Research & Development, LLC
NDA 20–137	Demadex (torsemide) Injection	Hoffman-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199
NDA 20–144	Transderm-Nitro (nitroglycerin)	Novartis Pharmaceuticals Corp.
NDA 20–154	Videx (didanosine) Chewable Tablets	Bristol-Meyers Squibb, 5 Research Pkwy., Signature 91 Bldg., Wallingford, CA 06492
NDA 20–155	Videx (didanosine) Buffered Powder for Oral Solution	Do.
NDA 20–199	Hivid (zalcitabine) Tablets	Hoffman-La Roche, Inc.
NDA 20–250	Halfan (halofantrine HCl) Tablets	GlaxoSmithKline, One Franklin Plaza, P.O. Box 7929, Philadelphia, PA 19101–7929
NDA 20–306	Fludeoxyglucose F–18 Injection	Downstate Clinical PET Center—Methodist Medical Center of Illinois, 221 NE. Glen Oak Ave., Peoria, IL 61636–0002
NDA 20–443	Geref (sermorelin acetate) for Injection	EMD Serono, Inc.
NDA 20–545	Procanbid (procainamide HCl) Extended-Release Tablets, 500 mg and 1,000 mg	King Pharmaceuticals, Inc.
NDA 20–686	LumenHance (manganese chloride tetrahydrate) for Solution	Bracco Diagnostics Inc., 107 College Rd. East, Princeton, NJ 08540
NDA 20–773	SonoRX (simethicone coated cellulose) Suspension	Do.
NDA 20–791	Testoderm TTS (testosterone transdermal system), 5 mg/24 h	Alza Corp.
NDA 21–019	Compazine (prochlorperazine maleate) Extended-Release Capsules	GlaxoSmithKline, Collegeville, PA 19426
NDA 21–868	Exubera (insulin recombinant human) Inhalation Powder, 1 mg and 3 mg	Pfizer, Inc.
ANDA 40–092	Digoxin Injection USP, 0.1 mg/mL	Hospira, Inc.
NDA 50–109	Mithracin (plicamycin) Injection, 2.5 mg	Pfizer, Inc.
NDA 50–286	Terramycin (oxytetracycline HCl) Capsules	Do.
NDA 50–316	Lincocin (lincomycin HCl) Capsules, 250 mg and 500 mg	Pharmacia & Upjohn Co., c/o Pfizer, Inc.
NDA 50–461	Ancef (cefazolin) for Injection	SmithKline Beecham, d/b/a GlaxoSmithKline, Philadelphia, PA 19101–7929
NDA 50–529	Pediazole (erythromycin ethylsuccinate and sulfisoxazole acetyl) for Oral Suspension	Ross Products Division, Abbott Laboratories, 3300 Stelzer Rd., Columbus, OH 43219–3034

Application No.	Drug	Applicant
NDA 50–613	Cefobid (cefoperazone sodium) Injection	Pfizer, Inc.
NDA 50–667	Lorabid (loracarbef for oral suspension USP), 100 mg/5 mL and 200 mg/5 mL	King Pharmaceuticals, Inc.
NDA 50–763	Mitozytrex (mitomycin) for Injection, 5 mg/vial	SuperGen, Inc., 4140 Dublin Blvd., suite 200, Dublin, CA 94568
ANDA 61–014	Terramycin (oxytetracycline HCl) Ophthalmic Solution	Pfizer, Inc.
ANDA 61–229	Polysporin Ophthalmic Ointment (bacitracin zinc and polymyxin B sulfate ophthalmic ointment)	Monarch Pharmaceuticals, Inc. (a wholly-owned subsidiary of King Pharmaceuticals, Inc.), 501 5th St., Bristol, TN 37620
ANDA 64–099	Amikacin Sulfate Injection USP, 250 mg/mL	Hospira, Inc.
ANDA 70–252	Naloxone HCl Injection USP, 0.02 mg/mL	Do.
ANDA 70–253	Naloxone HCl Injection USP, 0.02 mg/mL	Do.
ANDA 71–166	Bupivacaine HCl and Epinephrine Injection USP	Do.
ANDA 71–169	Bupivacaine HCl and Epinephrine Injection USP	Do.
ANDA 71–171	Bupivacaine HCl and Epinephrine Injection USP	Do.
ANDA 73–685	Acilac (lactulose solution USP), 10 grams (g)/15 mL	Nostrum Laboratories, Inc., 1800 North Topping Ave., Kansas City, MO 64120
ANDA 73–686	Laxilose (lactulose solution USP), 10 g/15 mL	Do.
ANDA 74–083	Nitroglycerin in 5% Dextrose Injection, 0.1 mg/mL	Hospira, Inc.
ANDA 74–127	Atenolol Tablets USP, 50 mg and 100 mg	Nostrum Laboratories, Inc.
ANDA 74–337	Furosemide Injection USP, 10 mg/mL	Hospira, Inc.
ANDA 74–391	Diclofenac Sodium Delayed-Release Tablets USP, 25 mg, 50 mg, and 75 mg	Roxane Laboratories, Inc., 1809 Wilson Rd., P.O. Box 16532, Columbus, OH 43216–6532
ANDA 74–403	Dopamine HCl Injection USP, 40 mg/mL	Hospira, Inc.
ANDA 74–404	Atenolol and Chlorthalidone Tablets USP, 50 mg/25 mg and 100 mg/25 mg	Nostrum Laboratories, Inc.
ANDA 74–474	Pindolol Tablets USP, 5 mg and 10 mg	Do.
ANDA 74–740	Atracurium Besylate Injection USP, 10 mg/mL	Hospira, Inc.
ANDA 74–741	Atracurium Besylate Injection USP, 10 mg/mL	Do.
ANDA 75–088	Cromoptic (cromolyn sodium) Ophthalmic Solution, 4%	King Pharmaceuticals, Inc.
ANDA 75–162	Clozapine Tablets USP, 25 mg and 100 mg	Par Pharmaceutical, Inc., One Ram Ridge Rd., Spring Valley, NY 10977
ANDA 75–466	Doxazosin Mesylate Tablets, 1 mg, 2 mg, 4 mg, and 8 mg	Genpharm Inc., c/o Mylan Pharmaceuticals, Inc., 781 Chestnut Ridge Rd., P.O. Box 4310, Morgantown, WV 26504–4310
ANDA 75–558	Vecuronium Bromide for Injection, 4 mg/Ampul	Hospira, Inc.
ANDA 75–762	Ofloxacin Injection, 40 mg/mL	Bedford Laboratories, Division of Ben Venue Laboratories, Inc., 300 Northfield Rd., Bedford, OH 44146
ANDA 75–899	Fluvoxamine Maleate Tablets, 25 mg, 50 mg, and 100 mg	Synthon Pharmaceuticals, Inc., 9000 Development Dr., P.O. Box 110487, Research Triangle Park, NC 27709
ANDA 76–138	Ciprofloxacin HCl Tablets USP, 250 mg, 500 mg, and 750 mg	Nostrum Laboratories, Inc.
ANDA 76–213	Fluconazole Tablets, 50 mg, 100 mg, 150 mg, and 200 mg	Roxane Laboratories, Inc.
ANDA 76–270	Mirtazapine Tablets USP, 15 mg, 30 mg, and 45 mg	Do.

Application No.	Drug	Applicant
ANDA 76–476	Benazepril HCl Tablets, 5 mg, 10 mg, 20 mg, and 40 mg	Mylan Pharmaceuticals, Inc.
ANDA 76–489	Anagrelide HCl Capsules, 0.5 mg and 1 mg	Roxane Laboratories, Inc.
ANDA 77–249	Oxandrolone Tablets USP, 2.5 mg and 10 mg	Do.
ANDA 77–445	Polyethylene Glycol 3350 Powder for Oral Solution	Teva Pharmaceuticals USA, 1090 Horsham Rd., P.O. Box 1090, North Wales, PA 19454
ANDA 77–648	Zonisamide Capsules, 25 mg, 50 mg, and 100 mg	Roxane Laboratories, Inc.
ANDA 78–026	Paroxetine Tablets USP, 10 mg, 20 mg, 30 mg, and 40 mg	Do.
ANDA 81–008	Strifon Forte DSC (chlorzoxazone tablets USP), 500 mg	Ferndale Laboratories, 780 West 8th Mile Rd., Ferndale, MI 48220
ANDA 81–095	Acetaminophen, Aspirin, and Codeine Phosphate Capsules, 150 mg/180 mg/15 mg	Mikart, Inc., 1750 Chattahoochee Ave., Atlanta, GA 30318
ANDA 83–283	Isoproterenol HCl Injection USP, 0.02 mg/mL	Hospira, Inc.
ANDA 83–838	Promethazine HCl Injection USP	Do.
ANDA 84–074	Bethanechol Chloride Tablets USP, 25 mg	Lannett Co., Inc., 9000 State Rd., Philadelphia, PA 19136
ANDA 84–702	Bethanechol Chloride Tablets USP, 5 mg	Do.
ANDA 84–712	Bethanechol Chloride Tablets USP, 10 mg	Do.
ANDA 84–735	Apresazide (hydralazine HCl and hydrochlorothiazide) Capsules, 25 mg/25 mg	Novartis Pharmaceuticals Corp.
ANDA 84–810	Apresazide (hydralazine HCl and hydrochlorothiazide) Capsules, 50 mg/50 mg	Do.
ANDA 86–366	Acetaminophen and Codeine Phosphate Oral Solution USP, 120 mg/12 mg per 5 mL	Roxane Laboratories, Inc.
ANDA 87–563	Quibron-T/SR (theophylline) Extended-Release Tablets, 300 mg	Monarch Pharmaceuticals, Inc.
ANDA 88–126	Aminophylline Oral Solution USP, 105 mg/5 mL	Roxane Laboratories, Inc.
ANDA 88–656	Quibron-T (theophylline) Tablets, 300 mg	Monarch Pharmaceuticals, Inc.
ANDA 89–650	Lidocaine HCl and Epinephrine Injection USP	Hospira, Inc.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research, by the Commissioner of Food and Drugs, approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective June 18, 2009.

Dated: April 30, 2009.

Douglas C. Throckmorton,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. E9–11628 Filed 5–18–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Annual Survey of Refugees (Form ORR–9).

OMB No.: 0970–0033.

Description: The Annual Survey of Refugees collects information on the social and economic circumstances of a random sample of refugees, Amerasians, and entrants who arrived in the United States in the five years prior to the date of the survey. The survey focuses on the refugees training, labor force participation, and welfare utilization rates. Dates are segmented by region of origin, State of resettlement, and number of months since arrival. From the responses, the Office of Refugee Resettlement reports on the economic adjustment of refugees to the American economy. These data are used by Congress in its annual deliberations for refugee admissions and funding and by program managers in formulating policies for the future direction of the Refugee Resettlement Program.

Respondents: Refugees, entrants, Amerasians, and Havana parolees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
ORR–9 Annual Survey of Refugees	2,000	1	0.63	1,253.20
Request for Participation Letter	2,000	1	0.04	80

Estimated Total Annual Burden Hours: 1,333.20

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, *Attn:* ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. *E-mail address: infocollection@acf.hhs.gov.*

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, *Fax:* 202–395–7245, *Attn:* Desk Officer for the Administration for Children and Families.

Dated: May 14, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–11606 Filed 5–18–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0075]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Fax written comments on the collection of information by June 18, 2009.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be faxed to the Office of Information and Regulatory Affairs, OMB, Attn: FDA Desk Officer, FAX: 202–395–6974, or e-mailed to *oira_submission@omb.eop.gov*. All comments should be identified with the OMB control number 0910–0437. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Jr., Office of Information Management (HFA–710), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–796–3793.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Medical Device Reporting: Manufacturer, Importer, User Facility, and Distributor Reporting—21 CFR Part 803 (OMB Control Number 0910–0437)—Extension

Section 519(a)(1) of Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360i(a)(1)) requires every manufacturer or importer to report ''whenever the manufacturer or importer receives or otherwise becomes aware of information that reasonably suggests that one of its marketed devices: (A) May have caused or contributed to a death or serious injury, or (B) has malfunctioned and that such device or a similar device marketed by the manufacturer or importer would be likely to cause or contribute to a death or serious injury if the malfunction were to recur * * *.''

Section 519(b)(1)(A) of the act requires ''whenever a device user facility receives or otherwise becomes aware of information that reasonably suggests that a device has or may have caused or contributed to the death of a patient of the facility, the facility shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the Secretary and, if the identity of the manufacturer is known, to the manufacturer of the device.''

Section 519(b)(1)(B) of the act requires ''whenever a device user facility receives or otherwise becomes aware of: (i) information that reasonably suggests that a device has or may have caused or contributed to the serious illness of, or serious injury to, a patient of the facility * * *, shall, as soon as practicable but not later than 10 working days after becoming aware of the information, report the information to the manufacturer of the device or to the Secretary if the identity of the manufacturer is not known.''

Complete, accurate, and timely adverse event information is necessary for the identification of emerging device problems. Information from these reports will be used to evaluate risks associated with medical devices which will enable FDA to take appropriate regulatory measures in protection of the public health under section 519 of the act. Thus FDA is requesting approval for these information collection requirements which are being implemented under part 803 (21 CFR part 803).

Respondents to this collection of information are businesses or other for profit and nonprofit organizations including user facilities, manufacturers, and importers of medical devices.

In the **Federal Register** of February 25, 2009 (74 FR 8547), FDA published a 60-day notice requesting public comment on the information collection provisions. FDA received one non-related PRA comment that did not require a response.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	FDA Form No.	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
803.19		57	4	228	3.0	684
803.30 and 803.32		393	2	777	1.0	777
803.33	3,419	393	1	393	1	393
803.40 and 803.42		73	37	2,682	1.0	2,682
803.50 and 803.52		1,601	104	166,271	1.0	166,271
803.56		1,200	63	76,186	1.0	76,186
Total				246,537		246,993

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Record	Total Hours
803.17	220	1	220	10	2,200
803.18(a) through (d)	30,000	1	30,000	1.5	45,000
Total					47,200

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Part 803 requires user facilities to report to the device manufacturer and to FDA in case of a death, incidents where a medical device caused or contributed to a death or serious injury. Additionally, user facilities are required to annually submit the number and summary of adverse events reported during the calendar year, using FDA Form 3419. Manufacturers of medical devices are required to report to FDA when they become aware of information indicating that one of their devices may have caused or contributed to death or serious injury or has malfunctioned in such a way that should the malfunction recur it would be likely to cause or contribute to a death or serious injury. Device importers report deaths and serious injuries to the manufacturers and FDA. Importers report malfunctions only to the manufacturers, unless they are unknown, then the reports are sent to FDA.

The number of respondents for each Code of Federal Regulations (CFR) section in table 1 of this document is based upon the number of respondents entered into FDA's internal databases. FDA estimates, based on its experience and interaction with the medical device community, that all reporting CFR sections are expected to take 1 hour to complete, with the exception of § 803.19. Section 803.19 is expected to take approximately 3 hours to complete, but is only required for reporting the summarized data quarterly to FDA. By summarizing events, the total time used to report for this section is reduced because the respondents do not submit a full report for each event they report in a quarterly summary report.

The agency believes that the majority of manufacturers, user facilities, and importers have already established written procedures to document complaints and information to meet the medical device reporting (MDR) requirements as part of their internal quality control system. There are an estimated 30,000 medical device distributors. Although they do not submit MDR reports, they must maintain records of complaints, under § 803.18(d).

The agency has estimated that on average 220 user facilities, importers, and manufacturers would annually be required to establish new procedures, or revise existing procedures, in order to comply with this provision.

Therefore, FDA estimates the one-time burden to respondents for establishing or revising procedures under § 803.17 to be 2,200 hours (220 respondents x 10 hours). For those entities, a one-time burden of 10 hours is estimated for establishing written MDR procedures. The remaining manufacturers, user facilities, and importers, not required to revise their written procedures to comply with this provision, are excluded from the burden because the recordkeeping activities needed to comply with this provision are considered ''usual and customary'' under 5 CFR 1320.3(b)(2).

Under § 803.18, 30,000 respondents represent distributors, importers, and other respondents to this information collection. FDA estimates that it should take them approximately 1.5 hours to complete the recordkeeping requirement for this section. Total hours for this section equal 45,000 hours.

Dated: May 13, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–11625 Filed 5–18–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10169]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revised collection; *Title of Information Collection:* Round 1 Rebid and Disclosure of Subcontracting Relationships for the Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS) Competitive Bidding Program; *Use:* The Centers for Medicare and Medicaid Services (CMS) will conduct competitive bidding programs in which certain suppliers will be awarded contracts to provide competitively bid DMEPOS items to Medicare beneficiaries in a competitive bidding area (CBA). CMS conducted its first round of bidding in 2007 which was implemented on July 1, 2008. The first round of bidding was subsequently delayed by section 154 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA). MIPPA mandates certain changes to the competitive bidding program which include, but are not limited to: a delay of Rounds 1 (bidding to begin in 2009) and 2 of the program (bidding to begin in 2011); the exclusion of Puerto Rico and negative pressure wound therapy (NPWT) from Round 1 and group 3 complex rehabilitative power wheelchairs from all rounds of competition; a process for providing feedback to suppliers regarding missing financial documentation; and a requirement for contract suppliers to disclose to CMS information regarding subcontracting relationships.

For the 2009 round of competitive bidding, also known as the Round 1 Rebid, CMS will publish a slightly modified version of the Request For Bids (RFB) instructions and accompanying forms so that suppliers will be better able to identify and understand the requirements to submit a bid in the competitive bidding program. We have also modified the format of some of these documents to make them more reader-friendly and help ease the burden of bid submission.

Additionally, for suppliers that are awarded a contract, CMS will collect information on contract supplier subcontracting relationships. Suppliers entering into a contract with CMS must disclose information on each subcontracting arrangement that the supplier has to furnish items and services under the contract and whether each subcontractor meets the accreditation requirements. The purpose of collecting this information is to comply with the disclosure requirement on subcontractors in section 154 of MIPPA. *Form Number:* CMS–10169 (OMB#: 0938–1016); *Frequency:* Reporting—Every three years; *Affected Public:* Business or other for-profit, Not-for-profit institutions; *Number of Respondents:* 6,900; *Total Annual Responses:* 6,900; *Total Annual Hours:* 442,600. (For policy questions regarding this collection contact Walter Rutemueller at 410–786–5395. For all other issues call 410–786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *June 18, 2009.*

OMB, Office of Information and Regulatory Affairs, *Attention:* CMS Desk Officer. *Fax Number:* (202) 395–6974. *E-mail: OIRA_submission@omb.eop.gov.*

Dated: May 12, 2009.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E9–11629 Filed 5–14–09; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

[Funding Opportunity Number: HHS–2009–IHS–CYP–0001]

Office of Clinical and Preventive Services; Children and Youth Projects; Announcement Type: New Cooperative Agreement CFDA Number: 93.933

Key Dates:

Letter of Intent Deadline: May 28, 2009.
Application Receipt Deadline: June 25, 2009.
Anticipated Application Review Date: July 22–24, 2009.
Application Notification: August 3–12, 2009.
Earliest Anticipated Start Date: September 16, 2009.

I. Funding Opportunity Description

The Indian Health Service (IHS) announces a full competition for cooperative agreements for Children and Youth Projects (CYP) established to assist Federally-recognized Tribes, Tribal organizations and urban Indian organizations serving American Indian and Alaska Native (AI/AN) children and youth. These cooperative agreements are established under the authority of the Indian Health Care Improvement Act, 25 U.S.C. 1621(o), and Section 301(a) of the Public Health Service Act, as amended. This program is described at 93.933 in the Catalog of Federal Domestic Assistance. In 2003, and again in 2006, the IHS, Office of the Director provided up to three years of support for the Child and Youth Health Initiative (CYHI) and CYP respectively. Twenty-three programs in rural, remote and urban AI/AN communities were awarded with additional funding support from the Administration for Native Americans (ANA) partnership in the first project period and eleven projects in the second project period. These community projects characterized varied approaches to promoting the health and well-being of AI/AN youth. The current announcement seeks to expand the reach into new communities and/or enhance existing programs.

The purpose of the CYP is to assist Federally recognized Tribes, Tribal organizations and urban Indian

organizations in promoting healthy practices for AI/AN school age children in community settings. This will be accomplished through community designed public health approaches in community, school and afterschool settings. The Maternal and Child Health (MCH) Program has determined that cooperative agreements are the funding mechanism best suited for the projects to achieve agency and MCH programmatic goals.

The IHS MCH Program goals are: (1) To support a mind/body/spirit context of well-being for AI/AN children and youth in settings with their peers; (2) to promote age-appropriate healthy nutrition and food choices; (3) to emphasize cardiovascular fitness and age-appropriate healthy weight status; and (4) to promote age-appropriate developmental and social skills for optimal child and adolescent mental health. Program goals additionally seek to promote academic success. MCH Program goals encourage support of group and peer activities that are informed by local culture and traditional knowledge. Program goals emphasize activities conducted in appropriate settings and safe environments. Native language and the fostering of intergenerational relationships are considered to be part of program development and enhancement. The MCH programmatic goals align with the ''Healthy People 2010'' goals and sub-objectives for children and youth. Goals specific to the 2009 Child and Youth Projects are as follows:

A. Newly funded projects will demonstrate quality process, impact and outcome data within two years of initial start-up.

B. Established and or previously funded projects (those with at least two years of documented project evaluation data) will demonstrate, within two years of this funding, how data is being used for developing or refining direct services, public health approaches, school-linked activities and/or policies addressing children and youth.

C. Project activities must include school age children and youth (5 to 19 years of age) specific community services in one or more settings including, for example: Summer programs, camps, seasonal activities, before and after school programs, school-linked activities and clinic-linked activities with a community outreach focus.

D. Projects that link health activities and foster native language; the imparting of traditional cultural values and practices; parent and family involvement; and intergenerational and peer mentoring are encouraged.

E. Projects designed to change health behaviors by modifying the environment and/or implementing/enforcing policies and procedures are encouraged.

Projects will be funded in one of three categories. Community capacity, size of the target population, and project reach and complexity vary. Funds will be made available for small projects to be funded at $25,000, for medium projects to be funded at $50,000, and for larger projects to be funded at $75,000 per year for up to a total of five years.

Note: For any current CYP grantees under separate awards that wish to apply for this funding period, September 16, 2009–September 15, 2014, grantee must *not* have overlapping award dates. If a funding date overlaps, grantee must terminate from current awards or have the newly funded grant amount reduced to avoid dual funding. This announcement applies to new and existing applicants. For additional information or clarification, please contact Ms. Michelle Bulls, Grants Policy Officer at (301) 443–6528.

II. Award Information

Type of Awards: Cooperative Agreement (CA).

Estimated Funds Available: The total amount identified for fiscal year (FY) 2009 is approximately $600,000. The awards are for 60 months in duration. The average award for *Category I* is approximately $25,000. The average award for *Category II* is approximately $50,000. The average award for *Category III* is approximately $75,000. In fiscal year 2010 an estimated $600,000 is available for continuation awards based on progress and availability of funds.

Categories of Cooperative Agreement (CA) covered under this announcement:

- *Category I—Small CYP:* Approximately 16% of funds are available to fund up to four awards for the *Small CYP.* Individual awards are for up to $25,000.
- *Category II—Medium CYP:* Approximately 34% of funds are available to fund up to four awards for the *Medium CYP.* Individual awards are for up to $50,000.
- *Category III—Large CYP:* Approximately 50% of funds are available to fund up to four awards for the *Large CYP* considered ''experienced'' as determined in the application under past and current activities documenting the history of the planning, implementation, and evaluation of previous projects for this target population. These large individual awards are for up to $75,000.

Anticipated Number of Awards: 12.

Project Period: September 16, 2009–September 15, 2014, 60 months.

The CA will be a 12-month budget period with five project years.

- *Category I—Small CYP*—five years beginning on or about September 16, 2009.
- *Category II—Medium CYP*—five years beginning on or about September 16, 2009.
- *Category III—Large CYP*—five years beginning on or about September 16, 2009.

Award Amount: $25,000, $50,000 or $75,000 per year.

- *Category I—Small CYP*—$25,000.
- *Category II—Medium CYP*—$50,000.
- *Category III—Large CYP*—$75,000.

Future continuation awards within the project period will be based on satisfactory performance. This includes the collection and reporting of evaluation data. Continuation is based on the availability of funding and continuing needs of the IHS. These annual non-competitive continuation applications will be submitted for Year II through V funding.

Maximum Funding Level: The maximum funding level includes both direct and indirect costs. Application budgets which exceed the maximum funding level or project period identified for a project category will not be reviewed. Applicants seeking funding in more than one category will not be reviewed.

Programmatic Involvement: The cooperative agreement will have substantial oversight to ensure evaluation of best practices and high quality performance in sustaining capacity of the CYP.

A. *Cooperative Agreement Awardee Activities for all Categories:* The letter of intent and the application should state the requested budget category (small, medium, or large).

Applicant should document in the letter of intent and the application the following in justifying the requested budget category:

- Contact frequency, duration and intensity:
- Program frequency—daily to once or twice a year event.
- Duration—minutes, hours, full day, full week.
- Intensity—interpersonal level of staff engagement, including one-on-one, small group, large group.
- Reach and impact in the community:
- Reach—single or multiple settings.
- Impact—altering utilization/attendance/key health indicators.
- Target population:

• Broad or narrow target population and catchment area.

• Size of target population of less than 50 children annually, more than 50 children annually, or more than 100 children annually.

B. *Substantial Involvement Description for Cooperative Agreement Activities for Category I—Small CYP:* The CA *Category I—Small CYP* awardee (Tribe, Tribal organization or urban Indian organization) will be responsible for activities listed under C. IHS will be responsible for activities listed under F. A contractor will be hired by MCH to assist in the oversight in *Category I.* Oversight includes assurances to promote evaluation of best practices and high quality performance in sustaining the Children and Youth Grant Programs. The contractor will be responsible in reporting to the IHS CYP project officer on the progress and issues of the cooperative agreement awardee.

C. *Cooperative Agreement Awardee Activities for Category I—Small CYP:* Provide a coordinator who has the authority, responsibility, and expertise to plan, implement, and evaluate the project. Position may be existing or new part-time or split duties. Where available, projects should demonstrate coordination with other children and youth services in the recipient's Tribe, Tribal organization or urban Indian organization, Tribal health department, advisory committee/children's coalition, and/or community-based program in order to maximize opportunities and share resources. Demonstrate awareness of where to find data sources including: Health, child welfare, educational, and psycho-social data descriptive of the children and youth population being served, including those at risk. Develop a work plan based on community need, health data and prioritized for prevention and wellness. This would include specific process measures and action steps to accomplish each. Show how project will be implemented and evaluated to reduce risk and promote wellbeing. During the first year of funding, focus should be built around the development of an action plan for evaluation of proposed activities. Implement project to gain visibility and further collaboration in the community. Present evaluation findings of the project's effect on the recipients, key staff and other community stakeholder(s) as proposed. The project coordinator will collaborate in planning and hosting a one day site visit in Year I and Year III by the IHS project officer, and IHS contractor. The project coordinator will budget for and attend a project Year II and Year IV training meeting with other awardees, IHS CYP project officer, and IHS contractor. The Year II meeting may be in conjunction with a national IHS meeting. Conference calls and e-mail communication individually and through a group listserv is expected. The project coordinator will collaborate with the IHS CYP project officer in timely submission of required reports.

D. *Substantial Involvement Description for Cooperative Agreement Activities for Category II—Medium and Category III—Large CYP:* For these categories, awardee (Tribe, Tribal organization or urban Indian organization) will be responsible for activities listed under E. IHS will be responsible for activities listed under F. A contractor will be hired by MCH to assist in the oversight. Oversight includes assurances to promote best practices and high quality performance in sustaining the CYP. The contractor will be responsible for reporting to the IHS CYP project officer on the progress and issues of the cooperative agreement awardee.

E. *Cooperative Agreement Awardee Activities for Category II—Medium and Category III—Large CYP:* Where available, demonstrate how coordination will take place with child and youth programs in the recipient's community and region. This may include Tribal and urban Indian organizations, health departments, epidemiology centers (EC), the State MCH Bureau (Title V) and or other community-based programs to serve to maximize resources and enhance sustainability. Provide a coordinator who has the authority, responsibility, and expertise to plan, implement and evaluate the project, and show that percentage of time devoted to project is commensurate with the list of objectives, activities, and evaluation activities. Position is expected to be .75 full time equivalent (FTE) to 1.0 FTE. Review health, child welfare, and educational, and/or psycho-social data descriptive of children and youth population being served, including those at greatest risk. Monitor program data internally or demonstrate collaboration on data monitoring for purposes of program evaluation. Develop a work plan based on community need, health data and prioritized for prevention and wellness. This would include specific process objectives and action steps to accomplish each. A core set of indicators would be jointly agreed upon by the project and the IHS project officer. Develop, implement, and evaluate a proven or promising project to reduce risk and promote well being in children and youth target population. Any planning phase should be near completion or already completed by the start of Year I. Implement project with intent to gain visibility and further collaboration in the community through reporting to a health board or child advisory committee. Evaluate the effect of the project on the recipients, key staff and other children and youth community stakeholders. The project coordinator will assist with the development of an agenda and plan for a one day site visit in Year I and Year III by IHS project officer and IHS contractor. The project coordinator will budget for and attend a project Year II and Year IV training meeting with other awardees, IHS CYP project officer and IHS contractor. The Year II meeting may be in conjunction with a national IHS meeting. Conference calls and e-mail communication individually and through a group listserv is expected. The project coordinator will collaborate with the IHS CYP project officer in timely submission of required reports.

F. *Indian Health Service Cooperative Agreement Activities for all Funded Projects:* The IHS MCH Coordinator or designee will serve as project officer for the CYP. The MCH program will provide consultation and technical assistance. Technical assistance also includes assistance in program implementation, marketing, evaluation, reporting, and sharing with other awardees. An IHS contractor (designated by the MCH program) will be responsible for technical assistance oversight, monitoring reporting of projects, conference calls, a listserv, and site visits. The IHS contractor serves as a technical liaison to the IHS MCH program and the CYP Cooperative Agreement Awardee. The IHS and the contractor will coordinate a Year I and Year III site visit, a Year II and Year IV training workshop for the project coordinators to share lessons learned, successes, new community strategies in children and youth health promotion, and best practices. Year III a second site visit will take place and in Year IV a second training/meeting will be held for all grantees.

III. Eligibility Information

A. Eligible Applicant, the AI/AN must be one of the following:

A Federally recognized Indian Tribe; Tribal organization; or urban Indian organization as defined by 25 U.S.C. 1652. Only one application per Tribe or Tribal organization is allowed. Applicants may only apply for one category. Submit documentation of non-profit status. There is no requirement for minimum target population size for

Category I and II applicants. Age range is between 5 to 19 years of age for the school age population. Category III applicants must serve a minimum target population size of 100 to 150 children and youth annually, between 5 to 19 years of age for the so-called school age population.

B. Cost Sharing or Matching—The CYP does not require matching funds or cost sharing.

C. Other Requirements

The following documentation is required (if applicable):

Tribal Resolution—A resolution of the Indian Tribe served by the project must accompany the application submission. This can be attached to the electronic application. An Indian Tribe that is proposing a project affecting another Indian Tribe must include resolutions from all affected Tribes to be served. Applications by Tribal organizations will not require a specific Tribal resolution if the current Tribal resolution(s) under which they operate would encompass the proposed grant activities. Draft resolutions are acceptable in lieu of an official resolution. However, an official signed Tribal resolution must be received by the Division of Grants Operations (DGO) prior to the beginning of the Application Review (July 22–24, 2009). If an official signed resolution is not received by July 27, 2009, the application will be considered incomplete, ineligible for review, and returned to the applicant without consideration. Applicants submitting additional documentation after the initial application submission are required to ensure the information was received by the IHS by obtaining documentation confirming delivery (*i.e.* FedEx tracking, postal return receipt, etc.).

Nonprofit organizations must submit a copy of the 501(c)(3) Certificate. Ineligible applications include requesting for water, sanitation, and waste management; tuition, fees, or stipends for certification or training of staff to provide direct services, the pre-planning, design, and planning of construction for facilities and those seeking funding in two categories.

IV. Application and Submission Information

A. Address to Request Application Package HHS–2009–IHS–CYP–0001.

Application package (HHS–2009–IHS–CYP–0001) may be found in Grants.gov. Information regarding the Letter of Intent and the electronic application process may be obtained from:

Program contact	Grants contact
Ms. Judith Thierry, D.O., M.P.H., Office of Clinical and Preventive Services, Indian Health Service, 801 Thompson Avenue, Suite 300, Rockville, Maryland 20852, (301) 443–5070, *Fax:* (301) 594–6213.	Ms. Norma Jean Dunne, Division of Grants Operations, Indian Health Service, 801 Thompson Avenue, TMP 360, Rockville, Maryland 20852, (301) 443–5204, *Fax:* (301) 443–9602.

The entire application kit is also available online at: *http://www.grants.gov*

B. Content and Form of Application Submission if prior approval was obtained for paper submission:

- Be single-spaced.
- Be typewritten.
- Have consecutively numbered pages.
- If unable to submit electronically, submit using a black type not smaller than 12 characters per one inch.
- Submit on one side only of standard size 8½″ x 11″ paper.
- Do not tab, glue, or place in a plastic holder.
- Contain a narrative that does not exceed 20 typed pages that includes the other submission requirements below. (The 20-page narrative does not include the work plan, standard forms, Tribal resolutions (if necessary), table of contents, budget, budget justifications, multi-year narratives, multi-year budget, multi-year budget justifications, and/or other appendix items.)

1. One Page Abstract, Introduction and Need for Assistance.
2. Project Objective(s), Approach, and Work Plan.
3. Project Evaluation.
4. Organizational Capabilities, Key Personnel and Qualifications.
5. Categorical Budget and Budget Justification by Item.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of the Lobbying and Discrimination Policy.

C. Submission Dates and Times

Applications must be submitted electronically through Grants.gov by close of business Thursday June 25, 2009. If technical issues arise and the applicant is unable to successfully complete the electronic application process, the applicant must contact Grants Policy staff fifteen days prior to the application deadline and advise them of the difficulties you are having submitting your application online. The Grants Policy staff will determine whether you may submit a paper application (original and two copies). The grantee must obtain prior approval, in writing, from the Grants Policy staff allowing the paper submission. Otherwise, applications not submitted through Grants.gov may be returned to the applicant and will not be considered for funding.

As appropriate, paper applications (original and two copies) are due by Thursday June 25, 2009. Paper applications shall be considered as meeting the deadline if received by June 25, 2009 or postmarked on or before the deadline date. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks will not be acceptable as proof of timely mailing and will not be considered for funding.

Late applications will be returned to the applicant without review or consideration.

A hard copy and/or faxed Letter of Intent must be received on or before Wednesday, May 28, 2009. This should be two full pages on letterhead. The fax number is (301) 594–6213 *Attn:* Judith Thierry, MCH Program Office. Applications must be received on or before Thursday June 25, 2009. The anticipated start date of the cooperative agreement is September 16, 2009.

In the Letter of Intent and application, state whether you will apply for a *Category I*—Small Project, *Category II*—Medium Project, or *Category III*—Large Project. Describe the proposed project, including health topics and mind/body/spirit issues to be addressed. A partial list includes: Nutrition, healthy weight, and fitness; drugs, alcohol and tobacco control; scholarship and academic success; social skills and mental health; and injury prevention. A letter of intent is non binding, but a mandatory request for information that will assist in planning both the review and post award phase. Applicants will be notified by fax that their letter of intent has been received by the program, as it is received.

Hand Delivered Proposals: Hand delivered proposals will be accepted from 8 a.m. to 5 p.m. Eastern Standard Time, Monday through Friday.

Applications will be considered to meet the deadline if they are received on or before the deadline, with hand-carried applications received by close of business 5 p.m. For mailed applications, a dated, legible receipt from a commercial carrier or the U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. Late applications will not be accepted for processing and will be returned to the applicant without further consideration for funding. Applicants are cautioned that express/overnight mail services do not always deliver as agreed. IHS will not accommodate transmission of applications by fax or e-mail.

Late applications will not be accepted for processing, will be returned to the applicant, and will not be considered for funding.

Extension of deadlines: IHS may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mail service, or in other rare cases. Determination to extend or waive deadline requirements rests with the Grants Management Officer, DGO.

D. Intergovernmental Review

Executive Order 12372 requiring intergovernmental review is not applicable to this program.

E. Funding Restriction

Pre-award costs are allowable at grantees own risk. Prior approval must be obtained from the Program Official.

The available funds are inclusive of direct and indirect costs.

Only one cooperative agreement will be awarded per applicant.

Ineligible Project Activities

The CYP may not be used to support recurring operational programs or to replace existing public and private resources. **Note:** The inclusion of the following projects or activities in an application will render the application ineligible and the application will be returned to the applicant:

- Projects related to water, sanitation, and waste management.
- Projects that include tuition, fees, or stipends for certification or training of staff to provide direct services.
- Projects that include pre-planning, design, and planning of construction for facilities.
- Projects that seek funding in two funding categories.

Other Limitations

- Grantee must *not* have overlapping award dates. If a funding date overlaps, grantee must terminate from current award or have the newly funded grant amount reduced to avoid dual funding. This announcement applies to new and existing applicants.
- The current project is not progressing in a satisfactory manner; or
- The current project is not in compliance with program and financial reporting requirements.
- Delinquent Federal Debts—No award shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full; or
2. A negotiated repayment schedule is established and at least one payment is received.

F. Other Submission Requirements

Electronic Submission—The preferred method for receipt of applications is electronic submission through Grants.gov. However, should any technical problems arise regarding the submission, please contact Grants.gov Customer Support at (800) 518–4726 or *support@grants.gov.* The Contact Center hours of operation are Monday–Friday from 7 a.m. to 9 p.m. (Eastern Standard Time). If you require additional assistance please contact the IHS Grants Policy staff at (301) 443–6528 at least fifteen days prior to the application deadline. To submit an application electronically, please use the *http://www.Grants.gov* Web site. Download a copy of the application package, on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov Web site. You may not e-mail an electronic copy of a grant application.

Please note the following:

- Under the new IHS requirements, paper applications are not allowable. However, if technical issues arise and the applicant is unable to successfully complete the electronic application process, the applicant must contact Grants Policy staff fifteen days prior to the application deadline and advise them of the difficulties you are having submitting your application online. The Grants Policy staff will determine whether you may submit a paper application. The grantee must obtain prior approval, in writing, from the Grants Policy staff allowing the paper submission. Otherwise, applications not submitted through Grants.gov may be returned to the applicant and it will not be considered for funding.
- The paper application (original and two copies) may be sent directly to the DGO, 801 Thompson Avenue, TMP, Suite 360, Rockville, MD 20852 by Thursday June 25, 2009.
- When you enter the Grants.gov Web site, you will find information about submitting an application electronically through the Web site, as well as the hours of operation. We strongly recommend that applicants not wait until the deadline date to begin the application process through the Grants.gov Web site.
- To use Grants.gov, you, as the applicant, must have a DUNS number and register with the Central Contractor Registry (CCR). You should allow a minimum of five days to complete CCR registration. See below on how to apply.
- You must submit all documents electronically, including all information typically included on the SF–424 and all necessary assurances and certifications.
- Your application must comply with any page limitation requirements described in the program announcement. After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The IHS will retrieve your application from the Grants.gov Web site.
- You may access the electronic application for this program on *http://www.Grants.gov.*
- You must search for the downloadable application package by CFDA number 93.933.
- To receive an application package, the applicant must provide the Funding Opportunity Number: HHS–2009–IHS–CYP–001.
- E-mail applications will not be accepted under this announcement.

G. DUNS Number

Beginning October 1, 2003, applicants were required to have a Dun and Bradstreet (DUNS) number. The DUNS number is a nine-digit identification number which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access *http://www.dnb.com/us/* or call (866) 705–5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number. Registration with the CCR is free of charge.

Applicants may register by calling (888) 227–2423. Applications must also be registered with the CCR to submit

electronically. Please review and complete the CCR ''Registration Worksheet'' located in the appendix of the CYP application kit or on *http://www.Grants.gov/CCRRegister.*

More detailed information regarding these registration processes can be found at *http://www.Grants.gov* Web site.

V. Application Review Information

The instructions for preparing the application narrative also constitute the evaluation criteria for reviewing and scoring the application. Weights assigned to each section are noted in parentheses. The 20-page narrative should include only the first year of activities; information for multi-year projects should be included as an appendix. *See* ''Multi-year Project Requirements'' at the end of this section for more information. The narrative section should be written in a manner that is clear to outside reviewers unfamiliar with prior related activities of the applicant. It should be well organized, succinct, and contain all information necessary for reviewers to understand the project fully.

1. Criteria: Introduction and Need for Assistance. (10 points)

• Provide a one-page summary of the proposed project. State whether the project is a *Category I, II or III* and the size of the children and youth target group. (*Category I and II* have no minimum and *Category III* projects must serve a minimum of 100 children annually.)

• Describe and define the target population at the program location(s) (*i.e.,* Tribal population and Tribal census tract data (when available); number of children and/or youth; data from previous community needs assessment; data from technical assistance site visit(s); school, recreation, after school or juvenile justice sources). Information sources must be appropriately identified.

• Describe the geographic location of the proposed project including any geographic barriers to the health care users in the area to be served. Append a detailed map.

• Describe the Tribe's/Tribal organization's current health operation. Include what programs and services are currently provided (*i.e.,* Federally funded, State funded, etc.). Include information regarding whether the Tribe/Tribal organization has a health department and/or health board and how long it has been operating. Provide similar information on the educational and juvenile justice organization programs and services.

• Describe the existing resources and services available, including the maintenance of Native healing systems and intergenerational activities (*i.e.,* mentoring, language, traditional teaching, storytelling, where appropriate, which are related to the specific program/service the applicant is proposing to provide). Supply the name, address, and phone number of a contact person for each.

• Identify all current and previous children and youth activities funded, dates of funding, and summary of project accomplishments. State how previous funds facilitated the progression of health or wellness development relative to the current proposed project. (Copies of reports will not be accepted.)

• Explain the reason for your proposed project by identifying specific needs of the target population and gaps or weaknesses in services or infrastructure that will be addressed by the proposed project. Explain how these gaps/weaknesses were discovered. Describe past efforts, collaborations with State/county programs and availability of program funding from Federal/non-Federal sources.

• Summarize the applicable national, IHS, and/or State standards, laws and regulations, and Tribal codes, such as those in the arenas of safety, school attendance, and child welfare.

Project Objective(s), Work Plan and Approach. (40 points)

A. Identify the proposed project objective(s) addressing the following measurable criteria.

• Objective is specific.

• Objective is measurable and (if applicable) quantifiable.

• Objective is achievable.

• Objective is relevant and outcome oriented.

• Objective is time-limited.

Example: The Project will increase the number of students who consistently participate in the program during FY 2010 by 10% by orienting students through the use of contracts, peer-mentoring and incentives at the start of the school year and at mid-school year.

B. State objectives concisely. Describe what the project intends to accomplish, what changes are expected in knowledge, attitudes, behaviors, policies, etc., and how the objectives will be measured, including if the accomplishments are replicable.

C. Describe the approach, including the activities, tasks and resources needed to implement and complete the project. Include a chart denoting start/finish of milestones, accountabilities and how you will know the activities and tasks are complete. Include the date the project will begin to accept clients.

D. Discuss expected results. Describe data collection for the project, and how it will be obtained, analyzed, and maintained by the project. Data should include, but is not limited to the number of children and youth served, services provided, program satisfaction, short term impact (*e.g.,* changes in knowledge, attitudes, behaviors, policies, etc.), costs associated with the program and long-term outcomes (*e.g.,* outcomes specific to program objectives). Describe how data collection will support the stated project objectives and how it will support the project evaluation in order to determine the impact of the project. Address how the proposed project will result in change or improvement in health or well-being status, program operations, or processes for each proposed project objective.

E. Also address what, if any tangible products are expected from the project (*i.e.,* policies and procedure manual; needs assessment; curricula or educational materials; publication or formal reports beyond those required by the grant).

F. Address the extent to which the proposed project will build the local capacity to provide, improve, or expand services that address the need of the target population.

G. Submit a work plan in the appendix which includes the following information:

• Provide the action steps on a time line for accomplishing the proposed project objective(s).

• Identify who will perform the action steps.

• Identify who will supervise the action steps taken.

• Identify who will accept and/or approve work products at the end of the proposed project.

• Include any training that will take place during the proposed project, who will conduct the training and who will be attending the training.

• Include evaluation activities planned and survey tools or instruments.

H. If consultants or contractors will be used during the proposed project, please include the following information in their position description and scope of work (or note if consultants/contractors will not be used):

• Educational requirements.

• Desired qualifications and work experience.

• Expected work products to be delivered on a time line.

• Contractor's supervisor.

• If a potential consultant/contractor has already been identified, please

include a resume and letter of commitment in the appendix.

Project Evaluation. (30 points)

Describe the methods for evaluating the project activities. Each proposed project objective should have an evaluation component and the evaluation activities should appear on the work plan. At a minimum, projects should describe plans to collect/summarize and process evaluation information (*e.g.,* reach of the program including numbers and/or age-ranges of the youth served) about all project activities. When applicable, impact evaluation activities (*i.e.,* those designed to assess/summarize initial and/or follow-up attitudes, satisfaction, knowledge, behaviors, practices, and/or policies/procedures) should also be described. Please address the following for each of the proposed objectives:

- What data will be collected to evaluate the success of the objective(s).
- How the data will be collected to assess the program's objective(s) (*e.g.,* methods used such as, but not limited to focus groups, surveys, interviews, or other data collection activities).
- When the data will be collected and the data analysis completed.
- The extent to which there are specific data sets, databases or registries already in place to measure/monitor meeting objectives.
- Who will collect the data and any cost of the evaluation (whether internal or external).
- Where and to whom the data will be presented.

Process Evaluation Example: The Project will conduct eight school-based obesity prevention educational activities reaching up to 100 students (in grades 9–12) by the end of Year I. This will be assessed by having project staff document the dates of attendance at, and grades reached by educational sessions conducted in Year I. Project sign-in sheets will assist in identifying number of and grades of student participants.

Impact Evaluation Example: The project will increase the use of all terrain vehicle (ATV) helmets (what specifically) by 10% (goal or how much) by the end of Project Year I (when or a target date). This will be assessed through the conduct of a baseline and follow-up ATV helmet use surveys (what tool) conducted by the project staff at well-known ATV trails (how) during the third and ninth month of project Year I (limited time frame).

Organizational Capabilities, Key Personnel and Qualifications. (10 points)

- Describe the organizational structure of the Tribe/Tribal organization beyond health care activities.
- If management systems are already in place, simply note it. (A copy of the 25 CFR Part 900, Subpart F, is available in the CYP application kit.)
- Describe the ability of the organization to manage the proposed project. Include information regarding similarly sized projects in scope and financial assistance as well as other grants and projects successfully completed.
- Describe what equipment (*i.e.,* fax machine, phone, computer, etc.) and facility space (*i.e.,* office space) will be available for use during the proposed project. Include information about any equipment not currently available that will be purchased through the grant.
- List key personnel who will work on the project. Identify existing personnel, grant writer(s) if utilized and new program staff to be hired. Include title used in the work plan. In the appendix, include position descriptions and resumes for all key personnel. Position descriptions should clearly describe each position and duties, indicating desired qualifications, experience, requirements related to the proposed project and how they will be supervised. Resumes must indicate that the proposed staff member is qualified to carry out the proposed project activities and who will determine if the work of a contractor is acceptable. Note who will be writing the progress reports. If a position is to be filled, indicate that information on the proposed position description.
- If the project requires additional personnel (*i.e.,* IT support, volunteers, drivers, chaperones, etc.), note these and address how the Tribe/Tribal organization will sustain the position(s) after the grant expires. (If there is no need for additional personnel, simply note it.)

Categorical Budget and Budget Justification. (10 points)

- Provide a categorical budget (Form SF 424A, Budget Information Non-Construction Programs) completing each of the budget periods requested.
- If indirect costs are claimed, indicate and apply the current negotiated rate to the budget. Include a copy of the rate agreement in the appendix.
- Provide a narrative justification explaining why each line item is necessary/relevant to the proposed project. Include sufficient cost and other details to facilitate the determination of cost allowability (*i.e.,* relevance of travel, crucial supplies, age-appropriate equipment, reason for incentives and honoraria, etc.).
- Indicate any special start-up costs.
- Indicate in Year II and IV budgets anticipated travel costs for workshops for one or more persons if deemed appropriate/desirable.

Multi-Year Project Requirements

Projects requiring a second, third, fourth, and/or fifth year must include a brief project narrative and budget (one additional page per year) addressing the developmental plans for each additional year of the project.

Appendix Items

- Work plan, logic model and/or time line for proposed objectives.
- Position descriptions for key staff.
- Resumes of key staff that reflect current duties.
- Consultant or contractor proposed scope of work and letter of commitment (if applicable).
- Current Indirect Cost Agreement.
- Organizational chart(s) highlighting proposed project staff and their supervisors as well as other key contacts within the organization and key community contacts.
- Map of area to benefit project identifying where target population resides and project location(s). Include trails, parks, schools, bike paths and other such applicable information.
- Multi-Year Project Requirements (if applicable).
- Additional documents to support narrative (*i.e.,* data tables, key news articles, etc.).

2. Review and Selection Process:

In addition to the above criteria/requirements, applications are considered according to the following:

A. *Letter of Intent Submission Deadline:* Thursday, May 28, 2009.

B. *Application Submission Deadline:* Thursday, June 25, 2009. Applications submitted in advance of or by the deadline and verified in Grants.gov will undergo preliminary review to determine that:

- The applicant and proposed project type is eligible in accordance with this grant announcement.
- The application is not a duplication of a previously funded project.
- The application narrative, forms, and materials submitted meet the requirements of the announcement allowing the review panel to undertake an in-depth evaluation; otherwise, it may be returned.
- Competitive Review of Eligible Applications review dates: July 22–24, 2009.
- Applications meeting eligibility requirements that are complete, responsive, and conform to this program announcement will be reviewed for

merit by the Ad Hoc Objective Review Committee (ORC) appointed by the IHS to review and make recommendations on these applications. The review will be conducted in accordance with the IHS Objective Review Guidelines. The technical review process ensures selection of quality projects in a national competition for limited funding. Applications will be evaluated and rated on the basis of the evaluation criteria listed in Section V. The criteria are used to evaluate the quality of a proposed project, determine the likelihood of success, and assign a numerical score to each application. The scoring of approved applications will assist the IHS in determining which proposals will be funded if the amount of CYP funding is not sufficient to support all approved applications. Applications recommended for approval, having a score of 70 or above by the ORC and scored high enough to be considered for funding, are ranked and forwarded to the MCH Program for further recommendation. Applications scoring below 70 points will be disapproved and returned to the applicant. Applications that are approved but not funded will not be carried over into the next cycle for funding consideration.

3. *Anticipated Announcement and Award Dates:* The IHS anticipates announcement date the week of August 3, 2009 and award date of September 16, 2009.

VI. Award Administration Information

1. Award Notices

Notification: Approximately the week of August 3, 2009. The program officer will notify the contact person identified on each proposal of the results in writing via postal mail. Applicants whose applications are declared ineligible will receive written notification of the ineligibility determination and their original grant application via postal mail. The ineligible notification will include information regarding the rationale for the ineligible decision citing specific information from the original grant application. Applicants who are approved but unfunded and disapproved will receive a copy of the Executive Summary which identifies the weaknesses and strengths of the application submitted. Applicants which are approved and funded will be notified through the Financial Assistant Award (FAA) document. The FAA will serve as the official notification of a grant award and will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the award, the project period, and the budget period. Any other correspondence announcing to the Applicant's Project Director that an application was recommended for approval is not an authorization to begin performance. Pre-award costs are not allowable charges under this program grant.

2. Administrative and National Policy Requirements

Grants are administered in accordance with the following documents:

A. This cooperative agreement.

B. 45 CFR, Part 92, ''Uniform Administrative Requirements for Grants and Cooperative Agreements to State, Local, and Tribal Governments'', or 45 CFR Part 74, ''Uniform Administration Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other NonProfit Organizations, and Commercial Organizations.''

C. Public Health Service Grants Policy Statement.

D. Grants Policy Directives.

E. Appropriate Cost Principles: OMB Circular A–87, ''State, Local, and Indian Tribal Governments,'' or OMB Circular A–122, ''Non-Profit Organizations.''

F. OMB Circular A–133, ''Audits of States, Local Governments, and Non-Profit Organizations.''

G. Other Applicable OMB Circulars.

3. Reporting

A. Progress Report—Program progress reports are required quarterly by December 15, March 15, June 15, and September 15 of each funding year. These reports will include a brief comparison of actual accomplishments to the goals established for the period, reasons for slippage (if applicable), and other pertinent information as required/outlined in award letters. A final report must be submitted within 90 days of expiration of the budget/project period.

B. Financial Status Report—Semi-annual financial status reports (FSR) must be submitted within 30 days of the end of the half year. Final FSR are due within 90 days of expiration of the budget/project period. This is a total of three times a year. Expected carry-overs should be noted in a separate FSR. Standard Form 269 can be downloaded from *http://www.whitehouse.gov/omb/grants/sf269.pdf* for financial reporting.

VII. Agency Contact(s)

Interested parties may obtain CYP programmatic information from the MCH Program Coordinator through the information listed under Section IV of this program announcement. Grant-related and business management information may be obtained from the Grants Management Specialist through the information listed under Section IV of this program announcement. Please note that the telephone numbers provided are not toll-free.

VIII. Other Information

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of *Healthy People 2010,* a PHS-led activity for setting priority areas. Potential applicants may obtain a printed copy of *Healthy People 2010,* (Summary Report No. 017–001–00547–9) or CD–ROM, Stock No. 017–001–00547–9, through the Superintendent of Documents, Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250–7945, (202) 512–1800. You may also access this information at the following Web site: *http://www.healthypeople.gov/Publications.*

The U.S. Census Bureau website contains AI/AN specific data at the Tribal census tract level. Data is provided at *http://factfinder.census.gov/home/AI/AN/index.html* by Tribe and language; reservations and other AI/AN areas; county and Tribal census tract level; and economic category.

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of the facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Dated: May 13, 2009.

Robert G. McSwain,

Deputy Director, Indian Health Service.

[FR Doc. E9–11624 Filed 5–18–09; 8:45 am]

BILLING CODE 4165–16–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee to the Director, Centers for Disease Control and Prevention

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC)

announces the following aforementioned committee meeting:

Time and Date: 9:30 a.m.–11 a.m., June 4, 2009.

Place: The teleconference call will originate at the Centers for Disease Control and Prevention in Atlanta, Georgia. Please *see* **SUPPLEMENTARY INFORMATION** for details on accessing the teleconference.

Status: Open to the public, teleconference access limited only by availability of telephone ports.

Purpose: The committee will provide advice to the Director, CDC on broad strategies and policy issues facing CDC.

Matters To Be Discussed: The committee will discuss and vote on recommendations regarding CDC Budget Challenges for Fiscal Year 2009 and beyond; discuss and vote on the updated recommendations from the National Biosurveillance Advisory Subcommittee; discuss and vote on the mission of the Health Disparities Subcommittee; discuss and vote on the Ethic Subcommittee's documents entitled, ''Recommendation on Ethical Aspects of Compulsory Use of Travel Restriction Tools''; and ''Requesting Department of Homeland Security Assistance for Control of Communicable Diseases: Standard Operating Procedures;'' and discussion of the committee's charge, ''Ethics Subcommittee Input on the Role of Social Determinants in Health Reform.''

Agenda items are subject to change as priorities dictate.

SUPPLEMENTARY INFORMATION: To participate in the teleconference, please dial 1–888–820–8958 and enter pass code 6034485.

FOR FURTHER INFORMATION CONTACT: Brad Perkins, M.D., M.B.A., Designated Federal Official, Advisory Committee to the Director, CDC, 1600 Clifton Road, NE., M/S D–14, Atlanta, Georgia 30333. Telephone 404–639–7000.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–11599 Filed 5–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Injury Prevention and Control Initial Review Group, (NCIPC IRG)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announce the following teleconference meeting:

Time and Date: 12:30 p.m.–12:45 p.m., June 2, 2009 (Open).

12:45 p.m.–7 p.m., June 2, 2009 (Closed).

Place: Teleconference, Toll Free: 877–468–4185, Participant Pass Code: 3772769.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), Title 5, U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to section 10(d) of Public Law 92–463.

Purpose: This group is charged with providing advice and guidance to the Secretary, Department of Health and Human Services, and the Director, CDC, concerning the scientific and technical merit of grant and cooperative agreement applications received from academic institutions and other public and private profit and nonprofit organizations, including State and local government agencies, to conduct specific injury research that focuses on prevention and control.

Matters To Be Discussed: The meeting will include the review, discussion, and evaluation of applications submitted in response to Fiscal Year 2009 Requests for Applications related to the following individual research announcement: RFA–EH–09–001 Climate Change: Environmental Impact on Human Health (U01).

Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Rick Waxweiler, PhD, Director, Extramural Research Program Office, National Center for Injury Prevention & Control and Executive Secretary, NCIPC IRG, CDC, 4770 Buford Highway, NE., M/S F–62, Atlanta, Georgia 30341, Telephone 770–488–4850.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–11600 Filed 5–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): CDC Grants for Public Health Research Dissertation, Panel K, Funding Opportunity Announcement (FOA) PAR07–231, Initial Review

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting.

Time and Date: 10 a.m.–12 p.m., June 4, 2009 (Closed).

Place: Teleconference.

Status: The meeting will be closed to the public in accordance with provisions set forth in section 552b(c) (4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''CDC Grants for Public Health Research Dissertation, Panel K, FOA PAR07–231.''

Contact Person for More Information: Susan B. Stanton, D.D.S., Scientific Review Officer, Office of the Director, Office of the Chief Science Officer, CDC, 1600 Clifton Road, NE., Mailstop D72, Atlanta, GA 30333, *Telephone:* (404) 639–4640.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: May 13, 2009.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. E9–11601 Filed 5–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Available Space for Vendors at the 2009 NIH Glycoscience Research Day

The purpose of this notice is to inform the public of the availability of limited vendor space at the 2009 NIH Glycoscience Research Day. This meeting is organized by the NIH Glycobiology Special Interest Group.

The meeting will be held on May 28, 2009, at the National Institutes of Health, Building 45 (Natcher Conference Center), on the Auditorium Balcony B and C and the Natcher Fourier, from 8:25 a.m. to 5 p.m. The doors will open at 7 a.m.

The purpose of this meeting is for presentation and discussion of scientific work performed by scientists at the National Institutes of Health and surrounding universities in the area of the glycosciences. The meeting agenda is available Online at *http://meetings.nigms.nih.gov/index.cfm?event=home&ID=6185.*

The meeting will be open to the public, including vendors, with attendance limited to the space available. Individuals who plan to attend and need special assistance, such as sign language or other reasonable accommodations, should notify Mary Conway, Conference Coordinator, Natcher Conference Center, at 301–594–7007.

In the interest of security, NIH has instituted security procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, and hotel and airport shuttles will be inspected prior to entry onto campus. Visitors will be required to present one form of identification and to state the purpose of their visit. Acceptable forms of identification include a government-issued photo ID, driver's license or passport.

For additional information concerning this meeting, please contact Dr. John F. Cipollo, Chair of the 2009 NIH Glycoscience Research Day, Principal Investigator, Food and Drug Administration Center for Biologics Evaluation and Research Division of Bacterial, Parasitic and Allergenic Products, Building 29, Room 126, 8800 Rockville Pike, Bethesda MD 20892–0001, telephone 301–827–0162 (office).

Dated: May 11, 2009.

Raynard S. Kington,

Acting Director, National Institutes of Health.

[FR Doc. E9–11574 Filed 5–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Advisory Child Health and Human Development Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals 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 and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Child Health and Human Development Council.

Date: June 11, 2009.

Open: 8 a.m. to 12:30 p.m.

Agenda: (1) A report by the Director, NICHD; (2) Report of the Subcommittee on Planning and Policy; (3) Endocrinology, Nutrition and Growth Branch Presentation; (4) An update on American Recovery and Reinvestment Act activities; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, C-Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2A03, Bethesda, MD 20892, (301) 496–1848.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: *http://www.nichd.nih.gov/about/nachhd.htm,* where an agenda and any additional information for the meeting will be posted when available.

In order to facilitate public attendance at the open session of Council, reserved seating will be made available to the first five individuals reserving seats in the main meeting room, Conference Room 6. Please contact Ms. Lisa Kaeser, NICHD Program and Public Liaison Office, NICHD, at 301–496–0536 to make your reservation. Additional seating will be available in the meeting overflow rooms, Conference Rooms 7 and 8. Individuals will also be able to view the meeting via NIH Videocast. Please go to the following link for Videocast access instructions at *http://www.nichd.nih.gov/about/overview/advisory/nachhd/virtual-meeting-200905.cfm.*

Meeting material will be available on the NICHD Web site at *http://www.nichd.nih.gov/about/overview/advisory/nachhd/.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–11576 Filed 5–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Biodemographic Factors of Longevity II.

Date: June 24, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review

Branch, National Institute on Aging, Gateway Bldg., 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Dietary Restriction Effect in Population.

Date: June 30, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Health, Aging, and Behavioral Economics.

Date: June 30, 2009.

Time: 12 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Rebecca J. Ferrell, PhD, Scientific Review Officer, National Institute on Aging, Gateway Building 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7703, *ferrellrj@mail.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Nutrient Signaling I.

Date: July 10, 2009.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

Name of Committee: National Institute on Aging Special Emphasis Panel; Maturing Heart.

Date: July 23, 2009.

Time: 12 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, 2C212, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Bita Nakhai, PhD, Scientific Review Officer, Scientific Review Branch, National Institute on Aging, Gateway Bldg., 2c212, 7201 Wisconsin Avenue, Bethesda, MD 20814, 301–402–7701, *nakhaib@nia.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–11586 Filed 5–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the National Cancer Institute Clinical Trials and Translational Research Advisory Committee. The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Clinical Trials and Translational Research Advisory Committee.

Date: July 15, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: Update on the progress of the implementation of the Clinical Trials Working Group and the Translational Research Working Group Reports.

Place: National Institutes of Health, Building 31, 6th Floor, C–Wing, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Sheila A. Prindiville, MD, Director, Coordinating Center for Clinical Trials, Office of the Director, National Cancer Institute, National Institutes of Health, 6120 Executive Blvd., 3rd Floor Suite, Bethesda, MD 20892, 301–451–5048, *prindivs@mail.nih.gov*.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–11585 Filed 5–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Epilepsy Clinical Trials.

Date: June 1, 2009.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: William C. Benzing, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Boulevard, Suite 3204, MSC 9529, Bethesda, MD 20892. (301) 496–0660. *benzingw@mail.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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Stroke SEP.

Date: June 2, 2009.

Time: 1 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Shanta Rajaram, PhD, Scientific Review Administrator, Scientific

Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20852. (301) 435–6033. *rajarams@mail.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: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Hemorrhage Trial.

Date: June 10, 2009.

Time: 4 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852. (Telephone Conference Call.)

Contact Person: Richard D. Crosland, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS/Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–594–0635. *rc218u@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 12, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–11584 Filed 5–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Deafness and Other Communication Disorders. Special Emphasis Panel. RFP Auditory Nerve.

Date: June 4, 2009.

Time: 11 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852. (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892. 301–496–8683. *singhs@nidcd.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: May 11, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–11480 Filed 5–18–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Gastrointestinal Drugs Advisory Committee; Cancellation

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The meeting of the Gastrointestinal Drugs Advisory Committee scheduled for May 20, 2009, is cancelled. This meeting was announced in the **Federal Register** of April 7, 2009 (74 FR 15739). The FDA's Center for Drug Evaluation and Research is continuing to review the application that was going to be discussed by the committee.

FOR FURTHER INFORMATION CONTACT: Kristine T. Khuc, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5630 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, FAX: 301–827–6776, e-mail: *Kristine.Khuc@fda.hhs.gov*, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 3014512538. Please call the Information Line for up-to-date information on this meeting.

Dated: May 14, 2009.

Randall W. Lutter,

Deputy Commissioner for Policy.

[FR Doc. E9–11725 Filed 5–15–09; 4:15 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5281–N–35]

Supplement to Application for Federally Assisted Housing

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing the delivery of any services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

DATES: *Comments Due Date: June 18, 2009.*

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval Number (2502–Pend) and should be sent to: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; *fax:* 202–395–6974.

FOR FURTHER INFORMATION CONTACT: Lillian Deitzer, Reports Management

Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410; e-mail Lillian Deitzer at *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Ms. Deitzer.

SUPPLEMENTARY INFORMATION: This notice informs the public that the Department of Housing and Urban Development has submitted to OMB a request for approval of the Information collection described below. This notice is soliciting comments from members of the public and affecting agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This notice also lists the following information:

Title of Proposal: Supplement to Application for Federally Assisted Housing.

OMB Approval Number: 2502–Pend.

Form Numbers: HUD–92006.

Description of the Need for the Information and Its Proposed Use: Section 644 of the Housing and Community Development Act of 1992 (42 U.S.C. 13604) imposed on HUD the obligation to require housing providers participating in HUD's assisted housing programs to provide any individual or family applying for occupancy in HUD-assisted housing with the option to include in the application for occupancy the name, address, telephone number, and other relevant information of a family member, friend, or person associated with a social, health, advocacy, or similar organization. The objective of providing such information, if this information is provided, and if the applicant becomes a tenant, is to facilitate contact by the housing provider with the person or organization identified by the tenant, to assist in providing the delivery of any services or special care to the tenant and assist with resolving any tenancy issues arising during the tenancy of such tenant. This supplemental application information is to be maintained by the housing provider and maintained as confidential information.

Frequency of Submission: Upon application for Federally assisted housing, if the individual or family opts to complete this form, or such other times as the individual or family may choose to update information.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden:	552,708	1		0.25		138,177

Total Estimated Burden Hours: 138,177.

Status: New Collection.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: May 12, 2009.

Stephen A. Hill,

Acting Director, Policy and E-GOV Office of the Chief Information Officer.

[FR Doc. E9–11553 Filed 5–18–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

60-Day Notice of Proposed Information Collection for 1004–0012

AGENCY: Bureau of Land Management, Interior.

ACTION: 60-Day Notice and Request for Comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request approval to continue the collection of information under the Recreation and Public Purposes Act. This information collection activity was previously approved by the Office of Management and Budget (OMB), and was assigned the control number 1004–0012.

DATES: Comments on the proposed information collection must be received by July 20, 2009, to be assured of consideration.

ADDRESSES: You may mail comments to: U.S. Department of the Interior, Bureau of Land Management, Mail Stop 401LS, 1849 C St., NW., Washington, DC 20240 (*Attention:* 1004–0012). You may also comment electronically at the following address: *Jean_Sonneman@blm.gov.*

FOR FURTHER INFORMATION CONTACT: To receive a copy of the information collection request, you may contact Alzata Ransom, Bureau of Land Management, Lands and Realty Group, at (202) 452–7772 (Commercial or FTS). Persons who use a telecommunication device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at (800) 877–8330, 24 hours a day, 7 days a week, to contact Ms. Ransom.

SUPPLEMENTARY INFORMATION: OMB regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501–3521), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (*see* 5 CFR 1320.8(d) and 1320.12(a)). This notice identifies an information collection that the BLM will be submitting to OMB for approval.

This collection is contained in 43 CFR 2730.0–9 (OMB Control No. 1004–0012). The BLM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany the BLM's submission of the information collection requests to OMB.

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.

The following information is provided for the information collection: (1) Title of the information collection; (2) OMB control number; (3) summary of the information collection activity; and (4) frequency of collection, description of the respondents, estimated total annual responses, and the total annual reporting and recordkeeping burden for the collection of information.

Title: 43 CFR part 2740—Recreation and Public Purposes Act.

OMB Control Number: 1004–0012.

Summary: The Recreation and Public Purposes Act (Act) (43 U.S.C. 869 *et seq.*), authorizes the Secretary of the Interior to lease or convey certain public lands to States or their political subdivisions, and to nonprofit corporations and associations, for recreational and public purposes. The information requested is needed to assist the BLM in determining if an applicant meets the requirements of the Recreation and Public Purposes Act. Responses are required to obtain a benefit.

Frequency of Collection: Once.

Description of Respondents: Applicants for leases and patents to public lands for recreational and public purposes.

Total Annual Responses: 7.

Total Annual Burden for All Respondents: 280 hours.

Dated: May 14, 2009.

Jean Sonneman,

Acting Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. E9–11626 Filed 5–18–09; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Collection of Water Delivery and Electric Service Data for the Operation of Irrigation and Power Projects and Systems: Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Renewal of Information Collection.

SUMMARY: As required by the Paperwork Reduction Act, the Bureau of Indian Affairs (BIA) is seeking comments on two information collections that need renewal under the Paperwork Reduction Act. They are the Electrical Service Application, OMB Control Number 1076–0021, required by 25 CFR 175, and Water Request, OMB Control Number 1076–0141, required by 25 CFR 171.

DATES: Submit comments on or before July 20, 2009.

ADDRESSES: John Anevski, Chief, Division of Irrigation, Power and Safety of Dams, Office of Trust Services, Mail Stop 4655–MIB, 1849 C Street, NW., Washington, DC 20240, Facsimile: (202) 219–0006.

FOR FURTHER INFORMATION CONTACT: John Anevski, Chief, Division of Irrigation, Power and Safety of Dams, Office of Trust Services, *Telephone:* (202) 208–5480, *E-mail: john.anevski@bia.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The BIA owns, operates, and maintains three electric power utilities that provide a service to the end user. The BIA also owns, operates, and maintains 15 irrigation projects that provide a service to the end user. To be able to properly bill for the services provided, the BIA must collect customer information to identify the individual responsible for repaying the government the costs of delivering the service, and billing for those costs. Additional information necessary for providing the service is the location of the service delivery. The Debt Collection Improvement Act of 1996 (DCIA) requires that certain information be collected from individuals and businesses doing business with the government. This information includes the taxpayer identification number for possible future use to recover delinquent debt. To implement the DCIA requirement to collect customer information, the BIA has included a section concerning the collection of information in its regulations governing its electrical power utilities (25 CFR 175) and in its regulations governing its irrigation projects (25 CFR 171). This authority is provided by 25 U.S.C. 381 and 385.

The Paperwork Reduction Act of 1995 provides an opportunity for interested parties to comment on proposed information collection requests. The BIA Division of Irrigation, Power, and Safety of Dams is proceeding with this public comment period as the first step in obtaining a normal information collection clearance from the Office of Management and Budget (OMB). Each request contains (1) type of review, (2) title, (3) summary of the collection, (4) respondents, (5) frequency of collection, (6) reporting and record keeping requirements.

II. Request for Comments

The BIA requests your comments on this collection concerning: (a) The necessity of this information collection for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 4655, during the hours of 8 a.m. to 4 p.m. EST, Monday through Friday, except for legal holidays. Please note that all comments received will be available for public review for two weeks after comment period closes. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. We do not consider anonymous comments. All comments from representatives of businesses or organizations will be made public in their entirety. We may withhold comments from review for other reasons.

III. Data

A. Electric Service Application

OMB Control Number: 1076–0021.

Type of review: Renewal.

Title: Electrical Service Application (25 CFR 175).

Brief Description of Collection: In order for electric power consumers to be served, information is needed by the BIA to operate and maintain its electric power utilities and fulfill reporting requirements. Section 175.22 of 25 CFR part 175, Indian electric power utilities, specifies the information collection requirement. Power consumers must apply for electric service. The information to be collected includes: name; electric service location; and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval

by OMB (OMB Control Number 1076–0021). All information is collected from each electric power consumer. Users are not required to maintain records but may do so for business purposes. The information they submit is for the purpose of obtaining or retaining a benefit, namely electric power. While we do require personal information for the purpose of adhering to the controlling laws and regulations, we protect the information under the Privacy Act. Annual reporting and record keeping burden for this collection of information is estimated to average 30 minutes for each response for 3,000 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total annual reporting and record keeping burden for this collection is estimated to be 1,500 hours.

Respondents: BIA Electric Power Consumers—individuals and businesses.

Number of Respondents: 3,000 per year.

Estimated Time per Response: ½ hour.

Frequency of Response: The information is collected once, unless the respondent requests new electrical service elsewhere or if it has been disconnected for failure to pay their electric bill.

Total Annual Burden to Respondents: 1,500 hours.

B. Water Requests

OMB Control Number: 1076–0141.

Type of review: Renewal.

Title: Water Request (25 CFR 171).

Brief Description of Collection: In order for irrigators to receive water deliveries, information is needed by the BIA to operate and maintain its irrigation projects and fulfill reporting requirements. Section 171.140 of 25 CFR part 171, [Irrigation] Operation and Maintenance, specifies the information collection requirement. Water users must apply for water delivery. The information to be collected includes: name; water delivery location; time and date of requested water delivery; duration of water delivery; rate of water flow; number of acres irrigated; crop statistics; and other operational information identified in the local administrative manuals. Collection of this information is currently authorized under an approval by OMB (OMB Control Number 1076–0141). The respondents mainly request water be turned on or turned off. Users are not required to maintain records but may do so for business purposes. The information they submit is for the purpose of obtaining or retaining a benefit, namely irrigation water. While we do require personal information for the purpose of adhering to the controlling laws and regulations, we protect the information under the Privacy Act. All information is collected from each respondent with a response required each time irrigation water is provided (we estimate 2 times each year). We estimate that we service 8,165 users who submit information about 2 times each year for a total of 16,330 responses a year. We estimate that it takes respondents approximately 1 hour per response, resulting in a total annual hourly burden of 16,330.

Respondents: Water users of the BIA irrigation project, which can include individuals and businesses.

Number of Respondents: 8,165.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion throughout the irrigation season, approximately 2 times per year.

Total Annual Burden to Respondents: 16,330 hours.

Dated: May 13, 2009.

Alvin Foster,

Deputy Chief Information Officer—Indian Affairs.

[FR Doc. E9–11559 Filed 5–18–09; 8:45 am]

BILLING CODE 4310–W7–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36 CFR 60.13(b,c)) and (36 CFR 63.5), this notice, through publication of the information included herein, is to apprise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from March 30 to April 3, 2009.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov.*

Dated: May 12, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

Key: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, Action, Date, Multiple Name.

ARKANSAS

Johnson County

Clarksville Commercial Historic District, Roughly bounded by McConnell St. on the S.; Cherry St. on the N.; Johnson St. on the W.; Spadra Creek on the E., Clarksville, 08000816, Listed, 3/30/09.

FLORIDA

Sarasota County

Armistead, William Martin, House, 1510 Hyde Park St., Sarasota, 09000165, Listed, 3/30/09.

GEORGIA

Chatham County

Fairway Oaks-Greenview Historic District, Bounded approx. by DeRenne Dr., Waters Ave., Truman Pkwy., and Casey Canal, and the Live Oaks Golf Course, Savannah, 09000184, Listed, 3/31/09.

Fulton County

Winecoff Hotel, 179 Peachtree St., NW., Atlanta, 09000185, Listed, 3/31/09.

Screven County

Harris-Murrow-Trowell House, 473 Old Louisville Rd., Oliver, 09000187, Listed, 3/30/09.

ILLINOIS

Cook County

Ramsey, Charles N., and Herry E. Weese House, 141 Kenilworth Ave., Kenilworth, 09000167, Listed, 4/01/09.

MISSISSIPPI

Attala County

Kosciusko Historic District, Roughly bounded by the Illinois, N. Wells, S. Natchez, Galloway, Bobo, S. Huntington, Jefferson St., Highland Dr., Kosciusko, 08001084, Listed, 3/31/09.

OHIO

Belmont County

Rock Hill Presbyterian Church, 56244 High Ridge Rd., Bellaire vicinity, 09000169, Listed, 4/01/09.

Hamilton County

Cheviot Fieldhouse, 3729 Robb Ave., Cheviot, 09000170, Listed, 4/01/09.

Knox County

Loveridge, Richard and Ann, House, 12526 Lower Green Valley Rd., Mount Vernon vicinity, 09000171, Listed, 4/01/09.

Stark County

Town Pump of East Sparta, The, Jct. of Walnut St. and Main Ave., East Sparta, 09000172, Listed, 4/01/09.

RHODE ISLAND

Providence County

Manville Company Worker Housing Historic District, Bounded by Chestnut St., Angle St., Railroad St., Winter St., Fall St., Spring St., Park Way, Almeida Dr., Main St., Lincoln, 08001183, Listed, 4/02/09.

VERMONT

Windham County

Homestead-Horton Neighborhood Historic District, Homestead Place, Horton Place, Canal St., Brattleboro, 09000160, Listed, 4/03/09.

[FR Doc. E9–11557 Filed 5–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF THE INTERIOR

U.S. Geological Survey

Privacy Act of 1974; Amendments to Existing Systems of Records

AGENCY: U.S. Geological Survey.

ACTION: Proposed amendment of existing Privacy Act systems of records.

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the U.S. Geological Survey of the Department of the Interior is issuing public notice of its intent to amend 14 existing Privacy Act system of records notices to add a new routine use to authorize the disclosure of records to individuals involved in responding to a breach of Federal data.

DATES: Comments must be received by June 29, 2009.

ADDRESSES: Any persons interested in commenting on these proposed amendments may do so by submitting comments in writing to the U.S. Geological Survey Privacy Act Officer, Deborah Kimball, U.S. Geological Survey, U.S. Department of the Interior, MS–807, 12201 Sunrise Valley Drive, Reston, VA 20192, or by e-mail to *dkimball@usgs.gov.*

FOR FURTHER INFORMATION CONTACT: U.S. Geological Survey Privacy Act Officer, Deborah Kimball, U.S. Geological Survey, U.S. Department of the Interior, MS–807, 12201 Sunrise Valley Drive, Reston, VA 20192, or by e-mail to *dkimball@usgs.gov.*

SUPPLEMENTARY INFORMATION: On May 22, 2007, in a memorandum for the heads of Executive Departments and Agencies entitled ''Safeguarding Against and Responding to the Breach of Personally Identifiable Information,'' the Office of Management and Budget directed agencies to develop and publish a routine use for disclosure of information in connection with response and remedial efforts in the event of a data breach. This routine use will serve to protect the interest of the individuals, whose information is at issue by allowing agencies to take appropriate steps to facilitate a timely and effective response to the breach, thereby improving its ability to prevent, minimize or remedy any harm resulting from a compromise of data maintained in its systems of records. Accordingly, the U.S. Geological Survey of the Department of the Interior is proposing to add a new routine use to authorize disclosure to appropriate agencies, entities, and persons, of information maintained in the following systems in the event of a data breach. These amendments will be effective as proposed at the end of the comment period unless comments are received which would require a contrary determination. The U.S. Geological Survey will publish a revised notice if changes are made based upon a review of comments received.

Dated: May 12, 2009.

Deborah Kimball,

U.S. Geological Survey Privacy Act Officer.

SYSTEM NAMES:

INTERIOR/USGS–1

SYSTEM NAME:

National Water Information System.

FR Doc. E8–21913 Filed 9–18–08; 8:45 a.m.

INTERIOR/USGS–5

SYSTEM NAME:

Contract Files.

FR Doc. 90–60371 Filed 09–07–90.

INTERIOR/USGS–7

SYSTEM NAME:

Personal Property Accountability Records.

FR Doc. 98–29906 Filed 11–6–98; 8:45 a.m.

INTERIOR/USGS–9

SYSTEM NAME:

National Research Council Grants Program.

FR Doc. 98–29906 Filed 11–6–98.

INTERIOR/USGS–11

SYSTEM NAME:

Security.

FR Doc. 98–51015 Filed 12–19–98.

INTERIOR/USGS–13

SYSTEM NAME:

Manuscript Processing.

FR Doc. 98–47863 Filed 01–07–98.

INTERIOR/USGS–15

SYSTEM NAME:

Earth Science Information Customer Records.

FR Doc. 90–36907 Filed 09–07–90.

INTERIOR/USGS–18

SYSTEM NAME:

Computer Registration System.

FR Doc. 98–25638 Filed 07–08–98.

INTERIOR/USGS–20

SYSTEM NAME:

Photo File System.

FR Doc. 83–28749 Filed 6–23–83.

INTERIOR/USGS–23

SYSTEM NAME:

Personnel Investigations Records.

FR Doc. 93–36822 Filed 6–29–93.

INTERIOR/USGS–24

SYSTEM NAME:

Employee Work Report Edit and Individual Employee Production Rates.

FR Doc. 90–45561 Filed 10–30–90.

INTERIOR/USGS–25

SYSTEM NAME:

Water Data Sources Directory.

FR Doc. 91–36823 Filed 08–01–91.

INTERIOR/USGS–26

SYSTEM NAME:

National Water Data Exchange User Accounting System.

FR Doc. 93–47869 Filed 10–25–93.

INTERIOR/USGS–27

SYSTEM NAME:

Office of Management Services (OMS) Badging and Access Control System.

FR Doc. 97–3499 Filed 02–11–97; 8:45 am.

NEW ROUTINE USE:

Disclosures outside the Department of the Interior may be made:

To appropriate agencies, entities, and persons when:

(a) It is suspected or confirmed that the security or confidentiality of information in the system of records has been compromised; and

(b) The Department has determined that as a result of the suspected or confirmed compromise there is a risk of harm to economic or property interest, identity theft or fraud, or harm to the security or integrity of this system or other systems or programs (whether maintained by the Department or another agency or entity) that rely upon the compromised information; and

(c) The disclosure is made to such agencies, entities and persons who are

reasonably necessary to assist in connection with the Department's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm.

[FR Doc. E9–11613 Filed 5–18–09; 8:45 am]
BILLING CODE 4311–AM–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2009–N0072; 10120–1112–0000–F2]

Proposed Programmatic Safe Harbor Agreement for Oregon Chub, Willamette Valley, OR

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of application.

SUMMARY: The Oregon Department of Fish and Wildlife (ODFW) has applied to the U.S. Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended. The permit application includes a proposed Programmatic Safe Harbor Agreement (Agreement) between ODFW and the Service. The proposed term of the permit and Agreement is 30 years. The requested permit would authorize ODFW to extend incidental take coverage with assurances to eligible landowners who are willing to carry out habitat management measures that would benefit the federally-listed as endangered Oregon chub (*Oregonichthys crameri*) by enrolling them under the Agreement as Cooperators through issuance of Certificates of Inclusion. The covered area or geographic scope of this Agreement includes all non-Federal properties in the Willamette Valley between the cities of Oregon City and Oakridge, Oregon, the estimated historical distribution of the species. We request comments from the public on the permit application, proposed Agreement, and related documents, which are available for review (see **ADDRESSES** below).

DATES: Comments must be received from interested parties on or before June 18, 2009. The final permit decision will be made no sooner than June 18, 2009.

ADDRESSES: You may obtain copies of the documents for review by contacting State Supervisor, U.S. Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, OR 97266; facsimile (503) 231–6195; or by making an appointment to view the documents at the above address during normal business hours. You may also view the documents on the Internet through *http://www.fws.gov/oregonfwo/species/*. You may submit your written comments to State Supervisor, Fish and Wildlife Service, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266, or facsimile (503) 231–6195. Include your name and address in your comments and refer to the 'Oregon chub Programmatic Safe Harbor Agreement'.

FOR FURTHER INFORMATION CONTACT: Paul Henson, State Supervisor, U.S. Fish and Wildlife Service, Oregon Fish and Wildlife Office, 2600 SE. 98th Avenue, Suite 100, Portland, Oregon, 97266; (telephone 503/231–6179). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800/877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefiting species listed under the Endangered Species Act of 1973, as amended (Act; 16 U.S.C. 1531 *et seq.*). Safe Harbor Agreements, and the subsequent enhancement of survival permits that are issued pursuant to section 10(a)(1)(A) of the Act, encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring the landowners that they will not be subjected to increased property use restrictions as a result of their efforts to either attract listed species to their property, or to increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c). These permits allow any necessary future incidental take of any covered species above the mutually agreed upon baseline conditions for those species in accordance with the terms of the permit and accompanying agreement.

We jointly developed the proposed Agreement with ODFW for the conservation of the Oregon chub. The area covered by this Agreement includes the portion of the Willamette Valley estimated to be within the historical distribution of the species. Sites not currently occupied by Oregon chub will have a baseline condition of zero unless a landowner is willing to accept a baseline greater than zero to support an enhanced level of conservation after the Agreement expires. Sites currently occupied by Oregon chub will have their baseline conditions determined on a case-by-case basis, with landowner consent, by ODFW and the Service until a Service-approved protocol for determining non-zero baselines is developed.

The purpose of this Agreement is to establish new populations of Oregon chub as refugia for natural populations through translocations and to increase the abundance, distribution and survival of existing natural populations through voluntary habitat improvements or protections. The Oregon chub was listed as an endangered species by the Service in 1993 (58 FR 53800). At the time of listing, Oregon chub was known to occur at only nine locations within a 30-kilometer (18.6-mile) reach of the Willamette River, representing approximately two percent of the species' historic range. In 2007, there were 19 populations totaling 500 or more individuals. The primary threats affecting Oregon chub include: Competition and predation by nonnative fish; the potential for initial or further introduction of nonnative fish; vegetative succession of shallow aquatic habitats; possible agricultural chemical runoff; possible excessive siltation from logging in the watershed; other threats to water quality (including threat of toxic spills, low dissolved oxygen); fluctuations in water levels due to regulated flow management at flood control dams, as well as low summer water levels; and the loss of genetic diversity as a result of managing Oregon chub populations in isolated habitats.

The status of Oregon chub has improved in recent years, resulting primarily from successful introductions and the discovery of previously undocumented populations. A recent 5-year status review of Oregon chub determined the species no longer warrants listing as endangered. A proposed rule to downlist the species to threatened status is in development, as is a proposal to designate critical habitat.

Under this Agreement, private lands may be enrolled through individual Cooperative Agreements between the ODFW and cooperating landowners (Cooperators). The duration of the Cooperative Agreements will be a minimum of 10 years. Cooperators will be issued a Certificate of Inclusion which will allow activities on the Enrolled Properties to be included within ODFW's section 10(a)(1)(A) Enhancement of Survival permit. Cooperators may renew their Cooperative Agreements to remain in effect for the 30-year duration of the permit. Cooperators will avoid conducting activities that could

adversely affect the Oregon chub's habitat within a specified distance during the term of their Cooperative Agreement.

Without the regulatory assurances provided through the Agreement and permit, landowners may otherwise be unwilling or reluctant to engage in activities that would place federally listed species such as the Oregon chub onto their properties. The proposed Agreement is expected to provide a net conservation benefit to the Oregon chub by creating new refugia populations through translocations or by enhancing the quality, quantity or connectivity of floodplain habitat for naturally occurring populations, thereby increasing the distribution, abundance and genetic diversity of the species.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for a categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). We explain the basis for this determination in an Environmental Action Statement that is also available for public review (see **ADDRESSES**).

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The Service will evaluate the permit application, associated documents, and comments submitted thereon to determine whether the permit application meets the requirements of section 10(a)(1)(A) of the Act and NEPA regulations. If we determine that all requirements are met, we will sign the Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to ODFW for the take of Oregon chub, incidental to otherwise lawful activities in accordance with the terms of the Agreement. This notice is provided pursuant to section 10(c) of the Act and NEPA regulations (40 CFR 1506.6).

Dated: April 14, 2009.

Paul Henson,

State Supervisor, Fish and Wildlife Service, Oregon Fish and Wildlife Office, Portland, Oregon.

[FR Doc. E9–11562 Filed 5–18–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: Assessing the Performance of Juvenile DNA System.

The Urban Institute, Justice Policy Center will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 74, Number 46, page 10616 on March 11, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to Louis Tuthill, National Institute of Justice, Office of Justice Programs 810 7th St., NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

—Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Telephone interviews with state lab directors and SDIS administrators. Collection of summary statistics on juvenile DNA records within CODIS.

(2) *Title of the Form/Collection:* Assessing the Performance of Juvenile DNA System.

(3) *Agency form number, if any, and the applicable component of the Department sponsoring the collection:* No form number. National Institute of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State Crime Lab Directors in the 35 states who collect juvenile DNA. *Other:* State CODIS personnel in those 35 states.

The Urban Institute has been funded by the NIJ to examine the collection and use of juvenile DNA. We will establish the state-specific policies and practices through interviews with state lab personnel and non-identifiable summary data on the number of juveniles included in SDIS and the DNA crime matches attributed to that population. This data can then be used to assess the value of juvenile DNA records from the practitioner perspective and inform DNA policy decisions at the local, state, and federal level.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Interviews will occur with one state crime lab director and CODIS administrator in each state, for a total of 70 estimated respondents. Telephone interviews are expected to take 1 hour each (35 respondents). Summary statistic collection is expected to take 3 hours (35 respondents); 1 hour for discussion with us, 1.5 hours for the actual data pull, and .5 hours to format and transmit the summary statistics.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual burden hours to complete both interviews and data collection is 140 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: May 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–11573 Filed 5–18–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–NEW]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day Notice of Information Collection Under Review: New Information Collection, OJJDP National Training and Technical Assistance Center (NTTAC), Needs Assessment of the Juvenile Justice Field Package.

The Department of Justice, Office of Justice Programs will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection was previously published in the **Federal Register** Volume 74, Number 46, page 10616 on March 11, 2009, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officers, Washington, DC 20503. Additional comments may be submitted to OMB via facsimile to (202) 395–5806. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

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

(2) Evaluate the accuracy of the agencies/components estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* New Information Collection.

(2) *The Title of the Form/Collection:* OJJDP NTTAC Needs Assessment of the Juvenile Justice Field.

(3) *The Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract. *Primary:* State, Local or Tribal. *Other:* Federal Government; Individuals or households; Not-for-profit institutions; Businesses or other for-profit. *Abstract:* The Office of Juvenile Justice and Delinquency Prevention's National Training and Technical Assistance Center (NTTAC) Needs Assessment is designed to assess the current training and technical assistance needs of professionals working in the juvenile justice field. The needs assessment will capture information regarding the topics of interest to the field, the level of need for information about the topic, the types of training and technical assistance of interest around a topic, and the specific challenges that the field is facing in their work. The needs assessment utilizes an on-line format and incorporated skip patterns to ensure that each completion is tailored to the needs of the respondent and reduces the burden of time to complete the instrument. The information will be used to improve services and plan for future training and technical assistance efforts in a fiscally responsible manner that can provide the greatest benefit and impact.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is expected that invitations for completion will be sent to approximately 6,000 respondents with a 60% response rate. This would indicate approximately 3,600 respondents who will require an average of 20 minutes to complete the needs assessment.

(6) An estimate of the total public burden (in hours) associated with the collection: The total annual public burden hours for this information collection is estimated to be 1200 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Planning and Policy Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: May 13, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–11575 Filed 5–18–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated October 9, 2008 and published in the **Federal Register** on October 17, 2008, (73 FR 61912), Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedule I:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I

The company plans to manufacture small quantities of marihuana derivatives for research purposes. In reference to drug code 7360 (Marihuana), the company plans to manufacture cannabidiol. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to manufacture synthetic Tetrahydrocannabinols. No other activity for their drug codes is authorized.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cayman Chemical Company to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cayman Chemical Company to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with State and local laws, and a review of the

company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: May 8, 2009.

Joseph T. Rannazzisi,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. E9–11623 Filed 5–18–09; 8:45 am]

BILLING CODE 4410–09–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 18, 2009. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting the Life Cycle Management Division (NWML) using one of the following means:

Mail: NARA (NWML), 8601 Adelphi Road, College Park, MD 20740–6001.

E-mail: request.schedule@nara.gov.

FAX: 301–837–3698.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Laurence Brewer, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. *Telephone:* 301–837–1539. *E-mail: records.mgt@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media neutral unless specified otherwise. An item in a schedule is media neutral when the disposition instructions may be applied to records regardless of the medium in which the records are created and maintained. Items included in schedules submitted to NARA on or after December 17, 2007, are media neutral unless the item is limited to a specific medium. (*See* 36 CFR 1228.24(b)(3).)

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending:

1. Department of the Army, Agency-wide (N1–AU–09–19, 1 item, 1 temporary item). Master files associated with an electronic information system that supports the development of training plans.

2. Department of the Army, Agency-wide (N1–AU–09–26, 1 item, 1 temporary item). Master files associated with an electronic information system that contains data on simulated battle environments and scenarios and is used to supplement live training exercises.

3. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–09–1, 2 items, 2 temporary items). Case files on individual divers that include training, certification, and medical records.

4. Department of Health and Human Services, Food and Drug Administration (N1–88–09–2, 19 items, 19 temporary items). Field office work plans and accomplishment reports, records related to commissioning state and local officials to perform regulatory inspections and investigations, copies of state commissioning program contract and grant records, records documenting evaluations of state inspectors, records relating to the Shelf Life Extension and Government-wide Quality Assurance programs, notes taken by inspectors during inspections, and records relating to laboratory proficiency testing.

5. Department of Homeland Security, Agency-wide (N1–563–09–7, 3 items, 3 temporary items). Data relating to lawful permanent residents of the United States which is no longer needed.

6. Department of Homeland Security, Office of the General Counsel (N1–563–

09–6, 4 items, 4 temporary items). Case files on information law and intellectual property issues, such as patent and trademarks, copyright, and trade secrets.

7. Department of Homeland Security, Privacy Office (N1–563–09–5, 3 items, 3 temporary items). Privacy impact assessments, privacy threshold analyses, and system of records notices.

8. Department of the Interior, National Park Service (N1–79–08–6, 4 items, 2 temporary items). Records relating to routine partnership relationships and administration of the partnership program. Proposed for permanent retention are records relating to the planning and development of partnership policies and programs as well as case files and other records that document significant and/or long-term partnerships.

9. Department of Justice, Civil Rights Division (N1–60–08–20, 3 items, 1 temporary item). Land use case files generated under the Religious Land Use and Institutionalized Persons Act of 2000 that do not go beyond the pre-investigative stage. Proposed for permanent retention are land use case files that go further than this stage as well as all appellate files.

10. Department of Justice, Federal Bureau of Investigation (N1–65–09–9, 1 item, 1 temporary item). Information collected under an order of the Foreign Intelligence Surveillance Court that was collected in error.

11. Department of Justice, Federal Bureau of Investigation (N1–65–09–10, 4 items, 4 temporary items). Training and certification records maintained by the Laboratory Division's latent print unit.

12. Department of Transportation, Federal Highway Administration (N1–406–08–4, 17 items, 17 temporary items). Records of the Office of Civil Rights, including such records as administrative files, affirmative action plans, budget files, training materials, complaint files, and records relating to Title VI implementation.

13. Department of Transportation, Federal Highway Administration (N1–406–08–6, 17 items, 13 temporary items). Records of the Office of Research, Development, and Technology, including such records as working files, drafts, correspondence, research files, routine drawings, copies of forensic files, uncaptioned photographs, and technical files. Proposed for permanent retention are such records as record copies of Public Roads Magazine, captioned photographs, and published technical reports.

14. Department of Transportation, Federal Highway Administration (N1–406–08–10, 30 items, 29 temporary items). Records of the Office of the Chief Financial Officer, including such records as administrative files, budget files, financial management files, and other files relating to appropriations, disbursements, and transactions. Master files of the Fiscal Management Information System, which contains data on Federally funded highway projects, are proposed for permanent retention.

15. Department of the Treasury, Internal Revenue Service (N1–58–09–11, 1 item, 1 temporary item). Master files of an electronic information system used to identify and assess penalties against taxpayers who fail to provide accurate taxpayer identification numbers.

16. Department of the Treasury, Internal Revenue Service (N1–58–09–14, 1 item, 1 temporary item). Master files of an electronic information system used to measure results of the Earned Income Tax Credit (EITC) and non-EITC research initiatives.

17. Department of the Treasury, Internal Revenue Service (N1–58–09–15, 3 items, 3 temporary items). Inputs, outputs, and master files of an electronic information system that contains data concerning certain small businesses in California.

18. Department of the Treasury, Internal Revenue Service (N1–58–09–16, 1 item, 1 temporary item). Electronic records containing taxpayer name, address, social security number, and latest tax year information.

19. Department of the Treasury, Internal Revenue Service (N1–58–09–17, 1 item, 1 temporary item). Lists and extracts containing data on individuals who did not itemize deductions on their Federal income tax return that is used to allow states to identify those to whom they need not issue Form 1099–G.

20. Department of the Treasury, Internal Revenue Service (N1–58–09–18, 1 item, 1 temporary item). Electronic data on taxpayers which is provided to states for child support enforcement purposes.

21. Department of the Treasury, Internal Revenue Service (N1–58–09–19, 1 item, 1 temporary item). Electronic data provided to the Department of Labor to identify employers who misclassify employees as independent contractors.

22. Department of the Treasury, Internal Revenue Service (N1–58–09–20, 1 item, 1 temporary item). Master files of an electronic information system used to match delinquent Federal tax accounts against a database of recipients of state tax refunds.

23. Department of the Treasury, Internal Revenue Service (N1–58–09–21, 2 items, 2 temporary items). Master files and outputs of an electronic information system used to identify individuals who claim Medicare benefits but also are employed and have medical benefits.

24. Department of the Treasury, Internal Revenue Service (N1–58–09–22, 1 item, 1 temporary item). Electronic data concerning taxpayers provided to states for their use for compliance purposes.

25. Department of the Treasury, Internal Revenue Service (N1–58–09–23 1 item, 1 temporary item). Electronic data containing zip code and social security number information which is provided to states for compliance purposes.

26. Department of the Treasury, Internal Revenue Service (N1–58–09–24, 1 item, 1 temporary item). Electronic data relating to business tax returns, extracted from certain IRS tax forms.

27. Environmental Protection Agency, Agency-wide (N1–412–09–1, 2 items, 1 temporary item). Working data contained in an electronic information system used to manage the agency's budget processes. Final data is proposed for permanent retention, including submissions for the Office of Management and Budget, the President's budget, and congressional budget justifications.

28. Environmental Protection Agency, Office of Water (N1–412–08–5, 2 items, 1 temporary item). Project working papers and administrative correspondence generated or gathered during method development in support of the agency's direct Federal implementation of drinking water programs under the Safe Drinking Water Act. Proposed for permanent retention are Lab Approval Program and Method Development records required under the Safe Drinking Water Act that may be used as a basis for regulatory decisions or the elevation of regulatory priorities related to drinking water programs.

29. Equal Employment Opportunity Commission, Office of Communications and Legislative Affairs (N1–403–09–1, 3 items, 2 temporary items). Biographical information relating to Presidential nominations of members of the Commission and the agency General Counsel as well as briefing books relating to such nominations. Proposed for permanent retention are files relating to pending and proposed legislation.

Dated: May 14, 2009.

Michael J. Kurtz,

Assistant Archivist for Records Services—Washington, DC.

[FR Doc. E9–11756 Filed 5–18–09; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that seven meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Media Arts (application review): June 2–3, 2009 in Room 730. This meeting, from 9 a.m. to 6 p.m. on June 2nd, and from 9 a.m. to 3:30 p.m. on June 3rd, will be closed.

Folk & Traditional Arts (application review): June 3–5, 2009 in Room 716. A portion of this meeting, from 10:30 a.m. to 11:30 a.m. on June 5th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 5:30 p.m. on June 3rd and 4th and from 9 a.m. to 10:30 a.m. and 11:30 a.m. to 12 p.m. on June 5th, will be closed.

Media Arts (application review): June 4–5, 2009 in Room 730. This meeting, from 9 a.m. to 6 p.m. on June 4th and from 9 a.m. to 4 p.m. on June 5th, will be closed.

Design (application review): June 8–9, 2009 in Room 716. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on June 9th, will be open to the public for policy discussion. The remainder of the meeting, from 9 a.m. to 6 p.m. on June 8th and from 9 a.m. to 1:30 p.m. and 2:30 p.m. to 4:30 p.m. on June 9th, will be closed.

Local Arts Agencies (application review): June 10–11, 2009 in Room 730. This meeting, from 9 a.m. to 5:30 p.m. on June 10th and from 9 a.m. to 2:30 p.m. on June 11th, will be closed.

Dance (application review): June 15–19, 2009 in Room 716. This meeting, from 9 a.m. to 6 p.m. on June 15th—18th, and from 9 a.m. to 5 p.m. on June 19th, will be closed.

Presenting (application review): June 18–19, 2009 in Room 714. This meeting, from 9 a.m. to 5:30 p.m. on June 18th and from 9 a.m. to 4 p.m. on June 19th, will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 14, 2009.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–11621 Filed 5–18–09; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No.: 040–09079; NRC–2009–0145

Notice of Opportunity for Hearing, License Application Request of Energy Metals Corporation Antelope and JAB Uranium Project, Sweetwater County, WY, and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of license application, and opportunity to request a hearing.

DATES: A request for a hearing must be filed by July 20, 2009.

FOR FURTHER INFORMATION CONTACT: Myron H. Fliegel, Senior Project Manager, Uranium Recovery Licensing Branch, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. *Telephone:* (301) 415–6629; *fax number:* (301) 415–5369; *e-mail: myron.fliegel@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

By letter dated July 3, 2008, Energy Metals Corporation (Energy Metals) submitted a Source Materials License application to the U.S. Nuclear Regulatory Commission (NRC) for the Antelope and JAB Uranium Project in Sweetwater County, Wyoming. The Antelope and JAB Uranium Project would involve the recovery of uranium by in situ leach (ISL) extraction. An NRC Administrative review, documented in a letter to Energy Metals dated March 9, 2009, found the application acceptable to begin a technical and environmental review. Before approving the license application, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. These findings will be documented in a Safety Evaluation Report (SER) and a site-specific environmental review consistent with the provisions of 10 CFR Part 51.

II. Opportunity To Request a Hearing

The NRC hereby provides notice that this is a proceeding on an application for a Source Materials License regarding Energy Metals' proposal to construct and operate the Antelope and JAB Uranium Project ISL uranium extraction facility in Sweetwater County, Wyoming. Any person whose interest may be affected by this proceeding, and who desires to participate as a party, must file a request for a hearing and a specification of the contentions which the person seeks to have litigated in the hearing, in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing rule requires participants to submit and serve documents over the internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requester must contact the Office of the Secretary by e-mail at *HEARINGDOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital Identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and/or (2) creation of an electronic docket for the proceeding (even in instances in which the petitioner/requestor (or its counsel or representative) already holds an NRC-issued digital ID certificate). Each petitioner/requester 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/requester 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 electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First-class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include social security numbers in their filings. 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.

The formal requirements for documents contained in 10 CFR 2.304(c)–(e) must be met. If the NRC grants an electronic document exemption in accordance with 10 CFR 2.302(g)(3), then the requirements for paper documents, set forth in 10 CFR 2.304(b) must be met.

In accordance with 10 CFR 2.309(b), a request for a hearing must be filed by July 20, 2009.

In addition to meeting other applicable requirements of 10 CFR 2.309, the general requirements involving a request for a hearing filed by a person other than an applicant must state:

1. The name, address, and telephone number of the requester;

2. The nature of the requester's right under the Act to be made a party to the proceeding;

3. The nature and extent of the requester's property, financial or other interest in the proceeding;

4. The possible effect of any decision or order that may be issued in the proceeding on the requester's interest; and

5. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.309(b).

In accordance with 10 CFR 2.309(f)(1), a request for hearing or petitions for leave to intervene must set forth with particularity the contentions sought to be raised. For each contention, the request or petition must:

1. Provide a specific statement of the issue of law or fact to be raised or controverted;

2. Provide a brief explanation of the basis for the contention;

3. Demonstrate that the issue raised in the contention is within the scope of the proceeding;

4. Demonstrate that the issue raised in the contention is material to the findings that the NRC must make to support the action that is involved in the proceeding;

5. Provide a concise statement of the alleged facts or expert opinions which support the requester's/petitioner's position on the issue and on which the requester/petitioner intends to rely to support its position on the issue; and

6. Provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. This information must include references to specific portions of the application (including the applicant's environmental report and safety report) that the requester/petitioner disputes and the supporting reasons for each dispute, or, if the requester/petitioner believes the application fails to contain information on a relevant matter as required by law, the identification of each failure and the supporting reasons for the requester's/petitioner's belief.

In addition, in accordance with 10 CFR 2.309(f)(2), contentions must be based on documents or other information available at the time the petition is to be filed, such as the application, supporting safety analysis report, environmental report or other supporting document filed by an applicant or licensee, or otherwise available to the petitioner. On issues arising under the National Environmental Policy Act, the requester/petitioner shall file contentions based on the applicant's environmental report. The requester/petitioner may amend those contentions or file new contentions if there are data or conclusions in the NRC draft, or final environmental impact statement, environmental assessment, or any supplements relating thereto, that differ significantly from the data or conclusions in the applicant's documents. Otherwise, contentions may be amended or new contentions filed

after the initial filing only with leave of the presiding officer.

Each contention shall be given a separate numeric or alpha designation within one of the following groups:

1. Technical—primarily concerns issues relating to matters discussed or referenced in the Energy Metals Technical Report for the proposed action.

2. Environmental—primarily concerns issues relating to matters discussed or referenced in the Energy Metals Environmental Report for the proposed action.

3. Miscellaneous—does not fall into one of the categories outlined above.

If the requester/petitioner believes a contention raises issues that cannot be classified as primarily falling into one of these categories, the requester/petitioner must set forth the contention and supporting bases, in full, separately for each category into which the requester/petitioner asserts the contention belongs with a separate designation for that category.

Requesters/petitioners should, when possible, consult with each other in preparing contentions and combine similar subject matter concerns into a joint contention, for which one of the co-sponsoring requesters/petitioners is designated the lead representative. Further, in accordance with 10 CFR 2.309(f)(3), any requester/petitioner that wishes to adopt a contention proposed by another requester/petitioner must do so, in accordance with the E-Filing rule, within ten days of the date the contention is filed, and designate a representative who shall have the authority to act for the requester/petitioner.

In accordance with 10 CFR 2.309(g), a request for hearing and/or petition for leave to intervene may also address the selection of the hearing procedures, taking into account the provisions of 10 CFR 2.310.

III. Further Information

Documents related to this action, including the July 3, 2008 license application and the supporting documentation (i.e., Technical and Environmental Reports), are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are ML082730312, Letter from Energy Metals Corporation, Submitting Source Materials License Application and Supporting Technical Report for Antelope and JAB Uranium Project, ML082820454, Letter from Energy Metals Corporation, Submitting Source Material License Application and Supporting Environmental Report for the Antelope and JAB Uranium Project, and ML090840127, Letter from Energy Metals Corporation, Antelope and JAB Uranium Project License Application, Sweetwater County, Wyoming, Corrected Volumes. The ADAMS accession number for the NRC staff's administrative review letter, dated March 9, 2009, is ML090630076. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.* These documents may also be viewed electronically on the public computers located at the NRC's Public Document Room (PDR), O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information (SUNSI) for Contention Preparation

1. This order contains instructions regarding how potential parties to this proceeding may request access to documents containing sensitive unclassified information. A suggested schedule is provided, as Attachment 1 to this order.

2. Within ten (10) days after publication of this notice of opportunity for hearing, any potential party as defined in 10 CFR 2.4 who believes access to SUNSI is necessary for a response to the notice may request access to such information. A ''potential party'' is any person who intends or may intend to participate as a party by demonstrating standing and the filing of an admissible contention under 10 CFR 2.309. Requests submitted later than ten (10) days will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

3. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, MD 20852. The e-mail address for the Office of the Secretary and the Office of the General Counsel are *HearingDocket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

a. A description of the licensing action with a citation to this Federal Register notice of opportunity for hearing;

b. The name and address of the potential party and a description of the potential party's particularized interest that could be harmed, if the licensing action is taken; and

c. The identity of the individual requesting access to SUNSI and the requester's need for the information in order to meaningfully participate in this adjudicatory proceeding, particularly why publicly available versions of the application would not be sufficient to provide the basis and specificity for a proffered contention;

4. Based on an evaluation of the information submitted under items 2 and 3.a through 3.c, above, the NRC staff will determine within ten (10) days of receipt of the written access request whether (1) there is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding, and (2) there is a legitimate need for access to SUNSI.

5. A request for access to SUNSI will be granted if:

a. The request has demonstrated that there is a reasonable basis to believe that a potential party is likely to establish standing to intervene or to otherwise participate as a party in this proceeding;

b. The proposed recipient of the information has demonstrated a need for SUNSI;

c. The proposed recipient of the information has executed a Non-Disclosure Agreement or Affidavit and agrees to be bound by the terms of a Protective Order setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI; and

d. The presiding officer has issued a protective order concerning the information or documents requested.[2] Any protective order issued shall provide that the petitioner must file

[1] *See* footnote 4. While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted, as described in this paragraph.

[2] If a presiding officer has not yet been designated, the Chief Administrative Judge will issue such orders, or will appoint a presiding officer to do so.

SUNSI contentions 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

6. If the request for access to SUNSI is granted, the terms and conditions for access to sensitive unclassified information will be set forth in a draft protective order and affidavit of non-disclosure appended to a joint motion by the NRC staff, any other affected parties to this proceeding,[3] and the petitioner(s). If the diligent efforts by the relevant parties or petitioner(s) fail to result in an agreement on the terms and conditions for a draft protective order or non-disclosure affidavit, the relevant parties to the proceeding or the petitioner(s) should notify the presiding officer within five (5) days, describing the obstacles to the agreement.

7. If the request for access to SUNSI is denied by the NRC staff after a determination on standing, the NRC staff shall briefly state the reasons for the denial. Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information. The requester may challenge the NRC staff's adverse determination with respect to access to SUNSI or with respect to standing by filing a challenge within five (5) days of receipt of that determination with (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

In the same manner, a party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within five (5) days of the notification by the NRC staff of its grant of such a request.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[4]

8. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR Part 2.

Dated at Rockville, Maryland, this 13th day of May 2009.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) IN THIS PROCEEDING

Day	Event
0	Publication of **Federal Register** notice of opportunity for hearing, including order with instructions for access requests.
10	Deadline for submitting requests for access to SUNSI with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding; demonstrating that access should be granted.
[20, 30 or 60]	Deadline for submitting petition for intervention containing: (i) demonstration of standing; (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requester reply).
20	NRC staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information. If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no ''need,'' ''need to know,'' or likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
190	(Receipt +180) If NRC staff finds standing, trustworthiness, and reliability, deadline for NRC staff to file motion for Protective Order and draft Non-disclosure Affidavit. Note: Before the Office of Administration makes an adverse determination regarding access, the proposed recipient must be provided an opportunity to correct or explain information.

[3] Parties/persons other than the requester and the NRC staff will be notified by the NRC staff of a favorable access determination (and may participate in the development of such a motion and protective order) if it concerns SUNSI and if the party/person's interest independent of the proceeding would be harmed by the release of the information (e.g., as with proprietary information).

[4] As of October 15, 2007, the NRC's Final ''E-Filing Rule'' became effective. See Use of Electronic Submissions in Agency Hearings (72 FR 49139; August 28, 2007). Requesters should note that the filing requirements of that rule apply to appeals of NRC staff determinations (because they must be served on the presiding officer or the Commission, as applicable), but not to the initial SUNSI requests submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI) IN THIS PROCEEDING—Continued

Day	Event
205	Deadline for petitioner to seek reversal of a final adverse NRC staff determination either before the presiding officer or another designated officer.
A	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A+3	If access granted: Issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A+28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A+53 (Contention receipt +25)	Answers to contentions whose development depends upon access to SUNSI.
A+60 (Answer receipt +7)	Petitioner/Intervenor reply to answers.
B	Decision on contention admission.

[FR Doc. E9–11604 Filed 5–18–09; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[NRC–2009–0204]

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 April 23, 2009, to May 6, 2009. The last biweekly notice was published on May 5, 2009 (74 FR 20741).

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 and Directives Branch, TWB–05–B01M, 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. 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.

Within 60 days after the date of publication of this notice, any person(s) whose interest may be affected by this action may file a request for a hearing and a petition to intervene with respect to issuance of the amendment to the subject facility operating license. 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements 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 electronic filing Help Desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The electronic filing Help Desk can be contacted by telephone at 1–866–672–7640 or by e-mail at *MSHD.Resource@nrc.gov*.

Participants who believe that they have a good cause for not submitting documents electronically must file a motion, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852, *Attention:*

Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

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, unless an NRC regulation or other law requires submission of such information. 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.*

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units 1, 2, and 3, Maricopa County, Arizona

Date of amendment request: February 19, 2009.

Description of amendment request: The amendments would relocate the reactor coolant system pressure and temperature (P/T) limits and the low temperature overpressure protection (LTOP) enable temperatures to a licensee-controlled document outside of the Technical Specifications (TSs). The P/T limits and LTOP enable temperatures would be specified in a Pressure and Temperature Limits Report (PTLR) that would be located in the Palo Verde Nuclear Generating Station (PVNGS) Technical Requirements Manual and administratively controlled by a new TS 5.6.9.

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.

This proposed change revises the Technical Specifications by relocating the reactor coolant system (RCS) pressure and temperature limits, heatup and cooldown curves and low temperature overpressure protection (LTOP) enable temperatures from the Technical Specifications to an [Arizona Public Service] APS-controlled RCS Pressure and Temperature Limits Report (PTLR), and requiring that the limits in the PTLR be determined using the analytical methods described in the NRC-approved Topical Report CE NPSD–683–A. Relocation of this information and updating it using NRC-approved methodology will not alter the requirement to update the RCS pressure and temperature curves and limits in accordance with 10 CFR 50 Appendices G and H. Updating the P/T curves and LTOP limits ensures the reactor coolant system's pressure boundary integrity is protected throughout plant life. Consequently, this proposed change is determined to not contribute to an increase in the probability of, or the initiation of, a design basis accident. Similarly, the safety analysis information presented in the Updated Final Safety Analysis Report remains unchanged.

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 revises the Technical Specifications by relocating the RCS pressure and temperature limits, heatup and cooldown curves and LTOP enable temperatures from the Technical Specifications to a PVNGS PTLR, and requiring that the limits in the PTLR be determined using the analytical methods described in the NRC-approved Topical Report CE NPSD–683–A. The PTLR documents removal, testing and analyzing the surveillance capsules, and will be updated by APS to reflect the results of testing and analysis of surveillance specimens withdrawn in the future. Removal, testing and analysis of surveillance specimens may result in a need to implement changes to the RCS pressure and temperature limits. Such changes are implemented to ensure the integrity of the RCS pressure boundary throughout plant lifetime. Updates to the RCS pressure and temperature curves and limits will not create a new or different kind of accident. Relocating the P/T curves, heatup and cooldown rates and LTOP limits to the PTLR has no impact on any safety analyses.

Therefore, 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 amendment involve a significant reduction in a margin of safety?

Response: No.

Pressure and temperature curves and limits are provided as limits to plant operation to ensure RCS pressure boundary integrity is maintained throughout the plant's lifetime. Changes to the RCS pressure and temperature curves and limits, resulting from the removal, testing and analysis of surveillance capsules, are only made within the acceptable margin limits thereby maintaining the required margin of safety. There is no change to the safety analysis.

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 that review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Michael G. Green, Senior Regulatory Counsel, Pinnacle West Capital Corporation, P.O. Box 52034, Mail Station 8695, Phoenix, Arizona 85072–2034.

NRC Branch Chief: Michael T. Markley.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: December 1, 2008.

Description of amendment request: The proposed amendments would correct a non-conservative Technical Specification (TS) Surveillance Requirement by revising McGuire TS 3.8.1.4 to increase the minimum required amount of fuel oil for the Emergency Diesel Generators fuel oil day tank as read on the local fuel gauge used to perform the surveillance.

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.

Implementation of the proposed amendment does not significantly increase the probability or the consequences of an accident previously evaluated. The Emergency Diesel Generators (EDGs) and their associated emergency buses function as accident mitigators. The proposed changes do not involve a change in the operational limits or the design of the electrical power systems (particularly the emergency power systems) or change the function or operation of plant equipment or affect the response of that equipment when called upon to operate. The proposed change to TS SR 3.8.1.4 confirms the minimum supply of fuel oil in the emergency diesel generators (EDG) fuel oil day tank. The minimum value for the affected parameter is being increased in the conservative direction and further ensures the EDGs ability to fulfill their safety related function. Thus, based on the above, 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 changes do not involve a change in the operational limits or the design capabilities of the emergency electrical power systems. The proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The evaluation that supports this LAR included a review of the EDG fuel oil system to which this parameter applies. The proposed changes do not introduce any new or different types of failure mechanisms; plant equipment will continue to respond as designed and analyzed.

3. Does the proposed amendment involve a significant reduction in the margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fuel cladding, the reactor coolant system and the containment system will not be adversely impacted by the proposed changes. Thus, it is concluded that the proposed TS and TS Basis 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: Ms. Lisa F. Vaughn, Associate General Counsel and Managing Attorney, Duke Energy Carolinas, LLC, 526 South Church Street, EC07H, Charlotte, NC 28202.

NRC Branch Chief: Melanie Wong.

Entergy Nuclear Operations, Inc., Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: March 5, 2009.

Description of amendment request: The proposed amendment will revise the Reactor Vessel Heatup, Cooldown, and Low Temperature Overpressure Protection curves in Technical Specifications (TSs) 3.4.3 and 3.4.12 to incorporate the most recent estimates of lifetime neutron fluence and the effects of the Stretch Power Uprate (Amendment No. 241).

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. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed TS changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. There are no physical changes to the plant being introduced by the proposed changes to the heatup and cooldown limitation curves. The proposed changes do not modify the RCS [Reactor Coolant System] pressure boundary. That is, there are no changes in operating pressure, materials, or seismic loading. The proposed changes do not adversely affect the integrity of the RCS pressure boundary such that its function in the control of radiological consequences is affected. The proposed heatup and cooldown limitation curves were generated in accordance with the fracture toughness requirements of 10 CFR 50 [Title 10 of the Code of Federal Regulations Part 50] Appendix G, and ASME B&PV code [American Society of Mechanical Engineers Boiler and Pressure Vessel Code], Section XI, Appendix G edition with 2000 Addenda. The proposed heatup and cooldown limitation curves were established in compliance with the methodology used to calculate and predict effects of radiation on embrittlement of RPV [Reactor Pressure Vessel] beltline materials. Use of this methodology provides compliance with the intent of 10 CFR 50 Appendix G and provides margins of safety that ensure non-ductile failure of the RPV will not occur. The proposed heatup and cooldown limitation curves prohibit operation in regions where it is possible for non-ductile failure of carbon and low alloy RCS materials to occur. Hence, the primary coolant pressure boundary integrity will be maintained throughout the limit of applicability of the curves, 29.2 EFPY [Effective Full-Power Years].

Operation within the proposed LTOPS [Low Temperature Overpressure Protection System] limits ensures that overpressurization of the RCS at low temperatures will not result in component stresses in excess of those allowed by the ASME B&PV Code Section XI Appendix G.

Consequently, the proposed changes do not involve a significant increase in the probability or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents. Further, the proposed changes to the heatup and cooldown limitation curves and the LTOPS limits do not affect any activities or equipment other than the RCS pressure boundary and do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Consequently, the proposed changes do not involve a significant increase in the probability or consequence of a new or different kind of accident, from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety.

The proposed TS changes do not involve a significant reduction in the margin of safety.

The revised heatup and cooldown limitation curves and LTOPS limits are established in accordance with current regulations and the ASME B&PV Code 1998 edition with 2000 Addenda. These proposed changes are acceptable because the ASME B&PV Code maintains the margin of safety required by 10 CFR 50.55(a). Because operation will be within these limits, the RCS materials will continue to behave in a non-brittle manner consistent with the original design bases.

The proposed changes to the allowable operation of charging and safety injection pumps when LTOPS is required to be operable is consistent with the IP2 licensing bases as established in TS Amendment 224.

Therefore, Entergy has concluded that the proposed changes do 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Acting Branch Chief: Richard V. Guzman.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: March 25, 2009.

Description of amendment request: The proposed amendment would add two Emergency Core Cooling System (ECCS) valves to Surveillance Requirement (SR) 3.5.2.1. The SR is designed to verify that ECCS valves whose single failure could cause loss of the ECCS function are in the required position with ac power removed so that misalignment or single failure cannot prevent completion of the ECCS function. Entergy plans to install an alternate source of power during the spring 2010 refueling outage to provide the required position indication. The proposed changes support Entergy's resolution to Generic Letter (GL) 2004–02 by establishing a licensing basis that supports meeting the regulatory requirements of the GL.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response—No.

The proposed change adds two ECCS valves to SR 3.5.2.1. The purpose of the surveillance is to assure that the valves are in their required position with normal ac power removed from the valve operator so that misalignment or single failure cannot prevent completion of the ECCS function. The performance of the SR does not involve any actions related to the initiation of an accident and therefore the proposed changes cannot increase the probability of an accident. Misalignment or single failure of one of the two valves being added to TS [Technical Specifications] could cause a loss of the ECCS function based on GSI [Generic Safety Issue]-191 evaluations, so the change will not increase the consequences of an accident but rather provide assurance that no such increase can occur. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response—No.

The proposed change adds two ECCS valves to SR 3.5.2.1. The purpose of the surveillance is to assure that the valves are in their required position with normal ac power removed from the valve operators so that misalignment or single failure cannot prevent completion of the ECCS function. The provision of alternate power to the existing valve position indication during the upcoming spring 2010 outage (2R19), will allow the valve operators to be normally deenergized. The change assures that the valves will be in their correct position and does not introduce any new failure modes or the possibility of a different accident. Therefore, 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 change involve a significant reduction in a margin of safety?

Response—No.

The proposed change adds two ECCS valves to SR 3.5.2.1. The purpose of the surveillance is to assure that the valves are in their required position with normal ac power removed so that misalignment or single failure cannot prevent completion of the ECCS function. The valves will be re-energized 24 hours following a DBA [design-basis accident] and therefore will be capable of performing their required function of isolating a potential passive failure at that time. This ensures that the ECCS function can be performed without a 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: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Acting Branch Chief: Richard V. Guzman.

Entergy Nuclear Operations, Inc., Docket Nos. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: March 29, 2009.

Description of amendment request: The proposed amendment will establish a more restrictive acceptance criterion for surveillance requirement (SR) 3.8.6.6 regarding periodic verification of capacity for the affected station batteries.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed change revises the acceptance criterion applied to an existing surveillance test for the Indian Point 2 station batteries. Performing a technical specification surveillance test is not an accident initiator and does not increase the probability of an accident occurring. The proposed revision to the test acceptance criterion is based on the design calculation for battery performance at the minimum design temperature. The proposed new value for the test acceptance criteria is more limiting than the existing value which does not account for the minimum environmental design temperature assumed for the limiting battery locations. Establishing a test acceptance criterion that bounds existing or assumed conditions validates the equipment performance assumptions used in the accident mitigation safety analyses. Therefore the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change revises the test acceptance criterion for an existing technical specification surveillance test conducted on the existing station batteries. The proposed change does not involve installation of new equipment or modification of existing equipment, so that no new equipment failure modes are introduced. Also, the proposed change in test acceptance criterion does not result in a change to the way that the equipment or facility is operated so that no new accident initiators are created. Therefore 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 change involve a significant reduction in a margin of safety?

No. The conduct of performance tests on safety-related plant equipment is a means of assuring that the equipment is capable of performing its intended safety function and therefore maintaining the margin of safety established in the safety analysis for the facility. The proposed change in the acceptance criterion for the battery capacity surveillance test is more conservative and more restrictive than the value currently in the technical specification and is based on the applicable design calculation for these components.

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: Mr. William C. Dennis, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Acting Branch Chief: Richard V. Guzman.

Exelon Generation Company, LLC, Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Units 1 and 2, Will County, Illinois; Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of amendment request: March 26, 2009.

Description of amendment request: The proposed amendments would revise the fire protection program (FPP) to eliminate the requirement for the backup manual carbon dioxide (CO_2) fire suppression system in the upper cable spreading rooms.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change revises the FPP to eliminate the requirement to maintain the backup CO_2 fire suppression system for the upper cable spreading rooms. With the exception of the CO_2 fire suppression system itself, the proposed change does not result in any physical changes to safety related structures, systems, or components [SSCs], or the manner in which they are operated, maintained, modified, tested, or inspected. The proposed change does not degrade the performance or increase the challenges of any safety related SSCs assumed to function in the accident analysis. The proposed change does not change the probability of a fire occurring since the fire ignition frequency is independent of the method of fire suppression. The proposed change does not affect the consequences of an accident previously evaluated since the fire safe shutdown analysis assumes fire damage throughout the affected fire area. The results of a fire in the upper cable spreading room would only affect one engineered safety features division. Sufficient redundancy exists in the engineered safety features fed from the other division to achieve a reactor shutdown and to maintain the reactor in a safe shutdown condition.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change revises the FPP to eliminate the requirement to maintain the backup CO_2 fire suppression system for the upper cable spreading rooms. With the exception of the CO_2 fire suppression system itself, the proposed change does not result in any physical changes to safety related structures, systems, or components, or the manner in which they are operated, maintained, modified, tested, or inspected. The proposed change does not degrade the performance or increase the challenges of any safety related SSCs assumed to function in the accident analysis. As a result, the proposed change does not introduce nor increase the number of failure mechanisms of a new or different type than those previously evaluated. The fire safe shutdown analysis assumes fire damage throughout the area consistent with a complete lack of fire suppression capability. Potential habitability hazards associated with actuation of the CO_2 system are eliminated with the proposed change.

Therefore, 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 change involve a significant reduction in a margin of safety?

Response: No.

The proposed change revises the FPP to eliminate the requirement to maintain the backup CO_2 fire suppression system for the upper cable spreading rooms. With the exception of the CO_2 fire suppression system itself, the proposed change does not result in any physical changes to safety related structures, systems, or components, or the manner in which they are operated, maintained, modified, tested, or inspected. The proposed change does not degrade the performance or increase the challenges of any safety related SSCs assumed to function in the accident analysis. Since the backup manual CO_2 fire suppression system is not credited in the safe shutdown analysis to protect the upper cable spreading rooms, the proposed change does not impact plant safety since the conclusions of the fire safe shutdown analysis remain unchanged.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (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: Mr. Bradley J. Fewell, Associate General Counsel, Exelon Generation Company, LLC, 4300 Winfield Road, Warrenville, IL 60555.

NRC Branch Chief: Russell Gibbs.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 1, 2009.

Brief description of amendments: The proposed amendment would delete Technical Specification (TS) 5.2.2.d, in TS 5.2.2, ''Unit Staff,'' regarding the requirement to develop and implement administrative procedures to limit the working hours of personnel who perform safety-related functions. The requirements of TS 5.2.2.d have been superseded by Title 10 of the Code of Federal Regulations (10 CFR) Part 26, Subpart I. The change is consistent with U.S. Nuclear Regulatory Commission (NRC)-approved Revision 0 to Technical Specification Task Force (TSTF) Improved Technical Specification Change Traveler, TSTF–511, ''Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26.''

The NRC staff issued a ''Notice of Availability of Model Safety Evaluation, Model No Significant Hazards Determination, and Model Application for Licensees That Wish to Adopt TSTF–511, Revision 0, 'Eliminate Working Hour Restrictions from TS 5.2.2 to Support Compliance with 10 CFR Part 26,' '' in the **Federal Register** on December 30, 2008 (73 FR 79923). The notice included a model safety evaluation, a model no significant hazards consideration (NSHC) determination, and a model license amendment request. In its application dated April 1, 2009, the licensee affirmed the applicability of the model NSHC determination, which is presented below.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of NSHC adopted by the licensee, 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 removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR 26. Removal of the TS requirements will be performed concurrently with the implementation of the 10 CFR 26, Subpart I, requirements. The proposed change does not impact the physical configuration or function of plant structures, systems, or components (SSCs) or the manner in which SSCs are operated, maintained, modified, tested, or inspected. Worker fatigue is not an initiator of any accident previously evaluated. Worker fatigue is not an assumption in the

consequence mitigation of any accident previously evaluated.

Therefore, it is concluded that 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 removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR 26. Working hours will continue to be controlled in accordance with NRC requirements. The new rule allows for deviations from controls to mitigate or prevent a condition adverse to safety or as necessary to maintain the security of the facility. This ensures that the new rule will not unnecessarily restrict working hours and thereby create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not alter the plant configuration, require new plant equipment to be installed, alter accident analysis assumptions, add any initiators, or effect the function of plant systems or the manner in which systems are operated, maintained, modified, tested, or inspected.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3: The Proposed Change Does Not Involve a Significant Reduction in a Margin of Safety

The proposed change removes TS restrictions on working hours for personnel who perform safety related functions. The TS restrictions are superseded by the worker fatigue requirements in 10 CFR 26. The proposed change does not involve any physical changes to plant or alter the manner in which plant systems are operated, maintained, modified, tested, or inspected. The proposed change does not alter the manner in which safety limits, limiting safety system settings or limiting conditions for operation are determined. The safety analysis acceptance criteria are not affected by this change. The proposed change will not result in plant operation in a configuration outside the design basis. The proposed change does not adversely affect systems that respond to safely shutdown the plant and to maintain the plant in a safe shutdown condition.

Removal of plant-specific TS administrative requirements will not reduce a margin of safety because the requirements in 10 CFR 26 are adequate to ensure that worker fatigue is managed.

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 amendment request involves no significant hazards consideration.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Michael T. Markley.

Luminant Generation Company LLC, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: April 2, 2009.

Brief description of amendments: The amendment revises Technical Specification (TS) 3.3.1, ''Reactor Trip System (RTS) Instrumentation,'' to add Surveillance Requirement (SR) 3.3.1.16 to Function 3 of TS Table 3.3.1–1. SR 3.3.1.16 requires that RTS RESPONSE TIMES be verified to be within limits every 18 months on a STAGGERED TEST BASIS. Function 3 is the power range neutron flux—high positive rate reactor trip function (hereafter referred to as the positive flux rate trip (PFRT) function). This change is based on a reanalysis of the Rod Cluster Control Assembly Bank Withdrawal at Power event.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change imposes additional surveillance requirements to assure safety related structures, systems, and components are verified to be consistent with the safety analysis and licensing basis. In this specific case, a response time verification requirement will be added to the positive flux rate trip (PFRT) function.

Overall protection system performance will remain within the bounds of the accident analysis since there are no hardware changes. The design of the Reactor Trip System (RTS) instrumentation, specifically the positive flux rate trip (PFRT) function, will be unaffected. The reactor protection system will continue to function in a manner consistent with the plant design basis. All design, material, and construction standards that were applicable prior to the request are maintained.

The proposed changes will not modify any system interface. 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. The proposed changes will not alter any assumptions or change any mitigation actions in the radiological consequences evaluations in the updated Final Safety Analysis Report (FSAR).

The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility or the manner in which the plant is operated and maintained. The proposed changes do not alter or prevent the ability of structures, systems, and components (SSCs) to perform their intended function to mitigate the consequences of an initiating event within the assumed acceptance limits. The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. The proposed changes are consistent with safety analysis assumptions and resultant consequences.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change imposes additional surveillance requirements to assure safety related structures, systems, and components are verified to be consistent with the safety analysis and licensing basis.

There are no hardware changes nor are there any changes in the method by which any safety related plant system performs its safety function. This change will not affect the normal method of plant operation or change any operating parameters. No performance requirements will be affected; however, the proposed change does impose additional surveillance requirements. The additional requirements are consistent with assumptions made in the safety analysis and licensing basis.

No new accident scenarios, transient precursors, failure mechanisms, or limiting single failures are introduced as a result of these changes. There will be no adverse effect or challenges imposed on any safety-related system as a result of these changes.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change imposes additional surveillance requirements to assure safety related structures, systems, and components are verified to be consistent with the safety analysis and licensing basis.

The proposed changes do not affect the acceptance criteria for any analyzed event. The margin of safety is affected in that in the new analyses of the Rod (Bank) Withdrawal at Power analyses, it is necessary to credit a previously uncredited reactor trip function in an analysis. However, that reactor trip function is described in the plant Technical

Specifications with well-defined operability requirements. An additional attribute, specifically the channel response time verification on, a periodic frequency, provides additional assurance that the trip function performs as credited in the accident analysis. With the credit for this reactor trip function, all relevant event acceptance criteria continue to be met. None of the event acceptance limits are exceeded, and none of the event acceptance limits are revised by the proposed activity. There is no effect on the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined nor is there any effect on those plant systems necessary to assure the accomplishment of protection functions. There is no impact on the overpower limit, the minimum departure from nucleate boiling ratio limit, the radial and axial peaking factor limits, the loss of coolant accident (LOCA) peak clad temperature limit, nor any other limit which, in whole or in part, defines a margin of safety. The radiological dose consequence acceptance criteria listed in the Standard Review Plan will continue to be met.

Therefore the proposed change does not involve a 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Timothy P. Matthews, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Branch Chief: Michael T. Markley.

Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–220, Nine Mile Point Nuclear Station Unit No. 1 (NMP 1), Oswego County, New York

Date of amendment request: March 3, 2009.

Description of amendment request: The proposed amendment would modify Technical Specification (TS) Section 3.2.1, ''Reactor Vessel Heatup and Cooldown Rates,'' and Section 3.2.2, ''Minimum Reactor Vessel Temperature for Pressurization,'' by replacing the existing reactor vessel heatup and cooldown rate limits and the pressure and temperature limit curves with references to the Pressure and Temperature Limits Report (PTLR). In addition, a new definition for the PTLR would be added to TS Section 1.0, ''Definitions,'' and a new section addressing administrative requirements for the PTLR would be added to TS Section 6.0, ''Administrative Controls.'' The proposed changes are consistent with the guidance in Generic Letter 96–03, ''Relocation of the Pressure Temperature Limit Curves and Low Temperature Overpressure Protection System Limits,'' as supplemented by TS Task Force (TSTF) traveler TSTF–419–A, ''Revise PTLR Definition and References in ISTS 5.6.6, RCS [Reactor Coolant System] PTLR.''

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 changes modify the TS by replacing references to existing reactor vessel heatup and cooldown rate limits and P–T [pressure-temperature] limit curves with references to the PTLR. The proposed amendment also adopts the NRC-approved methodology of SIR–05–044–A for the preparation of NMP1 P–T limit curves. In 10 CFR 50 Appendix G, requirements are established to protect the integrity of the reactor coolant pressure boundary (RCPB) in nuclear power plants. Implementing the NRC-approved methodology for calculating P–T limit curves and relocating those curves to the PTLR provide an equivalent level of assurance that RCPB integrity will be maintained, as specified in 10 CFR 50 Appendix G.

The proposed changes do not adversely affect accident initiators or precursors, and do not alter the design assumptions, conditions, or configuration of the plant or the manner in which the plant is operated and maintained. The ability of structures, systems, and components to perform their intended safety function is not altered or prevented by the proposed changes, and the assumptions used in determining the radiological consequences of previously evaluated accidents are not affected.

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.

The change in methodology for calculating P–T limits and the relocation of those limits to the PTLR do not alter or involve any design basis accident initiators. RCPB integrity will continue to be maintained in accordance with 10 CFR 50 Appendix G, and the assumed accident performance of plant structures, systems and components will not be affected. These changes do not involve any physical alteration of the plant (*i.e.*, no new or different type of equipment will be installed), and installed equipment is not being operated in a new or different manner. Thus, no new failure modes are introduced.

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 a margin of safety?

Response: No.

The proposed changes do not affect the function of the RCPB or its response during plant transients. By calculating the P–T limits using NRC-approved methodology, adequate margins of safety relating to RCPB integrity are maintained. The proposed changes do not alter the manner in which safety limits, limiting safety system settings, or limiting conditions for operation are determined, there are no changes to the setpoints at which actions are initiated, and the operability requirements for equipment assumed to operate for accident mitigation are not affected.

Therefore, the proposed changes do 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Acting Branch Chief: John P. Boska.

Nine Mile Point Nuclear Station, LLC, (NMPNS) Docket No. 50–410, Nine Mile Point Nuclear Station Unit No. 2 (NMP 2), Oswego County, New York

Date of amendment request: March 9, 2009.

Description of amendment request: The proposed amendment would revise the Technical Specification (TS) testing frequency for the surveillance requirement (SR) in TS 3.1.4, ''Control Rod Scram Times.'' Specifically, the proposed change is based on TS Task Force (TSTF) change traveler TSTF–460–A, Revision 0, and extends the frequency for testing control rod scram time testing in SR 3.1.4.2 from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. A notice of availability of this proposed TS change using the consolidated line item improvement process was published in the **Federal Register** on August 23, 2004 (69 FR 51864). The licensee affirmed the applicability of the model no significant hazards consideration determination in its application.

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 extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The frequency of surveillance testing is not an initiator of any accident previously evaluated. The frequency of surveillance testing does not affect the ability to mitigate any accident previously evaluated, as the tested component is still required to be operable.

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 extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change does not result in any new or different modes of plant operation.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

4. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

The proposed change extends the frequency for testing control rod scram time testing from every 120 days of cumulative Mode 1 operation to 200 days of cumulative Mode 1 operation. The proposed change continues to test the control rod scram time to ensure the assumptions in the safety analysis are protected.

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: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1700 K Street, NW., Washington, DC 20006.

NRC Acting Branch Chief: John P. Boska.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2 (PINGP), Goodhue County, Minnesota

Date of amendment request: March 5, 2009, as supplemented by letter dated April 13, 2009.

Description of amendment request: The proposed amendments would make changes to the PINGP Technical Specifications (TSs) to revise TS 3.8.1, ''AC Sources—Operating,'' Surveillance Requirement (SR) 3.8.1.8 Frequency to allow use of the SR 3.0.2 interval extension (1.25 times the specified 24 month Frequency). This would be an exception to the SR 3.0.2 limitations in the PINGP TS, which do not allow use of the interval extension for SRs with a 24 month Frequency.

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.

This license amendment request proposes to add a Frequency Note to Surveillance Requirement 3.8.1.8 which will allow application of the Surveillance Requirement 3.0.2 interval extension (1.25 times the specified 24 month Frequency) for performance of this surveillance. This would be an exception to the limitations specified in the Prairie Island Nuclear Generating Plant Technical Specification Surveillance Requirement 3.0.2 for Surveillance Requirements with a 24 month Frequency and would allow an interval up to 30 months for performance of the surveillance.

The emergency diesel generators are not accident initiators and therefore, these changes do not involve a significant increase [in] the probability of an accident.

Failure of the bypass relay, by itself, does not prevent an emergency diesel generator from performing its safety related functions. Since the accident analyses only require one of the two trains of onsite emergency AC to be operable, the changes proposed in the license amendment request do not involve a significant increase in the consequences of an accident.

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.

This license amendment request proposes to add a Frequency Note to Surveillance Requirement 3.8.1.8 which will allow application of the Surveillance Requirement 3.0.2 interval extension (1.25 times the specified 24 month Frequency) for performance of this surveillance. This would be an exception to the limitations specified in the Prairie Island Nuclear Generating Plant Technical Specification Surveillance Requirement 3.0.2 for Surveillance Requirements with a 24 month Frequency and would allow an interval up to 30 months for performance of the surveillance.

The changes proposed for the emergency diesel generators do not change any system operations or maintenance activities. Testing requirements will be revised and will continue to demonstrate that the Limiting Conditions for Operation are met and the system components are functional. The revised test Frequency does not create new failure modes or mechanisms and no new accident precursors are generated.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

This license amendment request proposes to add a Frequency Note to Surveillance Requirement 3.8.1.8 which will allow application of the Surveillance Requirement 3.0.2 interval extension (1.25 times the specified 24 month Frequency) for performance of this surveillance. This would be an exception to the limitations specified in the Prairie Island Nuclear Generating Plant Technical Specification Surveillance Requirement 3.0.2 for Surveillance Requirements with a 24 month Frequency and would allow an interval up to 30 months for performance of the surveillance.

The proposed change will continue to ensure that the DG trips bypass function operates as designed. The functionality and operability of the emergency power system is not being changed. Since the requested change only allows extension of the relay testing interval and failure of the relay by itself does not prevent the diesel from performing its safety function, this change does not involve a significant reduction in a margin of safety.

Therefore, the proposed changes do 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 amendment requests involve no significant hazards consideration.

Attorney for licensee: Peter M. Glass, Assistant General Counsel, Xcel Energy Services, Inc., 414 Nicollet Mall, Minneapolis, MN 55401.

NRC Branch Chief: Lois M. James.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendment request: March 30, 2009.

Description of amendment request: The proposed amendment revises the Technical Specifications (TS), Appendix A to Facility Operating License Nos. NPF–2 and NPF–8 for the Joseph M. Farley Nuclear Plant, Units 1

and 2, respectively. The changes would eliminate the Reactor Coolant Pump (RCP) Breaker Position reactor trip. The changes will allow the elimination of a trip circuitry that is susceptible to single failure vulnerabilities which can result in unwarranted reactor trips.

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. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated in the Final Safety Analysis Report (FSAR). All of the safety analyses have been evaluated for impact. The elimination of Reactor Coolant Pump Breaker Position reactor trip will not initiate any accident; therefore, the probability of an accident has not been increased. An evaluation of dose consequences, with respect to the proposed changes, indicates there is no impact due to the proposed changes and all acceptance criteria continue to be met. Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any previously evaluated?

Response: No.

The proposed changes do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new accident scenarios, failure mechanisms or limiting single failures are introduced as a result of the proposed changes. The changes have no adverse effects on any safety-related system. Therefore, all accident analyses criteria continue to be met and these changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not involve a significant reduction in a margin of safety. All analyses that credit the Reactor Coolant System Low Flow reactor trip function have been reviewed and no changes to any inputs are required. The evaluation demonstrated that all applicable acceptance criteria are met. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

Based on the preceding evaluation, SNC has determined that the proposed changes meet the requirements of 10 CFR 50.92(c) and do not involve a significant hazards consideration.

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: M. Stanford Blanton, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201.

NRC Branch Chief: Melanie C. Wong.

Tennessee Valley Authority (TVA), Docket No. 50 390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of amendment request: April 30, 2009.

Description of amendment request: The proposed amendment would revise technical specification (TS) Section 5.7, ''Procedures, Programs, and Manuals,'' to correct typographical errors introduced in Amendment No. 70, dated October 8, 2008.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No. This change is limited only to correcting a typographical error in a section number (5.7.2.20 versus 5.2.7.20) contained in Technical Specification Section 5.0, which will not change the intent of the added section previously approved in License Amendment 70. Therefore, no increase in the probability or consequences of an accident previously evaluated has been created.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No. This change is limited only to correcting a typographical error in a section number (5.7.2.20 versus 5.2.7.20) contained in Technical Specification Section 5.0, which will not change the intent of the added section previously approved in License Amendment 70. Therefore, the possibility of a new or different kind of accident from those previously analyzed has not been created.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No. This change is limited only to correcting a typographical error in a section number (5.7.2.20 versus 5.2.7.20) contained in Technical Specification Section 5.0, which will not change the intent of the added section previously approved in License Amendment 70. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

Based on the above, TVA concludes that the proposed amendment presents no significant hazards consideration under the standards set forth in 10 CFR 50.92(c), and accordingly, a finding of ''no significant hazards consideration'' is justified.

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: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, Tennessee 37902.

NRC Branch Chief: L. Raghavan.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Unit Nos. 1 and 2, Louisa County, Virginia

Date of amendment request: March 26, 2009.

Description of amendment request: The proposed amendments would increase each unit's rated thermal power (RTP) level from 2893 megawatts thermal (MWt) to 2940 MWt, and make technical specification changes as necessary to support operation at the uprated power level. The proposed change is an increase in RTP of approximately 1.6 percent.

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 change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change will increase the North Anna Power Station (NAPS) Units 1 and 2 rated thermal power (RTP) from 2893 megawatts thermal (MWt) to 2940 MWt. Nuclear steam supply systems and balance-of-plant systems, components and analyses that could be affected by the proposed change to the RTP were evaluated using revised design parameters. The evaluations determined that these structures, systems and components are capable of performing their design function at the proposed uprated RTP of 2940 MWt. An evaluation of the accident analyses demonstrates that the applicable analysis acceptance criteria are still met with the proposed changes. Power level is an input assumption to equipment design and accident analyses, but it is not a transient or accident initiator. Accident initiators are not affected by the power uprate, and plant safety barrier challenges are not created by the proposed changes.

The radiological consequences of operation at the uprated power conditions have been assessed. The proposed change to RTP does not affect release paths, frequency of release, or the analyzed source term for any accidents

previously evaluated in the NAPS Updated Final Safety Analysis Report. Structures, systems and components required to mitigate transients are capable of performing their design functions with the proposed changes, and are thus acceptable. Analyses performed to assess the effects of mass and energy releases remain valid. The source term used to assess radiological consequences was reviewed and determined to bound operation at the proposed power level.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

No new accident scenarios, failure mechanisms, or single failures are introduced as a result of any proposed changes. The UFM has been analyzed, and system failures will not adversely affect any safety-related system or any structures, systems or components required for transient mitigation. Structures, systems and components previously required for transient mitigation are still capable of fulfilling their intended design functions. The proposed changes have no significant adverse affect on any safety-related structures, systems or components and do not significantly change the performance or integrity of any safety-related system.

The proposed changes do not adversely affect any current system interfaces or create any new interfaces that could result in an accident or malfunction of a different kind than previously evaluated. Operating at RTP of 2940 MWt does not create any new accident initiators or precursors. Credible malfunctions are bounded by the current accident analyses of record or recent evaluations demonstrating that applicable criteria are still met with the proposed changes.

Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The margins of safety associated with the power uprate are those pertaining to core thermal power. These include fuel cladding, reactor coolant system pressure boundary, and containment barriers. Core analyses demonstrate that power uprate implementation will continue to meet the current nuclear design basis. Impacts to components associated with the reactor coolant system pressure boundary structural integrity, and factors such as pressure-temperature limits, vessel fluence, and pressurized thermal shock were determined to be bounded by the current analyses.

Systems will continue to operate within their design parameters and remain capable of performing their intended safety functions following implementation of the proposed change. The current NAPS safety analyses, including the design basis radiological accident dose calculations, bound the power uprate.

Therefore, this 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 amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Counsel, Dominion Resources Services, Inc., 120 Tredegar Street, RS–2, Richmond, VA 23219.

NRC Branch Chief: Melanie C. Wong.

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.*

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of application for amendment: September 11, 2008, as supplemented by letter dated December 17, 2008, and January 20, 2009.

Brief Description of amendment: The amendment revised the Technical Specifications, extending the 15-year interval between containment Type A tests specified by Specification 4.4.a, ''Integrated Leak Rate Test,'' by 6 months. The current Type A test interval expires at the end of April 2009. The amendment extends this interval, on a one-time basis, to October 2009 to coincide with completion of the next scheduled refueling outage.

Date of issuance: April 27, 2009.

Effective date: As of the date of issuance and should be implemented within 60 days.

Amendment No.: 204.

Facility Operating License No. DPR–43: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register***: November 4, 2008 (73 FR 65689). The commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 27, 2009.

No significant hazards consideration comments received: No.

Dominion Energy Kewaunee, Inc. Docket No. 50–305, Kewaunee Power Station (KPS), Kewaunee County, Wisconsin

Date of application for amendment: July 7, 2008, as supplemented on September 19, 2008, and March 17, 2009.

Brief description of amendment: The amendment revised the licensing basis, authorizing the licensee to use the methodology conveyed in the licensee's letters cited above to determine the seismic loads on the recently upgraded Auxiliary Building crane. The authorization is conveyed by addition of a new License Condition 2.C.(11) to Facility Operating License DPR–43.

Date of issuance: April 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 205.

Facility Operating License No. DPR–43: The amendment revised Facility Operating License No. DPR–43.

Date of initial notice in ***Federal Register***: August 26, 2008 (73 FR 50358). The Commission's related evaluation of the amendment is contained in a safety evaluation dated April 30, 2009.

No Significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: July 16, 2008, as supplemented by letters dated January 2 and March 19, 2009.

Brief description of amendment: The amendment revised Technical Specifications 3.1.4, ''Control Rod Scram Times,'' 3.2.2, ''Minimum Critical Power Ratio (MCPR),'' and 5.6.3, ''Core Operating Limits Report (COLR),'' to allow incorporation of the analytical methodologies associated with operation of Global Nuclear Fuel-Americas (GNF) fuel into the licensing basis to support transition to GNF GE14 fuel.

Date of issuance: May 5, 2009.

Effective date: As of its date of issuance and shall be implemented prior to beginning operating cycle 20.

Amendment No.: 211.

Facility Operating License No. NPF–21: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register***: October 14, 2008 (73 FR 60729).

The supplements dated January 2 and March 19, 2009, 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 May 5, 2009.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: September 18, 2008, as supplemented by letter dated February 4, 2009.

Brief description of amendment: The amendment modified Technical Specification (TS) requirements for inoperable snubbers by relocating the current TS 3.7.8, ''Snubbers,'' to the Technical Requirements Manual and adding Limiting Condition for Operation (LCO) 3.0.8. The amendment also made conforming changes to TS LCO 3.0.1. The proposed amendment is consistent with U.S. Nuclear Regulatory Commission (NRC)-approved Technical Specification Task Force (TSTF) Improved Standard Technical Specifications Change Traveler, TSTF–372, Revision 4, ''Addition of LCO 3.0.8, Inoperability of Snubbers,'' as part of the consolidated line item improvement process.

Date of issuance: May 1, 2009.

Effective date: As of the date of issuance and shall be implemented 60 days from the date of issuance.

Amendment No.: 219.

Facility Operating License No. NPF–38: The amendment revised the Facility Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** December 16, 2008 (73 FR 76410). The supplemental letter dated February 4, 2009, 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 May 1, 2009.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: November 18, 2008.

Brief description of amendment: This amendment modifies Technical Specification 5.5.6 to incorporate Technical Specification Task Force (TSTF) Travelers TSTF–479, ''Changes to Reflect Revision of 10 CFR [Code of Federal Regulations] 50.55a,'' and TSTF–497, ''Limit Inservice Testing Program SR [Surveillance Requirement] 3.0.2 Application to Frequencies of 2 Years or Less.''

Date of issuance: May 1, 2009.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment No.: 151.

Facility Operating License No. NPF–58: This amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** January 27, 2009 (74 FR 4772). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 1, 2009.

No significant hazards consideration comments received: No.

GPU Nuclear, Inc., Docket No. 50–320, Three Mile Island Nuclear Station, Unit 2, Dauphin County, Pennsylvania

Date of amendment request: June 11, 2008, as supplemented by letters dated September 15, 2008, December 10, 2008, and March 16, 2009.

Brief description of amendment: The amendment deletes Technical Specification 6.5, which provided the requirements related to review and audit functions.

Date of issuance: May 1, 2009.

Effective date: May 1, 2009.

Amendment No.: 63.

Possession Only License No. DPR–73: The amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 26, 2008 (73 FR 50356) The Commission's related evaluation of the amendment is contained in a Safety Evaluation Report, dated May 1, 2009.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2 (CNP–1 and CNP–2), Berrien County, Michigan

Date of application for amendment: June 27, 2007, as supplemented on April 28, September 4, and December 17, 2008.

Brief description of amendment: The amendment revises surveillance requirements in Technical Specifications (TS) Section 3.8.1, ''AC Sources—Operating,'' associated with the diesel generator (DG) steady-state frequency and voltage. The amendment corrects non-conservative TS frequency and voltage values, which the licensee states have the potential to result in undesirable effects such as centrifugal charging pump motor brake horsepower exceeding its nameplate maximum horsepower, and subsequently overloading the DGs.

Date of issuance: April 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 45 days from the date of issuance April 30, 2009.

Amendment Nos.: 309 (CNP–1), 291 (CNP–2).

Facility Operating License Nos. DPR–58 and DPR–74: Amendment revises the Renewed Operating License and Technical Specifications.

Date of initial notice in ***Federal Register:*** November 4, 2008 (73 FR

65696). The April 28 and December 17, 2008 supplements provided additional information that clarified the application, but did not expand the scope of the application as originally noticed, and did not change the staff's original proposed significant hazards consideration published in the **Federal Register** on August 14, 2007.

The September 4, 2008 supplement provided additional information which expanded the scope of the application as originally noticed. The NRC staff identified that the specified DG voltage of 3,740 volts at 10 seconds after the DG start was non-conservative and inconsistent with the 3,910 volt minimum steady-state voltage provided in other parts of TS Section 3.8.1. The licensee proposed additional changes to TS Section 3.8.1 in its September 4, 2008 letter. The NRC staff determined that the proposed expanded scope of the amendment involved a proposed no significant hazards consideration as published in the **Federal Register** on November 4, 2008 (73 FR 65696).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 2009.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: February 24, 2009.

Brief description of amendments: The amendments deleted the requirement for the power range neutron flux rate-high negative rate trip (Function 3.b) in Technical Specification (TS) Table 3.3.1–1, ''Reactor Trip System Instrumentation.'' The changes are consistent with the NRC-approved methodology presented in Westinghouse Topical Report, WCAP–11394–P–A, ''Methodology for the Analysis of the Dropped Rod Event,'' dated January 1990. The amendments also incorporated editorial changes to reflect the deletion of Function 3.b in TS Table 3.3.1–1.

Date of issuance: April 29, 2009.

Effective date: As of its date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment Nos.: Unit 1—205; Unit 2—206.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Facility Operating Licenses and Technical Specifications.

Date of initial notice in ***Federal Register:*** March 24, 2009 (74 FR 12394).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2009.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant (WBN), Unit 1, Rhea County, Tennessee

Date of application for amendment: December 31, 2008 superseded the application dated August 1, 2008, as supplemented by letters dated November 25 and December 31, 2008.

Brief description of amendment: The amendment revised WBN Unit 1 Technical Specification (TS) 4.2.1, ''Fuel Assemblies,'' and TS surveillance requirements (SRs) 3.5.1.4, ''Accumulators,'' and 3.5.4.3, ''RWST [Refueling Water Storage Tank],'' to increase the maximum number of tritium producing burnable absorber rods from 400 to 704.

Date of issuance: April 30, 2009.

Effective date: As of the date of issuance and shall be implemented within 180 days of issuance.

Amendment No.: 77.

Facility Operating License No. NPF–90: Amendment revises the TS 4.2.1 and TS SRs 3.5.1.4 and 3.5.4.3.

Date of initial notice in ***Federal Register:*** Originally November 12, 2008 (73 FR 66946) was superseded by a notice on January 27, 2009 (74 FR 4776).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 2009.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 7th day of May 2009.

For the Nuclear Regulatory Commission.

Joseph G. Giitter,

Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–11268 Filed 5–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–1113; NRC–2009–0209]

Notice of Availability of Environmental Assessment and Finding of No Significant Impact for License Renewal for Global Nuclear Fuel—Americas, LLC, Wilmington, NC

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

FOR FURTHER INFORMATION CONTACT: Mary Adams, Senior Project Manager, Fuel Manufacturing Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Rockville, Maryland 20852. *Telephone:* (301) 492–3113; *Fax:* (301) 492–3363; *e-mail: Mary.Adams@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The Nuclear Regulatory Commission (NRC) is considering the renewal of Special Nuclear Material License SNM–1097 for the continued operation of the Global Nuclear Fuel—Americas, LLC (GNF–A) Fuel Fabrication Facility located in Wilmington, North Carolina. This renewal authorizes the licensee to receive and possess nuclear materials at the Wilmington facility to fabricate and assemble nuclear fuel components under the provisions of 10 CFR Part 70, Domestic Licensing of Special Nuclear Material. If NRC approves the renewal of the license, the term would cover 40 years. NRC has prepared an environmental assessment (EA) in support of this action in accordance with the requirements of 10 CFR Part 51. Based on the EA, the NRC has concluded that a finding of no significant impact is appropriate. If approved, NRC will issue the renewed license following the publication of this Notice.

II. EA Summary

The licensee requests approval to renew SNM–1097 for an additional 40 years at the Wilmington, North Carolina facility. Specifically, this would allow GNF–A to continue manufacturing and assembling nuclear fuel components for use in commercial light-water-cooled nuclear power reactors. GNF–A's request for the renewal was previously noticed in the **Federal Register** on June 18, 2007 (72 FR 33539), with an opportunity to request a hearing. No hearing requests were received.

The staff has prepared the EA in support of the proposed license renewal. Staff considered direct, indirect, and cumulative environmental impacts to 12 resource areas in their evaluation, including: land use; transportation; socioeconomics; air quality; water quality; geology and soils; ecology; noise; historic and cultural; scenic and visual; public and occupational health; and waste management. All of the environmental impacts were small-to-moderate. The license renewal request does not require altering the site footprint nor does it

change the operating processes of the existing facility. The proposed action will not adversely affect Federal or State-listed threatened or endangered species nor flora and fauna in the site vicinity.

Airborne effluents released through stacks and liquid effluents released in the North Cape Fear River are below and are anticipated to remain below regulatory limits in 10 CFR Part 20 for non-radiological and radiological contaminants. Public and occupational exposures are below the limit established in 10 CFR Part 20. GNF–A maintains acceptable waste management practices and procedures. The staff concluded that the proposed 40 year renewal of license SNM–1097 will not result in a significant impact to the environment.

NRC staff consulted with other agencies regarding the proposed action, including the National Oceanic and Atmospheric Administration (NOAA) Fisheries, the North Carolina State Historic Preservation Office, The Waccamaw Siouan Tribe, the North Carolina Cape Fear Regional Council of Governments, the North Carolina Department of Environment and Natural Resources, the North Carolina Department of Agriculture, the North Carolina Department of Cultural Resources, the North Carolina Department of Transportation, the North Carolina Crime Control & Public Safety, Division of Emergency Management, Floodplain Management Program, New Hanover County Planning, and New Hanover County Environmental. The consultations ensured that the requirements of Section 7 of the Endangered Species Act and Section 106 of the National Historic Preservation Act were met and provided the designated State liaison agency the opportunity to comment on the proposed action.

III. Finding of No Significant Impact

On the basis of the EA, NRC has concluded that there are no significant environmental impacts from the proposed license renewal and has determined not to prepare an Environmental Impact Statement.

IV. Further Information

Documents related to this action, including the application for license renewal and supporting documentation, are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* From this site, you can access the NRC's Agencywide Documents Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The ADAMS accession numbers for the documents related to this notice are:

Document	ADAMS accession Nos.
License Renewal—Letter and Application	ML071000128
Environmental Report Supplement/Appendix	ML071000137/ML071000144
Letters to GNF–A—Request for Additional Information (RAI)	ML080860543/ML083110367
GNF–A Letters to NRC—Response to RAI	ML081350536/ML083540569
NRC Letter to New Hanover County Environmental	ML073620213
NRC Letter to National Oceanic and Atmospheric Administration (NOAA) Fisheries	ML073620398
NOAA Fisheries Letter to NRC	ML080290570
NRC Letter to North Carolina State Clearinghouse	ML073620443/ML090641049
North Carolina Wildlife Resources Letter to NRC	ML080650578
North Carolina Coastal Management Letter to NRC	ML080650577
North Carolina State E-mail to NRC	ML091170068/ML091170107
NRC Letter to New Hanover County Planning	ML073620172
New Hanover County Planning E-mail to NRC	ML081290389
Environmental Assessment	ML091180239

If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

These documents may also be viewed electronically on the public computers located at the NRC's PDR, O1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at Rockville, Maryland, this 13th day of May 2009.

For the U.S. Nuclear Regulatory Commission.

Andrea Kock,

Chief, Environmental Review Branch, Environmental Protection and Performance Assessment Directorate, Division of Waste Management and Environmental Protection, Office of Federal and State Materials and Environmental Management Programs.

[FR Doc. E9–11611 Filed 5–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of May 18, 25, June 1, 8, 15, 22, 2009.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of May 18, 2009

Monday, May 18, 2009

10 a.m. Affirmation Session (Public Meeting) (Tentative).

a. Progress Energy Carolinas, Inc. (Shearon Harris Nuclear Power Plant, Units 2 and 3), Docket Nos. 52–022–COL and 52–023–COL, Progress Energy and NRC Staff Appeals from LBP–08–21; NC WARN's Motion to Hold the Proceeding in Abeyance (Tentative).

b. Crow Butte Resources, Inc. (License Renewal), LBP–08–24 and LBP–08–27 (Staff and Applicant Appeals of Order Granting Hearing) (Tentative).

Week of May 25, 2009—Tentative

Wednesday, May 27, 2009

9:30 a.m.

Briefing on External Safety Culture (Public Meeting), (Contact: Stewart Magruder, 301–415–8730).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Wednesday, May 27, 2009

1:30 p.m.

Briefing on Internal Safety Culture (Public Meeting), (Contact: June Cai, 301–415–5192).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, May 28, 2009

9:30 a.m.

Briefing on Fire Protection Closure Plan (Public Meeting), (Contact: Alex Klein, 301–415–2822).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of June 1, 2009—Tentative

Wednesday, June 3, 2009

9:30 a.m.

Briefing on New Reactor Issues—Component Fabrication and Oversight—Part 1 (Public Meeting).

1:30 p.m.

Briefing on New Reactor Issues—Component Fabrication and Oversight—Part 2 (Public Meeting). (Contact for both parts: Roger Rihm, 301–415–7807).

Both parts of this meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Thursday, June 4, 2009

9:30 a.m.

Briefing on Digital Instrumentation and Control (Public Meeting) (Contact: Steve Arndt, 301–415–6502).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

1:30 p.m.

Meeting with the Advisory Committee on Reactor Safeguards (Public Meeting) (Contact: Tanny Santos, 301–415–7270).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Week of June 8, 2009—Tentative

There are no meetings scheduled for the week of June 8, 2009.

Week of June 15, 2009—Tentative

There are no meetings scheduled for the week of June 15, 2009.

Week of June 22, 2009—Tentative

Thursday, June 25, 2009

1:30 p.m.

Meeting with Advisory Committee on the Medical Uses of Isotopes (Public Meeting) (Contact: Ashley Cockerham, 240–888–7129).

This meeting will be Webcast live at the Web address—*http://www.nrc.gov.*

Friday, June 26, 2009

9:30 a.m.

Discussion of Security Issues (Closed—Ex. 3).

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* 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: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/about-nrc/policy-making/schedule.html.*

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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 *rohn.brown@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to 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), or send an e-mail to *darlene.wright@nrc.gov.*

Dated: May 14, 2009.

Rochelle C. Bavol,

Office of the Secretary.

[FR Doc. E9–11712 Filed 5–15–09; 4:15 pm]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11716 and #11717]

Florida Disaster Number FL–00039

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 Florida (FEMA–1831–DR), dated 04/21/2009.

Incident: Severe Storms, Flooding, Tornadoes, and Straight-line Winds.

Incident Period: 03/26/2009 through 05/05/2009.

DATES: *Effective Date:* 05/11/2009.

Physical Loan Application Deadline Date: 06/22/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 01/21/2010.

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: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Florida, dated 04/21/2009, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Dixie, Gilchrist, Lafayette, Suwannee.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–11602 Filed 5–18–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11732 and #11733]

Florida Disaster Number FL–00040

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 3.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Florida (FEMA–1831–DR), dated 04/28/2009.

Incident: Severe Storms, Flooding, Tornadoes, and Straight-line Winds.

Incident Period: 03/26/2009 through 05/05/2009.

DATES: *Effective Date:* 05/11/2009.

Physical Loan Application Deadline Date: 06/29/2009.

EIDL Loan Application Deadline Date: 01/28/2010.

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: The notice of the Presidential disaster declaration for the State of Florida, dated 04/28/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Leon, Levy, Wakulla

Contiguous Counties: (Economic Injury Loans Only):

Florida: Citrus, Marion

Georgia: Grady, Thomas

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–11603 Filed 5–18–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Surrender of License of Small Business Investment Company

Pursuant to the authority granted to the United States Small Business Administration under the Small Business Investment Act of 1958, under Section 309 of the Act and Section 107.1900 of the Small Business Administration Rules and Regulations (13 CFR 107.1900) to function as a small business investment company under the Small Business Investment Company License No. 09/79–0404 issued to Bay Partners SBIC, L.P., and said license is hereby declared null and void as of May 1, 2009.

United States Small Business Administration.

Harry E. Haskins,

Acting Associate Administrator for Investment.

[FR Doc. E9–11565 Filed 5–18–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59905; File No. SR–FINRA–2007–012]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment Nos. 1 and 2 Thereto To Amend Trade Reporting Rules To Require a Related Market Center Indicator on Certain Non-Tape Reports Submitted to FINRA

May 12, 2009.

I. Introduction

On September 12, 2007, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its trade reporting rules to require members to record a related market center indicator on certain non-tape reports submitted to FINRA. On December 18, 2007, FINRA filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on December 28, 2007.[3] The Commission received three comments on the proposal.[4] FINRA filed Amendment No. 2 on March 27, 2009.[5] This order approves to the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Description of the Proposal

As discussed more fully in the Notice, certain transactions can be reported in related tape (*i.e.,* the transaction is reported to the tape for publication) and non-tape reports.[6]

Thus, agency transactions where one member acts as agent on behalf of another member can be reported in related tape and non-tape reports. Similarly, a riskless principal transaction,[7] which is a functional equivalent of an agency trade, can be submitted to FINRA as a single trade report properly marked as riskless principal, or as two separate reports: (1) A tape report to reflect the initial leg of the transaction and (2) a non-tape report to reflect the offsetting, ''riskless'' leg of the transaction. Currently, a non-tape report does not provide specific information pertaining to the related tape report.

FINRA proposed to amend FINRA Rules 7130 (relating to the ADF/TRACS), 7230A (relating to the FINRA/NASDAQ TRF), 7230B (relating to the FINRA/NYSE TRF), and 7330 (relating to OTC RF) [8] to require members for any non-tape report (either a non-tape, non-clearing report or a clearing-only report) submitted to a FINRA Facility associated with a previously executed trade that was not reported to that same FINRA Facility, to identify the facility or market to which the associated trade was reported. The proposed rule change also requires that members retain and produce to FINRA, upon request, documentation relating to the associated trade (*e.g.,* a confirmation from the exchange identifying the ''street side'' of a riskless principal transaction).

FINRA also proposed that where a single non-tape report is related to multiple tape reports: (1) If the multiple tape reports were made to a single exchange or, in the case of over-the-counter trades, a single FINRA Facility, that exchange or facility must be properly reflected on the single non-tape report; and (2) if the multiple tape reports were made to different exchanges and/or FINRA Facilities, the member will not be required to identify the specific exchanges or facilities; it will be required to populate the Related Market Center field with a standard indicator: ''multiple venues.'' [9] In

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 57020 (December 20, 2007), 72 FR 73930 (''Notice'').

[4] *See* letter from Securities Industry and Financial Markets Association, dated January 24, 2008 (''SIFMA Letter''); letter from Citigroup Global Markets, Inc., dated February 1, 2008 (''Citi Letter''); and letter from Financial Information Forum, dated February 29, 2008 (''FIF Letter'').

[5] In Amendment No. 2, FINRA: (1) Addressed the comments received in response to the publication of the Notice and proposed certain minor modifications and clarifications in response to the comments; (2) reflected changes to the underlying rule text adopted pursuant to two intervening rule changes and made conforming modifications to the proposed rule change. This Amendment is a technical amendment and therefore not subject to notice and comment.

[6] Non-tape reports can be (1) ''non-tape, non-clearing,'' *i.e.,* the transaction is not reported to the tape but is submitted to FINRA for regulatory (not clearing) purposes, or (2) ''clearing-only,'' *i.e.,* the transaction is not reported to the tape and is submitted to FINRA for clearing (and perhaps also regulatory) purposes.

[7] For purposes of over-the-counter trade reporting requirements applicable to equity securities, a ''riskless principal'' transaction is a transaction in which a member, after having received an order to buy (sell) a security, purchases (sells) the security as principal (the initial leg) and satisfies the original order by selling (buying) as principal at the same price (the offsetting, ''riskless'' leg). *See* FINRA *Regulatory Notice* 07–38 (August 2007).

[8] The original filing contained different Rule numbers, which were revised in Amendment No. 2 to account for intervening rule filings. *See supra* note 5.

[9] *See* Amendment No. 2.

addition, where a member routes an order and has no basis for identifying where the trade was ultimately executed or, in the case of over-the-counter trades, where the trade was ultimately reported, the member will be required to populate the Related Market Center field with a standard indicator: ''unknown venue.'' [10]

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.[11] In particular, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,[12] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest.

The Commission believes that the proposed rule change will result in a more complete and accurate audit trail and ensure that members are not using non-tape reports to circumvent FINRA or Commission rules. FINRA stated that currently it is difficult to determine with certainty where the associated trade was reported, especially if that trade was reported to an exchange or another FINRA Facility.[13]

As noted above, the Commission received three comment letters in response to the Notice.[14] The three commenters generally oppose the proposal and state that the potential costs, including required system changes, outweigh the benefits of the proposal. In addition, the commenters raise several concerns about the practical difficulties of complying with the proposed rule change. *First,* the commenters indicate it would be difficult (if not impossible) to identify multiple exchanges and/or FINRA Facilities where a single non-tape report is associated with multiple executions on multiple markets. *Second,* the three commenters point out that when a firm routes an order, it may not know the ultimate execution destination. *Third,* the commenters argue that even if a firm knows that a trade in an NMS stock was executed over-the-counter, the firm may not know where the trade was reported because FINRA's Uniform Service Bureau/Executing Broker Agreement (''USBEBA'') allows the reporting party to report to any TRF or ADF, without providing notice to the other party to the trade.[15]

FINRA replied to the comments in Amendment No. 2 and revised and clarified the original proposal to alleviate the commenters' concerns. In particular, FINRA clarified that where a single non-tape report is related to multiple tape reports: (1) If the multiple tape reports were made to a single exchange or, in the case of over-the-counter trades, a single FINRA Facility, that exchange or facility must be reflected on the single non-tape report; and (2) if the multiple tape reports were made to different exchanges and/or FINRA Facilities, the member will be required to populate the Related Market Center field with a standard indicator: ''multiple venues.'' [16] In addition, FINRA provided that where a member routes an order and has no basis for identifying the relevant exchange or FINRA Facility to determine where the trade was ultimately executed or, in the case of over-the-counter trades, where the trade was ultimately reported, the member will be required to populate the Related Market Center field with a standard indicator: ''unknown venue.''

To the extent technological enhancements are required, FINRA stated that it intends to provide adequate time for members to make the necessary changes and revised the original proposal to provide for the implementation of the proposed rule change at least 90 days following implementation on August 3, 2009, of the amendments to FINRA trade reporting rules adopted pursuant to SR–FINRA–2008–011.[17]

The Commission believes that FINRA's approach that tailors the proposed reporting requirement to reflect informational limitations described by the commenters is reasonable, in that it reflects FINRA's expectation that members provide as much information as is reasonably available at the time the non-tape report is submitted. Further, the Commission notes that FINRA clarified that where a member routes to an exchange and has a reasonable basis for reporting that the trade was executed on that exchange, FINRA would not consider it a violation if, unbeknownst to the member, the trade is ultimately executed somewhere other than the routed exchange.[18] The Commission also notes that it would expect FINRA to incorporate the proposed changes into its surveillance and examination programs to ensure that members are not improperly using the ''multiple venue'' or ''unknown venue'' indications.

IV. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities association.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[19] that the proposed rule change (SR–FINRA–2007–012), as modified by Amendment Nos. 1 and 2 thereto, be and hereby is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11607 Filed 5–18–09; 8:45 am]

BILLING CODE 8101–01–P

[10] *See id.*

[11] In approving these proposed rule changes, the Commission has considered the proposed rules' impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78*o*–3(b)(6).

[13] Currently, FINRA must manually match non-tape reports with associated tape reports for purposes of monitoring member compliance with trade reporting rules. FINRA stated that by requiring that firms identify the market center or facility to which the associated tape report was submitted, the universe of tape reports that must be reviewed as part of the matching process will be significantly narrowed, and accordingly, the effectiveness and certainty of the matching process will be enhanced.

[14] *See supra* note 4.

[15] *See* SIFMA Letter and Citigroup Letter.

[16] *See* Amendment No. 2.

[17] *See* FINRA *Regulatory Notice* 09–08 (January 2009).

[18] The same approach would apply to reporting to other FINRA Facilities.

[19] 15 U.S.C. 78s(b)(2).

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59915; File No. SR–NASDAQ–2009–040]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to the Nasdaq Listing Rules To Conform Those Rules With the Prior Marketplace Rules and Make Certain Technical Corrections

May 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on April 27, 2009, The NASDAQ Stock Market LLC (''Nasdaq'') filed with the Securities and Exchange Commission (''Commission'')

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

the proposed rule change as described in Items I and II below, which Items have been prepared by Nasdaq. Nasdaq has designated the proposed rule change as effecting a change described under Rule 19b-4(f)(6) under the Act,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq proposes to modify the Nasdaq Listing Rules to conform those rules with the prior Marketplace Rules and make certain technical corrections. The text of the proposed rule change is available from Nasdaq's Web site at *http://nasdaq.cchwallstreet.com,* at Nasdaq's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 12, 2009, Nasdaq filed a proposed rule change to revise the rules relating to the qualification, listing, and delisting of companies listed on, or applying to list on, Nasdaq to improve the organization of the rules, eliminate redundancies and simplify the rule language.[4] These rules (the ''New Listing Rules'') were effective April 13, 2009. Nasdaq has observed that the March filing introduced two inadvertent changes in the New Listing Rules. This filing modifies those rules to revert to the requirements as they previously existed [5] and makes other technical and clarifying corrections to the rules.

Specifically, Nasdaq proposes to modify Rule 5405(b)(3)(A) to correct the requirement for companies seeking to list on the Nasdaq Global Market under the Market Value Standard. Previously, under Rule 4420(c)(6)(A), a currently traded company that applied to list under this standard was required to meet the market value of listed securities requirement and the bid price requirement for 90 consecutive *trading* days prior to applying for listing. As adopted in Rule 5405(b)(3)(A), this requirement was inadvertently changed to 90 consecutive *calendar* days.

In addition, Nasdaq proposes to modify Rules 5250(d) and 5615 and IM–5615–3 to allow a Foreign Private Issuer to follow its home country practice in lieu of the requirement to distribute interim and annual reports. Previously, the provision allowing Foreign Private Issuers to follow their home country practice applied to all of Rule 4350 (subject to certain specified exceptions), including the requirement to distribute reports set forth in prior Rule 4350(b).[6] In the New Listing Rules, while most of the requirements of Rule 4350 were moved to the Rule 5600 Series, the requirement to distribute reports was moved to Rule 5250(d). However, no corresponding cross-reference was included to specify the ability of a Foreign Private Issuer to follow its home country practice in lieu of this requirement. The proposed rule change would correct that omission.

Nasdaq also proposes to add a new Rule 5250(f), clarifying that companies listed on Nasdaq are required to pay their listing fees as a condition to continued listing.[7] This proposed requirement, which was previously contained in Rules 4310(c)(13) and 4320(e)(11), would be analogous to the requirement contained in Rule 5210(d) applicable to companies applying to list on Nasdaq.

Finally, Nasdaq proposes to make certain technical corrections. First, Nasdaq proposes to modify Rule 5255, relating to Direct Registration Programs, to eliminate a provision that expired on March 31, 2009. In addition, Nasdaq proposes to correct certain typographical errors, such as adding omitted words, deleting repeated and unnecessary words, renumbering certain provisions, and correcting capitalization, spacing, punctuation and cross references in Rules 5000, 5600, 5615, 5635, 5740, 5820, and 5900, IM–5615–2 and IM–5615–3.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[8] in general and with Sections [sic] 6(b)(5) of the Act,[9] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The proposed rule change is designed to revert to the previously approved requirements of certain listing standards that were inadvertently changed when adopting the New Listing Rules and correct typographical errors in the rules.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days after the date of the filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section

[3] 17 CFR 240.19b–4(f)(6).

[4] Securities Exchange Act Release No. 59663 (March 31, 2009), 74 FR 15552 (April 6, 2009) (SR–NASDAQ–2009–018).

[5] The text of Nasdaq's prior rules is included in Exhibit 5B of SR–NASDAQ–2009–018, *supra* note 4, available at: *http://nasdaq.cchwallstreet.com/NASDAQ/pdf/nasdaq-filings/2009/SR–NASDAQ–2009–018.pdf.*

[6] *See* prior Rule 4350(a)(1). Note that under this rule, as with Rule 5615(a)(3), a foreign private issuer was required to comply with the requirement to disclose the receipt of an audit opinion that expresses doubt about the ability of the company to continue as a going concern, which was contained in prior Rule 4350(b)(1)(B).

[7] Although New Listing Rules 5400 and 5500 contain the requirement for listed companies to pay fees, Nasdaq believes it would be more transparent to also include this requirement in the list of obligations for listed companies.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

19(b)(3)(A) of the Act[10] and Rule 19b–4(f)(6) thereunder.[11]

A proposed rule change filed under Rule 19b–4(f)(6) normally may not become operative prior to 30 days after the date of filing.[12] However, Rule 19b–4(f)(6)(iii)[13] permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. Nasdaq has requested that the Commission waive the 30-day operative delay. Nasdaq requests this waiver so that these corrections can be immediately operative, eliminating any potential confusion caused by the unintended changes in the New Listing Rules. Nasdaq further believes that the proposed rule change does not significantly affect the protection of investors or the public interest because it merely conforms the recently adopted Nasdaq listing rules with the previously approved Nasdaq rules and corrects typographical errors.

The Commission notes that the changes being proposed do not present any new regulatory issues. The changes simply conform recently revised listing rules to previously approved rules, correct typographical errors, and make certain clarifying changes. For these reasons, the Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, and designates the proposed rule change to be operative upon filing with the Commission.[14]

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–NASDAQ–2009–040 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2009–040. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of Nasdaq. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2009–040 and should be submitted on or before June 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11618 Filed 5–18–09; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] 17 CFR 240.19b–4(f)(6)(iii). In addition, Rule 19b–4(f)(6)(iii) requires that a self-regulatory organization submit to the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. Nasdaq has satisfied this requirement.

[13] *Id.*

[14] For the purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59912; File No. SR–ISE–2009–26]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by International Securities Exchange, LLC Relating to Changes to the Fee Schedule

May 13, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 5, 2009, the International Securities Exchange, LLC (the ''Exchange'' or the ''ISE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend its Schedule of Fees to make clarifying changes. The text of the proposed rule change is available on the Exchange's Internet Web site at *http://www.ise.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—The purpose of this proposed rule change is to make clarifying changes to the Exchange's Schedule of Fees. On April 27, 2009, the Exchange submitted SR–ISE–2009–21, a proposed rule change to eliminate customer fees in multiply-listed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Premium Products, retire a pilot program capping fees for use of the Exchange's Facilitation Mechanism and eliminate a volume-based fee rebate for Electronic Access Members. Those changes became operative on May 1, 2009.

In SR–ISE–2009–21, the Exchange adopted the term 'Singly Listed Indexes' on its Schedule of fees. The Exchange now proposes to make a clarifying change by identifying the 'Singly Listed Indexes' on its fee schedule with the ticker symbols for those products. The Exchange also proposes to adopt the term 'Singly Listed ETFs' on its fee schedule and identify those products by their ticker symbols. Finally, the Exchange proposes to revert back to identifying by ticker symbols those products to which the Exchange's Payment for Order Flow fee does not apply.

(b) *Basis*—The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[3] in general, and furthers the objectives of Section 6(b)(4),[4] in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3) of the Act [5] and Rule 19b–4(f)(2) [6] thereunder. At any time within 60 days of the filing of such 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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–ISE–2009–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–ISE–2009–26. 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 ISE. 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–ISE–2009–26 and should be submitted on or before June 9, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11617 Filed 5–18–09; 8:45 am]

BILLING CODE 8010–01–P

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(4).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 19b–4(f)(2). [sic]

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59908; File No. SR–BX–2009–021]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing of Proposed Rule Change To Amend the Restated Certificate of Incorporation and By-Laws of NASDAQ OMX BX, Inc.

May 12, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that, on April 29, 2009, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

BX is filing this proposed rule change with regard to proposed changes to its Restated Certificate of Incorporation and By-Laws. The proposed rule change will be implemented as soon as practicable following approval by the Commission. The text of the proposed rule change is available at *http://nasdaqomxbx.cchwallstreet.com,* at BX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, BX 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. BX has prepared summaries, set forth in Sections A, B,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On August 29, 2008, BX was acquired by NASDAQ OMX. Following that acquisition, BX—together with The NASDAQ Stock Market LLC (the ''NASDAQ Exchange'') and NASDAQ OMX PHLX, Inc. (formerly the Philadelphia Stock Exchange, Inc. and also an exchange subsidiary of NASDAQ OMX, and referred to herein as ''PHLX'')—has been evaluating means to realize synergies in the operations of these three exchanges while maintaining the separate identity and member representation structures of each.

In making this evaluation, BX and its sister exchanges have given consideration to the experiences of their respective boards and have reviewed the governance documents of other exchanges. In particular, BX and the other exchanges have reviewed the board structures established by NYSE Euronext and its exchange subsidiaries. In Securities Exchange Act Release No. 55293,[3] the Commission approved a structure in which certain committees of the board of directors of NYSE Euronext, the public holding company, perform functions for exchange subsidiaries, which do not themselves have these committees. Specifically, the Commission's approval order states that ''the NYSE Euronext board of directors will have an audit committee, a human resource and compensation committee, and a nominating and governance committee. Each of the audit committee, human resource and compensation committee, and nominating and governance committee of the NYSE Euronext board of directors will consist solely of directors meeting the independence requirements of NYSE Euronext. These committees also will perform relevant functions for NYSE Group,[4] the Exchange,[5] NYSE Market,[6] NYSE Regulation,[7] Archipelago,[8] NYSE Arca,[9] and NYSE Arca Equities,[10] as well as other subsidiaries of NYSE Euronext, except that the board of directors of NYSE Regulation will continue to have its own compensation committee and nominating and governance committee.''

BX and the other exchanges owned by NASDAQ OMX have also considered the experience of the NASDAQ Exchange in operating as a subsidiary of a public company since 2006. During the period, the board of each of the NASDAQ Exchange and its parent corporation (currently NASDAQ OMX, and formerly The Nasdaq Stock Market, Inc.) has appointed its own audit committee and management compensation committee. However, these committees at the NASDAQ Exchange level have generally found themselves duplicating the work of other committees at the exchange or holding company level. The NASDAQ OMX audit committee has broad authority to review the financial information that will be provided to shareholders and others, systems of internal controls, and audit, financial reporting and legal and compliance processes. Because NASDAQ OMX's financial statements are prepared on a consolidated basis that includes the financial results of NASDAQ OMX's subsidiaries, including BX and the other exchange subsidiaries, the NASDAQ OMX audit committee's purview necessarily includes these subsidiaries. The committee is composed of four or five directors, all of whom must be independent under the standards established by Section 10A(m) of the Act[11] and Rule 4200(a) of the NASDAQ Exchange. All committee members must be able to read and understand financial statements, and at least one member must have past employment experience in finance or accounting, requisite professional certification in accounting, or any other comparable experience or background that results in the individual's financial sophistication.

By contrast, the audit committee of the NASDAQ Exchange has a more limited role, focused solely on the exchange entity and its subsidiaries that operate as facilities of the NASDAQ Exchange. As described in the current By-Laws of the NASDAQ Exchange (which are, in this respect, virtually identical to the current By-Laws of BX), the primary functions of the audit committee are (i) Oversight over financial reporting, (ii) oversight over the systems of internal controls established by management and the Board and the legal and compliance process, (iii) selection and evaluation of independent auditors, and (iv) direction and oversight of the internal audit function. However, to the extent that the committee reviews financial and accounting matters, its activities are duplicative of the activities of the NASDAQ OMX audit committee, which is also charged with providing oversight over financial reporting and independent auditor selection for NASDAQ OMX and all of its subsidiaries, including the NASDAQ Exchange, BX, and PHLX and their subsidiaries. Similarly, the NASDAQ OMX audit committee has general responsibility for oversight over internal controls and direction and oversight over the internal audit function for NASDAQ OMX and all of its subsidiaries. Thus, the responsibilities of the exchanges' audit committees are fully duplicated by the responsibilities of the NASDAQ OMX audit committee. Accordingly, the NASDAQ Exchange is proposing to allow the elimination of its audit committee by amending Article III, Section 5 of the By-Laws.[12] Similarly, drawing upon the model established by NYSE Euronext and the experience of the NASDAQ Exchange, BX is likewise proposing to allow the elimination of its audit committee by amending Section 4.13 of its By-Laws.

BX believes, however, that even in light of the NASDAQ OMX audit committee's overall responsibilities for internal controls and the internal audit function, it is nevertheless important for the BX Board to maintain its own independent oversight over BX's controls and internal audit matters relating to BX's operations. In this regard, BX notes that its regulatory oversight committee currently has broad authority to oversee the adequacy and effectiveness of BX's regulatory and self-regulatory organization responsibilities, and is therefore able to maintain oversight over controls in tandem with the NASDAQ OMX audit committee's overall control oversight responsibilities. Similarly, it is already the practice of NASDAQ OMX's Internal

[3] Securities Exchange Act Release No. 55293 (February 14, 2007), 72 FR 8033 (February 22, 2007) (SR–NYSE–2006–120).

[4] NYSE Group, Inc., the former public holding company of NYSE Euronext's U.S. exchanges.

[5] New York Stock Exchange LLC (''NYSE''), a registered national securities exchange.

[6] NYSE Market, Inc., a subsidiary of NYSE to which it has delegated certain operational authority.

[7] NYSE Regulation, Inc., a subsidiary of NYSE to which it has delegated certain operational authority.

[8] Archipelago Holdings, Inc., formerly the public holding company of the entities now known as NYSE Arca, Inc. and NYSE Arca Equities, Inc.

[9] NYSE Arca, Inc., a registered national securities exchange.

[10] NYSE Arca Equities, Inc., a subsidiary of NYSE Arca to which it has delegated certain operational authority.

[11] 15 U.S.C. 78j–1(m).

[12] SR–NASDAQ–2009–042 (April 29, 2009). PHLX expects to file a similar proposed rule change in the near future.

Audit Department (''Department''),[13] which performs internal audit functions for all NASDAQ OMX subsidiaries, to report to the BX regulatory oversight committee on all internal audit matters relating to BX. This practice will be formally reflected in the Department's written procedures. In addition, to ensure that the BX Board retains authority to direct the Department's activities with respect to BX, the Department's written procedures will be amended to stipulate that the BX regulatory oversight committee may, at any time, direct the Department to conduct an audit of a matter of concern to it and report the results of the audit both to the BX regulatory oversight committee and the NASDAQ OMX audit committee.

BX also proposes to amend Section 4.13 of the By-Laws in order to follow the NYSE Euronext model with respect to allowing the elimination of its compensation committee and the performance of its function by the NASDAQ OMX compensation committee and/or subsidiary boards. The NASDAQ OMX By-Laws provide that its compensation committee considers and recommends compensation policies, programs, and practices for employees of NASDAQ OMX. Because many employees performing work for BX are also employees of NASDAQ OMX, its compensation committee already performs these functions for such employees. Moreover, certain of its senior officers are also officers of NASDAQ OMX and other NASDAQ OMX subsidiaries because their responsibilities relate to multiple entities within the NASDAQ OMX corporate structure. Accordingly, NASDAQ OMX pays these individuals and establishes compensation policy for them. Most notably, the former Chief Executive Officer of BX was also an ''executive officer'' of NASDAQ OMX within the meaning of NASDAQ Exchange Rule 4350.[14] Under that rule, the compensation of executive officers of an issuer of securities, such as the common stock of NASDAQ OMX, that is listed on the NASDAQ Exchange, must be determined by, or recommended to the board of directors for determination by, a majority of independent directors or a compensation committee comprised solely of independent directors. Accordingly, the NASDAQ OMX board of directors and/or its compensation committee was legally required to establish the compensation for this individual. Although the individual recently resigned his positions with NASDAQ OMX and its subsidiaries in order to pursue another opportunity, it is likely that his successor as Chief Executive Officer of BX will serve in a similar position at NASDAQ OMX and therefore be subject to comparable compensation requirements.

To the extent that policies, programs, and practices must also be established for any BX officers or employees who are not also NASDAQ OMX officers or employees, the BX Board will perform such actions without the use of a compensation committee (but subject to the recusal of Staff Directors)[15] unless the persons in question are also employees of Boston Options Exchange Regulation LLC (''BOXR''). BOXR is the subsidiary of BX that has been delegated responsibility to regulate the market operated by Boston Options Exchange Group LLC (''BOX''), an options exchange that is a facility of BX but in which neither BX nor any of its affiliates has a financial interest. Section 17 of the By-Laws of BOXR (which are part of its Limited Liability Company Agreement) provides that the compensation of BOXR's officers shall be determined by the BOXR Board. Because of BOXR's special status as a regulatory subsidiary, this provision will remain operative following the implementation of the rule change proposed by this filing. Finally, it should be noted that as already provided in the By-Laws, the regulatory oversight committee of the BX Board must be informed about the compensation and promotion or termination of the BX chief regulatory officer and the reasons therefor, to allow it to provide oversight over decisions affecting this key officer.[16]

2. Statutory Basis

BX believes that its proposal is consistent with Section 6(b) of the Act[17] in general, and furthers the objectives of: (1) Section 6(b)(1) of the Act,[18] which requires a national securities exchange to be so organized and have the capacity to carry out purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act; and (2) Section 6(b)(5) of the Act,[19] in that it is designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Specifically, the proposed rule change will allow BX to eliminate two Board committees whose roles are limited by BX's status as a wholly owned subsidiary of NASDAQ OMX, thereby allowing directors to focus greater attention on matters falling directly within the purview of the Board, including regulatory quality, market structure, new product initiatives, and review of proposed rule changes. The filing also updates the corporate name of NASDAQ OMX in the Restated Certificate of Incorporation and By-Laws.

B. Self-Regulatory Organization's Statement on Burden on Competition

BX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

[13] *See* e-mail from John Yetter, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., to Christopher W. Chow, Special Counsel, Commission, dated May 5, 2009.

[14] The position of Chief Executive Officer of BX is currently vacant, pending selection of a successor.

[15] Staff Directors are directors of BX that are also serving as officers. Since the BX Board would not be responsible for setting the compensation of any Staff Directors who are also officers of NASDAQ OMX, they would be permitted to participate in discussions concerning compensation of BX employees, but would recuse themselves from a vote on the subject to allow the determination to be made by directors that are not officers or employees of BX. If a Staff Director was not also an employee of NASDAQ OMX, that Staff Director would also absent himself or herself from any deliberations regarding his or her compensation.

[16] In this filing, BX is also amending its Restated Certificate of Incorporation and By-laws to reflect the name change of The Nasdaq Stock Market, Inc. to The NASDAQ OMX Group, Inc. See Article Fourth of Restated Certificate of Incorporation; Section 9.4 of the By-Laws.

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78(b)(1).

[19] 15 U.S.C. 78f(b)(5).

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–BX–2009–021 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2009–021. 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 the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2009–021 and should be submitted on or before June 8, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11609 Filed 5–18–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59906; File No. SR–FINRA–2009–013]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Granting Approval of Proposed Rule Change To Amend the Tolling Provisions in Rules 12206 and 13206 of the Codes of Arbitration Procedure for Customer and Industry Disputes

May 12, 2009.

On March 11, 2009, Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'') 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] The proposed rule change was published for comment in the **Federal Register** on April 7, 2009.[3] The Commission received five comments on the proposed rule change.[4] This order approves the proposed rule change.

I. Description of the Proposed Rule Change

FINRA proposed to amend the tolling provisions in Rules 12206 and 13206 of the Code of Arbitration Procedure for Customer Disputes (''Customer Code'') and for Industry Disputes (''Industry Code''), respectively, to clarify that the rules toll the applicable statutes of limitation when a person files an arbitration claim with FINRA.

Currently, Rule 12206, the ''eligibility rule,'' provides that, ''no claim shall be eligible for submission to arbitration under the Code where six years have elapsed from the occurrence or event giving rise to the claim.'' [5] The eligibility rule does not extend applicable statutes of limitation, but Rule 12206(c) does provide that, ''where permitted by applicable law, when a claimant files a statement of claim in arbitration, any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim.'' [6] This means that, where permitted by applicable law, state statutes of limitation will be tolled (*i.e.,* temporarily suspended) when a person files an arbitration claim with FINRA.

For many years, FINRA has interpreted the rule to mean that any applicable statutes of limitation would be tolled in all cases when a person files an arbitration claim with FINRA. In *Friedman* v. *Wheat First Securities, Inc.,* however, the court found that the phrase ''where permitted by applicable law,'' means that state or federal law, as applicable, must permit tolling expressly, or the period will not be tolled.[7] In light of the court's interpretation of the phrase and the negative effect it could have on investors' arbitration claims, FINRA proposed to remove the phrase, ''where permitted by applicable law,'' from Rules 12206(c) and 13206(c) to make tolling automatic as part of the arbitration agreement.

The *Friedman* court granted the defendant's request to dismiss the plaintiff's complaint on statute of limitations grounds. In arguing against dismissal, the plaintiff sought to rely on old Rule 10307(a)[8] of the Code of Arbitration Procedure, which was updated and is currently designated as Rules 12206(c) and 13206(c) of the Customer Code and Industry Code, respectively, to support his position that

[20] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 59672 (April 1, 2009), 74 FR 15806 (April 7, 2009).

[4] *See* letters from: (1) Seth E. Lipner, Professor of Law, Zicklin School of Business, Baruch College, dated April 3, 2009 (''Lipner letter''); (2) Joseph M. Licare, St. John's University School of Law, Securities Arbitration Clinic, to Elizabeth M. Murphy, Secretary, Commission, dated April 28, 2009 (''Securities Arbitration Clinic letter''); (3) Brian N. Smiley, Esquire, President, Public Investors Arbitration Bar Association, to Elizabeth M. Murphy, Secretary, Commission, dated April 28, 2009 (''PIABA letter''); (4) Steven B. Caruso, Maddox Hargett & Caruso, P.C., dated April 29, 2009 (''Caruso letter''); and 5) Scot Bernstein, dated May 1, 2009 (''Bernstein letter'').

[5] FINRA describes the eligibility rule using the rule number from the Customer Code for simplicity. However, the proposal also applies to the identical eligibility rule of the Industry Code. *See* Rule 13206.

[6] *See* also Rule 13206(c) of the Industry Code.

[7] 64 F. Supp. 2d 338 (S.D.N.Y. 1999). The case involved claims under Section 10(b) of the Act.

[8] Rule 10307(a) (Tolling of Time Limitation(s) for the Institution of Legal Proceedings and Extension of Time Limitation(s) for Submission to Arbitration) states in relevant part that:

Where permitted by applicable law, the time limitations which would otherwise run or accrue for the institution of legal proceedings shall be tolled where a duly executed Submission Agreement is filed by the Claimant(s). The tolling shall continue for such period as the Association shall retain jurisdiction upon the matter submitted.

filing an arbitration claim tolls the applicable statute of limitations.[9] The court determined, however, that the language of old Rule 10307(a) does not toll the statute of limitations unless such tolling is ''permitted by applicable law.'' [10] After further analysis, the court found that no federal or state statute tolled the applicable statute of limitations and granted the defendant's dismissal request.[11]

Other courts have reached the same conclusion in interpreting old Rule 10307(a) and the phrase ''where permitted by law.'' In *Individual Securities* v. *Ross,*[12] the plaintiff, in appealing a judgment of a New York district court that dismissed the complaint as time-barred, claimed that the statute of limitations was tolled while his matter was in arbitration with then-NASD.[13] The court cited old Rule 10307(a) and noted that the ''where permitted by law'' language referred to the applicable law in New York, which prevented tolling of the limitations period.[14] In *Rampersad* v. *Deutsche Bank Securities, Inc.,*[15] the court, citing *Friedman,* determined that, used in a similar context, the phrase meant that federal law, not state law, governs the availability of tolling the limitations period in a Section 10(b) cause of action.[16]

FINRA is concerned that courts may begin citing this interpretation to dismiss claims that would otherwise be permitted under the eligibility rule.[17] FINRA does not believe this outcome would be consistent with the original intent of the tolling provision or of amendments to the eligibility rule that allow customers to take their claims to court if their claims are dismissed in arbitration on eligibility grounds.[18] Rather, FINRA believes that, in such a situation, the rule should be read to provide that a firm or associated person has implicitly agreed to suspend any statute of limitations defense for the time period that the matter was in FINRA's jurisdiction. Amending the eligibility rule is intended to make this clear.

Moreover, FINRA is concerned that the *Friedman* interpretation could limit or foreclose customers' access to other judicial forums to address their disputes, which would be an unfair result. Most brokerage firms require customers to arbitrate their disputes, a process that can take more than a year. Customers may be disadvantaged in a subsequent court proceeding if the panel dismisses the arbitration case on eligibility grounds and the statute of limitations is not tolled for the period of time that the customers were in arbitration. In addition to being an unfair result, FINRA believes this would undermine the intent of the eligibility rule, which gives customers the option of taking their claims to court when a case is dismissed on eligibility grounds.

Therefore, FINRA proposed to delete the phrase ''where permitted by applicable law'' from Rules 12206(c) and 13206(c). FINRA noted that the *Friedman* interpretation suggests that, but for the phrase, the rule would be read as an explicit agreement between the parties to toll the statute of limitations period.[19] FINRA stated that it believes that the proposed rule change would leave the parties in the same position in court as they were at the start of the arbitration with regard to any statutes of limitation: the time period before the claim was filed in arbitration would not be extended by the proposed changes, but applicable statutes of limitation would not run while the matter was in arbitration.

II. Summary of Comments

The Commission received five comments in response to the proposed rule change, all of which supported the proposal.[20] One commenter stated that FINRA has proposed equitable amendments and should be commended for its thoughtful treatment of the tolling issues, and that the Commission should approve the amendments as written and without delay.[21] Another commenter noted that an automatic tolling of the applicable statute of limitations, if any, will protect the public interest and preserve fairness in the arbitration process.[22]

III. Discussion and Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the rules and regulations thereunder that are applicable to a national securities association [23] and in particular, with Section 15A(b)(6) of the Act,[24] in that it is designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. The Commission believes that the proposal is consistent with Section

[9] 64 F. Supp. 2d at 343.

[10] *Id.*

[11] *Id.* at 347.

[12] 1998 U.S. App. Lexis 12618.

[13] On July 26, 2007, the Commission approved a proposed rule change filed by NASD to amend NASD's Certificate of Incorporation to reflect its name change to FINRA in connection with the consolidation of the member firm regulatory functions of NASD and NYSE Regulation, Inc. *See* Securities Exchange Act Release No. 56146 (July 26, 2007), 72 FR 42190 (August 1, 2007) (SR–NASD–2007–053).

[14] *Id.*

[15] 2004 U.S. Dist. Lexis 5031. The case also involved claims under Section 10(b) of the Securities Exchange Act of 1934.

[16] *Id.* In this case, the plaintiff filed an arbitration claim against the defendants at the New York Stock Exchange, Inc. (''NYSE''). The plaintiff argued that the limitations period should have been tolled under New York law for the period during which the arbitration was pending, and cited NYSE Rule 606(a), which is similar to old Rule 10307(a), and states in pertinent part:

Where permitted by law, the time limitation(s) which would otherwise run or accrue for the institution of legal proceedings, shall be tolled when a duly executed Submission Agreement is filed by the claimants.

[17] The rule states that ''dismissal of a claim under this rule does not prohibit a party from pursuing the claim in court. By filing a motion to dismiss a claim under this rule, the moving party agrees that if the panel dismisses a claim under this rule, the non-moving party may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.'' *See also* Rule 13206(b).

[18] *See* Securities Exchange Act Release No. 50714 (November 22, 2004), 69 FR 69971 (December 1, 2004) (SR–NASD–2001–101).

[19] *Friedman,* 64 F. Supp. 2d 338, 343 n.4 (1999). The court indicates that it likely would accept the amended language as representing an agreement of the parties:

The precise meaning of Rule 10307(a) is not entirely clear. If the phrase ''where permitted by applicable law'' did not precede the remainder of the paragraph, the rule would simply be read as an explicit agreement between the parties to toll the limitations period, regardless of what the applicable state or federal tolling principles provide. However, by including the phrase the drafters seemed to limit tolling to situations in which tolling is expressly permitted by applicable law, thereby making an explicit agreement between the parties unnecessary.

[20] *Supra* note 4.

[21] *See* PIABA letter. One commenter, while supporting the proposed rule change, suggested that the words ''and for thirty days thereafter'' should be added to the proposed rule amendment so that the final sentence of Rule 13206(c) would read: ''* * * any time limits for the filing of the claim in court will be tolled while FINRA retains jurisdiction of the claim *and for thirty days thereafter.'' See* Bernstein letter. FINRA declined to make that change, stating that it believes the suggested amendment to the proposed rule change would contradict the rule, as currently drafted, by extending applicable statutes of limitations by 30 days. The proposed rule change was intended to clarify FINRA's interpretation of Rule 12206(c) that any applicable statute of limitations would be tolled in all cases when a person files an arbitration claim with FINRA. However, FINRA did not intend to extend the tolling protection beyond the completion of the arbitration case. For these reasons, FINRA declines to amend the proposal as suggested. Email from Mignon McLemore, FINRA (May 12, 2009).

[22] *See* Caruso letter. *See also* the Securities Arbitration Clinic letter (the proposed changes will ensure that the intent of the rule is respected), and the Lipner letter (investors who submit to arbitration should benefit for the tolling of the statute of limitations in the event that the claim is non-arbitrable and must later be heard in court).

[23] In approving this proposed rule change, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 17c(f).

[24] 15 U.S.C. 78*o*-3(b)(6).

15A(b)(6) of the Act because the proposed rule change will preserve fairness in the arbitration process by ensuring that investors maintain their right to have their claims heard in court if their arbitration cases are dismissed on eligibility grounds by tolling the applicable statutes of limitation while their disputes are in arbitration.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–FINRA–2009–013) be, and hereby is, approved.[25]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–11608 Filed 5–18–09; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF STATE

[Public Notice 6620]

Waiver of Restriction on Assistance to the Central Government of Lebanon

Pursuant to section 7088(c)(2) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2009 (Division H, Pub. L. 111–8) (''the Act''), and Department of State Delegation of Authority Number 245–1, I hereby determine that it is important to the national interest of the United States to waive the requirements of section 7088(c)(1) of the Act with respect to the Government of Lebanon, and I hereby waive such restriction.

This determination shall be reported to the Congress, and published in the **Federal Register.**

Dated: May 7, 2009.

Jacob L. Lew,

Deputy Secretary of State, Department of State.

[FR Doc. E9–11641 Filed 5–18–09; 8:45 am]

BILLING CODE 4710–31–P

[25] 15 U.S.C. 78s(b)(2).

[26] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[DOT–OST–2008–0371]

Agency Information Collection Activity for OMB Review: Foreign Air Carrier Application for Statement of Authorization, ICR–2106–0036

AGENCY: Department of Transportation (DOT), Office of the Secretary (OST).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, PublicLaw 104–13, this notice announces that the Information Collection Request, abstracted below, is being forwarded to the Office of Management and Budget for extension of approval of currently approved ICR–2106–0036, Foreign Air Carrier Application for Statement of Authorization. Earlier, a **Federal Register** Notice with a 60-day comment period was published (73 FR 74223, December 5, 2008). The agency did not receive any comments to its previous notice.

DATES: Written comments should be submitted by June 18, 2009.

FOR FURTHER INFORMATION CONTACT: George Wellington, (202) 366–2391, Office of International Aviation, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W86–125, Washington, DC 20590. Office hours are from 8:30 a.m. to 5 p.m., Monday through Friday, except Federal holidays.

Comments: Comments should be sent to OMB: Attention DOT/OST Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street, NW., Washington, DC 20503, or *oira_submission@omb.eop.gov* and should identify the associated OMB Approval Number 2106–0035 and Docket DOT–OST–2008–0374.

SUPPLEMENTARY INFORMATION:

OMB Approval No.: 2106–0035.

Title: Foreign Air Carrier Application for Statement of Authorization.

Form No.: Form OST 4540.

Type of Review: Extension of a currently approved collection.

Respondents: Foreign Air Carriers.

Number of Respondents: approximately 100.

Estimated Time per Response: 2.25 hours per application.

Total Annual Burden: 1,000 hours.

Abstract: Applicants use Form OST 4540 to request statements of authorization to conduct numerous types of operations authorized under Title 14, CFR Part 212. The form requires basic information regarding the carrier(s) conducting the operation, the party filing the form, the operations being conducted, the number of third- and fourth-freedom flights conducted in the last twelve-month period, and certification of reciprocity from the carrier's homeland government. DOT analysts will use the information collected to determine if applications for fifth-freedom operations meet the public interest requirements necessary to authorize such applications.

Burden Statement: We estimate that the industry-wide total hour burden for this collection to be approximately 1,000 hours or approximately 2.25 hours per application. Conservatively, we estimate the compilation of background information will require 1.75 hours, and the completion and submission of OST Form 4540 will require thirty (30) minutes.

Reporting the number of third- and fourth-freedom operations conducted by an applicant carrier will require collection of flight data, and detailed analysis to determine which flights conducted by the carrier are third- and fourth-freedom. Applicants should be able to use data collected for the Department's T–100 program to provide this information (under this program, carriers are required periodically to compile and report certain traffic data to the Department, as more fully described in the Docket referenced in footnote 1 below). The Bureau of Transportation Statistics (BTS) provide carriers with a computer program that allows them to compile and monitor, among other things, flight origin and destination data, to be used in making the carriers' T–100 submissions.[1] We estimated that carriers will require 1.25 hours per application [2] to compile and analyze the data necessary to disclose the number of third- and fourth-freedom flights conducted within the twelve-month period preceding the filing of an application.

Foreign carriers will also have to provide evidence that their homeland

[1] The rule-making associated with the T–100 program can be found on the Federal Docket Management System (FDMS) at *http://www.regulations.gov,* in Docket DOT–OST–1998–4043. Information regarding burden hours is on file in the Office of Aviation Analysis (X–50).

[2] The Office of Aviation Analysis (X–50) estimated that small carriers would require 1 burden hour per report, and large carriers would require 3 burden hours per report to analyze and report T–100 program data. Considering that the data required in this information collection can be derived from data already collected, we have taken an average of the estimated time required, and conservatively shortened the time by 45 minutes because no new data entry will be required.

government will afford reciprocity to U.S. carriers seeking authority for the similar fifth-, sixth- and seventh-freedom operations. Carriers may cite certifications submitted by carriers from the same homeland if that homeland issued such certification within the preceding six-month period. Approximately 100 carriers from roughly 30 distinct homelands use OST Form 4540 to apply for statements of authorization annually. We estimate that one foreign carrier from any given homeland will expend roughly 4 hours every six months to obtain certification from its homeland governments.[3] We have apportioned 30 minutes to each application to account for the time required to obtain certifications from homeland governments.

We have no empirical data to indicate how much time is required for a person to complete OST Form 4540; however, anecdotal evidence reveals that respondents spend thirty (30) minutes or less completing the form and brief justification. In some cases, respondents spend a limited amount of time, less than ten (10) minutes, reviewing the form before sending it via facsimile or email to the Department. In the interest of providing a conservative estimate so as to not understate the burden hours, we estimate the hour burden for completing OST Form 4540 as thirty (30) minutes.

Issued in Washington, DC on May 11, 2009.

Tracey M. Jackson,

Office of the Chief Information Officer.

[FR Doc. E9–11605 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA–2009–0142]

Reports, Forms, and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: National Highway Traffic Safety Administration, US DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collections and their expected burden. The **Federal Register** Notice with the 60-day comment period was published on October 3, 2008. No comments were received in response.

DATES: Comments must be submitted on or before June 18, 2009.

FOR FURTHER INFORMATION CONTACT: Laurie Flaherty at the National Highway Traffic Safety Administration, Office of Emergency Medical Services (NTI–140), 202–366–2705, 1200 New Jersey Ave., SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Title: E–911 Grant Program.

OMB Control Number: N/A.

Requested Expiration Date of Approval: Three years from the approval date.

Type of Request: New collection.

Affected Public: State Governments.

Form Number: N/A.

Abstract: The Ensuring Needed Help Arrives Near Callers Employing 911 (ENHANCE 911) Act of 2004 (Pub. L. 108–494, codified at 47 U.S.C. 942) authorizes a joint grant program between the National Highway Traffic Safety Administration (NHTSA) of the U.S. Department of Transportation and the National Telecommunications and Information Administration (NTIA) of the Department of Commerce to facilitate coordination among all parties involved in the organization of enhanced 911 (E–911) services.

The Act requires an applicant to certify to several conditions in its application in order to qualify for a grant. Specifically, an applicant must certify that (1) it has coordinated its application with the public safety answering points (PSAPs); (2) it has designated a single officer or governmental body to serve as the coordinator of implementation of E–911 services; (3) it has established a plan for the coordination of and implementation of E–911 services; (4) it has integrated telecommunications services involved in the implementation of E–911 services; and (5) no portion of any designated E–911 charges imposed by the State or other taxing jurisdiction within the State is being diverted for any other purpose during the period at least 180 days before the application date and continuing throughout the period of time for which grant funds are available. In addition, the Act requires grantees to match at least 50 percent from non-Federal sources.

The information collected for this grant program is to include an application consisting of a State 911 Plan, project budget information and certifications. This information is necessary to determine whether a State satisfies the criteria for a grant award. The agencies intend to use SF–424, which is an approved OMB form, as part of the application for the E–911 grant program. Accordingly, the agencies are not required to obtain OMB approval for the use of that form.

A State must also submit a State 911 Plan as part of its application. This plan must detail the projects and activities proposed to be funded for the implementation of Phase II E–911 services or migration to an IP-enabled emergency network, establish metrics and a timetable for grant implementation, and describe the steps that the State has taken to meet the grant criteria. It is important for the agencies to review each applicant's plan to confirm that the applicant has met certain statutory requirements—a plan for the coordination of and implementation of E–911 services, coordination of its application with PSAPs, involvement of integrated telecommunications services in the implementation of E–911 services, and priority funding to communities without 911 capability.

Estimated Total Annual Burden: 10,976.

Estimated Number of Respondents: 56 (50 States, District of Columbia, Puerto Rico, American Samoa, Guam, the Northern Mariana Islands, and the U.S. Virgin Islands).

ADDRESSES: Send comments, within 30 days, to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503. Attention NHTSA Desk Officer.

Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the agencies, including whether the information will have practical utility; the accuracy of the agencies' estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on May 14, 2009.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. E9–11658 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–59–P

[3] Calculation: (4 burden hours per application) x (30 foreign homelands) x (2 requests per year) = 240 annual burden hours. Apportioning 240 annual burden hours equally among an average of 430 applications annually = approximately 30 burden minutes per application.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. 20502(a), the following railroad has petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236, as detailed below.

Docket Number FRA–2009–0040

Applicant: Western New York & Pennsylvania Railroad, LLC, Mr. Carl P. Belke, President and Chief Operating Officer, 3146 Constitution Avenue, Olean, New York 14760.

The Western New York & Pennsylvania Railroad, LLC (WNYP) seeks approval of the proposed discontinuance and removal of signal systems on three sections of the Buffalo Line between North Driftwood, Pennsylvania, and Machias, New York. The three sections are:

1. The discontinuance and removal of the Block Signal System, Interlocking and Traffic Control System between Machias (MP BR44.5) and CP North Olean (MP BR66.4).

2. The discontinuance and removal of the Block Signal System, Interlocking and Traffic Control System between CP–South Olean (MP BR 73.0 and CP–Kean (MP BR97.0).

3. The discontinuance and removal of the Block Signal System, Interlocking and Traffic Control System between CP–Kean (MP BR97.0) and North Driftwood (MP BR 134.0).

The reason given for the proposed changes is the low traffic density on all three sections.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and include a concise statement of the interest of the party in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2009–0040) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC on May 13, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–11592 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2009–0045]

Capital Assistance for High Speed Rail Corridors and Intercity Passenger Rail Service: Public Input on Recovery Act Guidance to Applicants

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public docket.

SUMMARY: The American Recovery and Reinvestment Act of 2009 (ARRA) became law on February 17, 2009. ARRA provides $8 billion to the Secretary of Transportation (Secretary) for grants for capital assistance for high speed rail corridors and intercity passenger rail service. In April 2009, in accordance with ARRA, the Secretary submitted a strategic plan *Vision for High Speed Rail in America* (*http://www.fra.dot.gov/us/content/31*) that describes how the Secretary will use these funds to improve and deploy high speed passenger rail systems to the House and Senate Committees on Appropriations. ARRA also requires FRA to issue on or before June 17, 2009 interim guidance regarding grant terms, conditions, and procedures until final regulations are issued. This interim guidance will address the high speed rail corridor program, capital assistance for intercity passenger rail service grants, and congestion grants. FRA seeks input from the public on issues that should be addressed in the interim guidance and specific recommendations on the criteria to be used in evaluating grant applications.

DATES: Comments must be received by June 5, 2009. FRA will consider late filed comments to the extent practicable.

ADDRESSES: You may submit comments by one of the following methods.

- *Federal e-Rulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *U.S. Post or Express Mail:* U.S. Department of Transportation, Docket Operations, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* The West Building of the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: You must include the agency name (Federal Railroad Administration) and the Docket number (FRA–2009–0045) at the beginning of your comment. You should include two copies of your comment if you submit it by mail. If you wish to receive confirmation that FRA received your comment, you must include a self-addressed stamped postcard. Note that FRA will post all comments that it receives, including any personal information provided therein, without change, to *http://www.regulations.gov.*

Due to security procedures in effect since October 2001 regarding mail deliveries, mail received through the

U.S. Postal Service may be subject to delays. A party that submits a comment responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand.

FOR FURTHER INFORMATION CONTACT: Robert Kulat, Public Affairs Specialist, Federal Railroad Administration, 1200 New Jersey Avenue, SE., West Building-3rd Floor, Washington, DC 20590; *Telephone:* (202) 493–6024.

SUPPLEMENTARY INFORMATION: President Barack Obama and Secretary Ray LaHood have voiced a commitment to further develop and refine a world-class network of high-speed passenger rail corridors and intercity passenger rail service. The President proposes to jump-start the process with the $8 billion down payment provided in ARRA. ARRA directs funds toward projects that will aid in near-term economic recovery, while laying a foundation for longer-term economic stability and competitiveness. These first steps emphasize strategic investments that will yield tangible benefits to intercity rail infrastructure, equipment, performance, and intermodal connections over the next several years, while also creating a ''pipeline'' of projects to enable future corridor development.

The forthcoming guidance will describe in more detail the application prerequisites for each program along with the specific criteria that will be used to evaluate applications. The scope and specificity of each project will vary, but all applications will most likely need to address planning and project development, stakeholder agreements, financial plans, and risk management plans.

As President Obama outlined in his March 20, 2009, memorandum, *Ensuring Responsible Spending of Recovery Act Funds,* implementing agencies are to:

> Develop transparent, merit-based selection criteria that will guide their available discretion in committing, obligating, or expending funds under the Recovery Act.

FRA is committed to carrying out this requirement through clear selection criteria and evaluation procedures. In preparing the selection criteria and evaluation procedures, FRA seeks structured input from stakeholders and the public on the criteria to be used in evaluating grant applications in order to achieve a new national network of high speed intercity passenger rail corridors.

Issued in Washington, DC, on May 12, 2009.

Joseph C. Szabo,

Administrator.

[FR Doc. E9–11597 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[FMCSA Dockets No. FMCSA–2005–22660, FMCSA–2005–22937, FMCSA–2007–28827, FMCSA–2007–29254, FMCSA–2007–29048, FMCSA–2008–0076]

Applications for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA has denied the applications for exemption from its regulations submitted by the following: Bordentown Driver Training School LLC, Centennial Communications, Inc., United States Department of Energy, Jcrane, Inc., Summit Helicopters, Inc., and United States Postal Service. FMCSA reviewed the application and public comments received on each, and rendered its decision based on the merits of each application.

DATES: All of these applications for exemption were denied effective January 16, 2009.

Dockets: For access to the dockets to read background documents or comments received, go to *http://www.regulations.gov* at any time, or to the ground floor, room W12–140, DOT Building, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Robert Schultz, Jr., FMCSA Driver and Carrier Operations Division; Office of Bus and Truck Standards and Operations; *Telephone:* 202–366–4325. *E-mail: MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 31315 and 31136(e), FMCSA may grant an exemption from certain of its regulations for a two-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 published in the **Federal Register** a separate public notice of each application for exemption. The Agency requested public comment on each application and provided the public an opportunity to inspect the information relevant to each. FMCSA reviewed and evaluated each of the applications for exemption and all the comments filed. Table 1 provides, for each application, the docket number where the complete record of the docket can be examined (*see* ''DOCKETS'' above), and the Federal Motor Carrier Safety Regulations (49 CFR 350 *et seq.*) (FMCSRs) from which exemption was sought.

TABLE 1

Applicant	Docket No.	Exemption sought
Bordentown Driver Training School LLC, dba Smith & Solomon Driver Training.	FMCSA–2007–29048 ..	Random Drug and Alcohol Testing of Drivers with a Commercial Driver's License. 49 CFR 382.305(a).
Centennial Communications	FMCSA–2007–28827 ..	All 49 CFR parts 350–399.
U.S. Department of Energy	FMCSA–2008–0076	Hours of Service, Sleeper berth periods of at least eight (8) consecutive hours. 49 CFR 395.1(g)(1)(ii)(A).
Jcrane, Inc	FMCSA–2007–29254 ..	Qualification of drivers: minimum age of 21 years. 49 CFR 391.11(b)(1).
Summit Helicopters, Inc	FMCSA–2005–22937 ..	Hours of Service, 49 CFR Part 395.
United States Postal Service	FMCSA–2005–22660 ..	Hours of Service, Limit on ''on-duty'' time each day. 49 CFR 395.3.

FMCSA Decision

The applicants failed to demonstrate how, if the exemption(s) sought were granted, they would ensure that their operations could achieve a level of safety that is equivalent to, or greater than, the level of safety that would be obtained by compliance with the regulations (49 CFR 381.305(c)(5)). Therefore, the Administrator denied each of these applications for exemption

on January 16, 2009. Details of the Agency's analysis follow.

Bordentown Driver Training School LLC, Doing Business as (dba) Smith & Solomon Driver Training

This truck-driver training school applied to obtain exemption from random drug and alcohol testing (49 CFR 382.305(a)) for its student-drivers of commercial motor vehicles. Two comments were filed in response to this application. One comment supported the request on the basis that student drivers undergo a drug screen as part of the enrollment process, and also because random testing is costly and inconvenient considering the limited amount of driving these students actually perform during training. A second comment recommended denial of the application because the random testing of students promotes early detection of unfit drivers. FMCSA believes that the value of random testing in this environment justifies its inconvenience and cost because it serves as an effective deterrent to illegal and unsafe activity in the operation of heavy trucks by students after enrollment. FMCSA found that the applicant failed to explain how it could ensure that students exempt from random drug and alcohol testing would achieve a level of safety equivalent to, or greater than, the level they would achieve by complying with the regulation.

Centennial Communications

This entity sought exemption from all the FMCSRs for 46 drivers who operate commercial motor vehicles (CMVs) on an occasional basis. The only comment was from the Advocates for Highway and Auto Safety, which strongly opposed the application on several grounds, including that the applicant did not demonstrate how operation under the exemption would maintain a level of safety equivalent to, or greater than, the level achieved without the exemption. The information provided in support of the petition failed to establish a basis for distinguishing the involved drivers from the drivers employed by other motor carriers on an occasional basis. The inconvenience the applicant experiences in complying with the FMCSRs is not exceptional or noteworthy. The applicant also failed to explain how, were these 46 drivers exempt from all the FMCSRs, it could ensure that it would achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained by compliance with the regulations.

U.S. Department of Energy (DOE)

This Federal agency sought modification of the rules pertaining to the hours of service (HOS) of its contract drivers hauling high-risk, high-security shipments of transuranic waste in interstate commerce. These drivers operate in teams of two so that, to the maximum extent allowable, one driver can obtain rest in a sleeper berth (SB) while the other drives. Based upon scientific research, FMCSA in 2005 amended the SB rules to require drivers to include, at specified intervals, periods of no less than 8 hours in the SB, plus a separate period of at least 2 but less than 10 consecutive hours either in the SB or off duty or in any combination of the two. Prior to this amendment, drivers could satisfy the HOS rules by using SB periods of any length in excess of 2 hours, so long as two consecutive SB periods totaled at least 10 hours in length (and occurred within specified timeframes). One of the most popular SB protocols prior to amendment alternated the driving and sleeper berth ''shifts'' every 5 hours. The applicant espoused the virtue of such a protocol.

Three companies in the same line of work as the applicant commented in favor of DOE's application. In addition, an industry association recommended that FMCSA conduct a rulemaking and re-examine the SB rules. None of these comments persuaded the Agency to overlook the extensive scientific research underlying its current SB rule. This research found that team drivers employing 5-hour shifts were unable to obtain sufficient restorative rest. Two commenters opposed the application, including a safety group that felt that DOE failed to show that the current level of safety would be maintained if the exemption were granted. The Agency notes the hazardous nature of the property being transported (transuranic waste), and is not persuaded that the operations of drivers exempt from 8-hour SB periods could attain a level of safety equivalent to, or greater than, the level of safety that would be obtained by compliance with the current SB regulations requiring such periods.

Jcrane, Inc. (Jcrane)

This company sought exemption for 10 of its crane and tractor-trailer drivers from the requirement that interstate drivers of CMVs be at least 21 years of age. The drivers would be as young as 18 years of age. The comments were unanimous in their opposition to the exemption. Jcrane failed to differentiate its operating environment from that of other motor carriers. The agency remains persuaded by research showing that drivers age 18 to 21 years of age are a high-risk group. The Agency is especially hesitant to allow these young drivers to operate cranes in interstate commerce. Jcrane failed to demonstrate how it would ensure that it could achieve a level of safety with 10 drivers under age 21 that would be equivalent to, or greater than, the level of safety that would be obtained if all its drivers were at least 21 years of age.

Summit Helicopters, Inc. (Summit)

This motor carrier, engaged in the aerial application of herbicides, operates 21 tank CMVs in support of its aircraft. It asked the Agency to exempt it and the operators of these tank CMVs from all of the HOS rules. Five comments opposed the application; none supported it. The Agency believes that it would be irresponsible to allow drivers operating tank CMVs laden with hazardous materials to be free of all constraints on driving or on-duty time, and of all requirements for restorative rest. Summit failed to explain how it could ensure that drivers operating tank CMVs in interstate commerce without any regulation of their HOS would achieve a level of safety equivalent to, or greater than, the level of safety that would be obtained by compliance with the HOS rules.

United States Postal Service (USPS)

This Agency sought an exemption to allow over 5,000 contract mail haulers it utilizes to operate under the HOS rules in effect prior to January 4, 2004. On that date, revised HOS rules governing the on-duty time of interstate property-carrying drivers took effect. The revisions followed a comprehensive review of the science of driver fatigue by FMCSA and extensive public comment. There were 1,071 comments to the docket. Only sixteen comments supported the request. Of the comments in opposition to the request, approximately 930 employed identical wording. The amended rules were designed to improve the safety of the property-carrying industry and have, in fact, done so. The petition provides no information to suggest that a return to the HOS rules previously in effect by this large group of drivers would be accompanied by measures ensuring that the current level of safety would be maintained. Absent such a showing, FMCSA cannot grant the application. Therefore, FMCSA denies the USPS request for exemption.

Conclusion

FMCSA has carefully reviewed the applications and the comments received, and has concluded that each application lacks sufficient merit to justify the exemptions sought. Accordingly, FMCSA denies each application.

Issued on: May 7, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–11661 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2009–0099]

National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting.

SUMMARY: The NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public. The purpose of NEMSAC is to provide a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to the U.S. DOT's NHTSA.

DATES: The meeting will be held on June 2, 2009, from 1 p.m. to 5 p.m., and June 3, 2009, from 8 a.m. to 11:30 a.m. A public comment period will take place on June 3, 2009, between 10 a.m. and 10:30 a.m.

Comment Date: Written comments or requests to make oral presentations must be received by May 26, 2009.

ADDRESSES: The meeting will be held at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202. Persons wishing to make an oral presentation or who are unable to attend or speak at the meeting may submit written comments. Written comments and requests to make oral presentations at the meeting should reach Drew Dawson at the address listed below and must be received by May 26, 2009.

All submissions received must include the docket number, NHTSA–2009–0099, and may be submitted by any one of the following methods: You may submit or retrieve comments online through the Document Management System (DMS) at *http://www.regulations.gov/* under the docket number listed at the beginning of this notice. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara.*

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available.

E-mail: drew.dawson@dot.gov or susan.mchenry@dot.gov.

Fax: (202) 366–7149.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, Telephone number (202) 366–9966; E-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*). The NEMSAC will be holding its sixth meeting on Tuesday and Wednesday, June 2 and 3, 2009, at the Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Agenda of Council Meeting, June 2–3, 2009

The tentative agenda includes the following:

Tuesday, June 2, 2009

(1) Opening Remarks;
(2) Introduction of Members and all in attendance;
(3) Review and Approval of Minutes of last Meeting;
(4) Committee Reports and Discussion.

Wednesday, June 3, 2009

(1) Welcome and Introductions;
(2) Unfinished Business from June 2;
(3) Public Comment Period;
(4) Next Steps and Future Meetings.

A public comment period will take place on June 3, 2009, between 10 a.m. and 10:30 a.m..

Public Attendance: The meeting is open to the public. Persons with disabilities who require special assistance should advise Drew Dawson of their anticipated special needs as early as possible. Members of the public who wish to make comments on Wednesday, June 3 between 10 a.m. and 10:30 a.m. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

This meeting will be open to the public. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *drew.dawson@dot.gov* or by telephone at (202) 366–9966 no later than May 26, 2009. There will be limited seating, so please register early. Pre-registration is necessary to enable proper arrangements.

Minutes of the NEMSAC Meeting will be available to the public online through the DOT Document Management System (DMS) at: *http://www.regulations.gov* under the docket number listed at the beginning of this notice.

Issued on: May 14, 2009.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. E9–11659 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2009–0100]

Meeting Notice—Federal Interagency Committee on Emergency Medical Services

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Meeting Notice—Federal Interagency Committee on Emergency Medical Services.

SUMMARY: NHTSA announces a meeting of the Federal Interagency Committee on Emergency Medical Services (FICEMS) to be held in Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public.

DATES: The meeting will be held on June 3, 2009, from 2:30 p.m. to 5 p.m.

ADDRESSES: The meeting will be held at Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National

Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, Telephone number (202) 366–9966; E-mail *Drew.Dawson@dot.gov.*

SUPPLEMENTARY INFORMATION: Section 10202 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Public Law 109–59, provided that the FICEMS consist of several officials from Federal agencies as well as a State emergency medical services director appointed by the Secretary of Transportation. SAFETEA–LU directed the Administrator of NHTSA, in cooperation with the Administrator of the Health Resources and Services Administration of the Department of Health and Human Services and the Director of the Preparedness Division, Directorate of Emergency Preparedness and Response of the Department of Homeland Security, to provide administrative support to the Interagency Committee, including scheduling meetings, setting agendas, keeping minutes and records, and producing reports.

This meeting of the FICEMS will focus on addressing the requirements of SAFETEA–LU and the opportunities for collaboration among the key Federal agencies involved in emergency medical services. The agenda will include:

- Reports from National Transportation Safety Board (NTSB)
  - Status Report on Helicopter Emergency Medical Services
  - Mexican Hat, UT Crash and Recommendations to FICEMS
- FICEMS Letter re National Health Security Strategy
- Health Care Reform—EMS integration
- Coordination with Council on Emergency Medical Care
- Reports and updates from Technical Working Group committees
- Reports, updates, recommendations from FICEMS members
- Report from National EMS Advisory Council (NEMSAC)

This meeting will be open to the public. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *Drew.Dawson@dot.gov* or by telephone at (202) 366–9966 no later than May 26th, 2009. Pre-registration is necessary.

Minutes of the FICEMS Meeting will be available to the public online through the DOT Document Management System (DMS) at: *http://www.regulations.gov* under the docket number listed at the beginning of this notice.

Issued on: May 14, 2009.

Jeffrey P. Michael,

Associate Administrator for Research & Program Development.

[FR Doc. E9–11656 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meeting; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

DATES: *Time and Date:* June 15, 2009, at 1 p.m. (only the Board's Industry Advisory Subcommittee will meet on this day), June 16, 2009, from 1 p.m. until 5 p.m., and June 17, 2009, from 8 a.m. until 12 Noon, Eastern Daylight Time.

PLACE: This meeting will take place at The Hershey Lodge and Conference Center, 1077 West Governor, Hershey, Pennsylvania, 17033.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Plan Board of Directors at (505) 827–4565.

Dated: May 15, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–11763 Filed 5–15–09; 4:15 pm]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice; Nashua Municipal Airport, Nashua, NH

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps for Nashua Municipal Airport, as submitted by the Nashua Airport Authority under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR Part 150, are in compliance with applicable requirements.

DATES: *Effective Date:* The effective date of the FAA's determination on the noise exposure maps is April 29, 2009.

FOR FURTHER INFORMATION CONTACT: Richard Doucette, Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Nashua Municipal Airport are in compliance with applicable requirements of Part 150, effective April 29, 2009.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA noise exposure maps that meet applicable regulations and that depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted such noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval that sets forth the measures the operator has taken, or proposes, for the introduction of additional non-compatible uses.

The FAA has completed its review of the noise exposure map and related descriptions submitted by the Nashua Airport Authority. The specific maps under consideration were Figure 1. Existing (2009) Noise Exposure Map and Figure 2. Future (2014) Noise Exposure Map in the submission. The FAA has determined that these maps for Nashua Municipal Airport are in compliance with applicable requirements. This determination is effective on April 29, 2009.

FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in Appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise

compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under Section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of Section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted the map or with those public agencies and planning agencies with which consultation is required under Section 103 of the Act. The FAA has relied on the certification by the airport operator, under Section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Nashua Airport Authority, Nashua Municipal Airport, Boire Field, 93 Perimeter Rd., Nashua, NH 03063 or:

Federal Aviation Administration, New England Region, Airports Division, 12 New England Executive Park, Burlington, Massachusetts 01803.

Questions may be directed to the individual named above under the heading: **FOR FURTHER INFORMATION CONTACT**.

Issued in Burlington, Massachusetts on April 29, 2009.

LaVerne Reid,

Manager, Airports Division.

[FR Doc. E9–11594 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Wallowa Union Railroad; Waiver Petition Docket Number FRA–2004–18494

The Wallowa Union Railroad (WURR) of Wallowa, Oregon, has petitioned for a permanent waiver of compliance for one passenger car, WURR 1120, from the requirements of the Railroad Safety Glazing Standards, Title 49 CFR Part 223, which require certified glazing in all windows. The passenger car, WURR 1120, was built by Pullman Standard in 1947, and does not have glazing material that meets the provisions of Title 49 CFR Part 223.15 *Requirements for existing passenger cars* for certified glazing in the side facing windows. The excursion operations on WURR consist of trips ranging from five miles to sixty miles. Speeds are generally ten miles per hour (mph); however, there is a relatively straight section of track between milepost (MP) 57 and MP 83, where the maximum speed is 15 mph.

WURR is located in rural Northeastern Oregon, with very limited access to the line outside of the railroad itself. The largest town that the railroad runs through has a population of 2,020, and the county has a population of just over 7,000 people. The most frequently used public grade crossing has an ADT of 3,250.

WURR states that the line, for the most part, runs through pastures or river canyons. Only two miles of the sixty-three miles of track are located within the above mentioned town with the population of 2,020. WURR requests that due to the slow speed, the rural area of operations, no instances of vandalism from the time the original waiver was granted in 2004, and prohibitive cost to replace the side windows the certified glazing requirements be waived for the passenger car WURR 1120.

The railroad also requests passenger car WURR 1120, together with WURR 2636, which has the required certified glazing, and both built in 1947, continue to be classified as antiquated equipment that is used only for excursion purposes per 49 CFR 223.3(b)3.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.,* Waiver Petition Docket Number FRA–2004–18494) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC on May 13, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–11591 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal

Railroad Administration (FRA) has received a request for a waiver of compliance from certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favor of relief.

Alaska Railroad Corporation

[Waiver Petition Docket Number FRA–2008–0161]

The Alaska Railroad Corporation (ARR), a Class II railroad, petitioned FRA for a waiver of compliance from certain provisions of the Passenger Equipment Safety Standards, as prescribed by 49 CFR * 238.303(c) *Exterior Calendar day inspection* and * 238.313 *Class I brake test,* for one set of conventional passenger equipment. Specifically, this waiver request applies to the seasonal Hurricane Turn passenger train. This service is operated from May through September, between Talkeetna, Alaska (Milepost (MP) 226), and Hurricane Gulch Bridge, Alaska (MP 284). This train provides ''flag stop'' service to residents as well as visitors to an area that has no road access. Until now, this service was provided using Buddy Company-built Railway Diesel Cars (RDC) that have been retired and replaced by two locomotives, one baggage car, and two passenger coach cars. The equipment makes a single round trip between Talkeetna and Hurricane, four days per week, only during the summer months. Until the retirement of RDC's, this service was covered under waiver Docket Number FRA–2002–11215.

ARR maintains mechanical facilities located at Fairbanks (MP 470) and Anchorage (MP 114), Alaska, where qualified maintenance employees are headquartered. The equipment is stored overnight at Talkeetna during the work week, and may be moved to Anchorage the other days for cleaning, supplies, and servicing. FRA requires a ''qualified maintenance person'' (QMP) conduct the daily exterior inspection and the Class I—initial terminal airbrake inspection each day the equipment is used. This requires ARR to assign a QMP to Talkeetna, where there is not enough work to support a position, or have an employee travel 224 miles (round trip) each day from Anchorage.

ARR requests that a QMP be authorized to complete the required daily exterior and airbrake inspections at Talkeetna at least once each week, during the months the equipment is stationed there. The equipment may be moved to Anchorage or a mechanical department road truck will travel to Talkeetna to have a QMP conduct the required inspections. Talkeetna is the only location that this relief is sought. Train crews will conduct the required inspection on all other days. ARR has safely operated the two RDC's under the conditions set by FRA's Railroad Safety Board in a decision letter dated June 11, 2002, under Docket Number FRA–2001–11215. ARR requests that since the original RDC equipment has been retired, the replacement conventional equipment be operated under the same conditions of that waiver, and FRA–2001–11215 be withdrawn due to the retirement of the covered equipment.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number FRA–2008–0161) and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at *http://www.regulations.gov.*

Anyone is able to search the electronic form of any written communications and 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).

Issued in Washington, DC on May 13, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–11593 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2000–8398; FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2007–27515]

Qualification of Drivers; Exemption Applications; Vision

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemptions; request for comments.

SUMMARY: FMCSA announces its decision to renew the exemptions from the vision requirement in the Federal Motor Carrier Safety Regulations for 21 individuals. FMCSA has statutory authority to exempt individuals from the vision requirement if the exemptions granted will not compromise safety. The Agency has concluded that granting these exemption renewals will provide a level of safety that is equivalent to, or greater than, the level of safety maintained without the exemptions for these commercial motor vehicle (CMV) drivers.

DATES: This decision is effective June 13, 2009. Comments must be received on or before June 18, 2009.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2000–8398; FMCSA–2003–14504; FMCSA–2005–20560; FMCSA–2007–27515, 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 or Courier:* 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 number 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 acknowledgment 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://DocketInfo.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 renew an exemption from the vision requirements in 49 CFR 391.41(b)(10), which applies to drivers of CMVs in interstate commerce, for a two-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.'' The procedures for requesting an exemption (including renewals) are set out in 49 CFR part 381.

Exemption Decision

This notice addresses 21 individuals who have requested a renewal of their exemption in accordance with FMCSA procedures. FMCSA has evaluated these 21 applications for renewal on their merits and decided to extend each exemption for a renewable two-year period. They are:

Roosevelt Bell, Jr.
Joseph M. Blankenship
David K. Boswell
Melvin M. Carter
Bernabe V. Cerda
Michael S. Crawford
Rex A. Dyer
Patrick J. Goebel
Thomas A. Gotto
Louis W. Henderson, Jr.
William P. Holloman
Wilbur J. Johnson
Joseph W. Mayes
Larry L. Morseman
Kenneth C. Reeves
Charles J. Rowsey
Dustin N. Sullivan
Thomas E. Summers, Sr.
Jon C. Thompson
Daniel E. Watkins
Tommy N. Whitworth

These exemptions are extended subject to the following conditions: (1) That each individual have a physical examination every year (a) by an ophthalmologist or optometrist who attests that the vision in the better eye continues to meet the standard in 49 CFR 391.41(b)(10), and (b) by a medical examiner who attests that the individual is otherwise physically qualified under 49 CFR 391.41; (2) that each individual provide a copy of the ophthalmologist's or optometrist's report to the medical examiner at the time of the annual medical examination; and (3) that each individual provide a copy of the annual medical certification to the employer for retention in the driver's qualification file and retain a copy of the certification on his/her person while driving for presentation to a duly authorized Federal, State, or local enforcement official. Each exemption will be valid for two years unless rescinded earlier by FMCSA. The exemption will be rescinded if: (1) The person fails to comply with the terms and conditions of the exemption; (2) the exemption has resulted in a lower level of safety than was maintained before it was granted; or (3) continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315.

Basis for Renewing Exemptions

Under 49 U.S.C. 31315(b)(1), an exemption may be granted for no longer than two years from its approval date and may be renewed upon application for additional two year periods. In accordance with 49 U.S.C. 31136(e) and 31315, each of the 21 applicants has satisfied the entry conditions for obtaining an exemption from the vision requirements (65 FR 78256; 66 FR 16311; 68 FR 13360; 70 FR 12265; 72 FR 11426; 68 FR 19598; 68 FR 33570; 70 FR 25878; 72 FR 28093; 70 FR 17504; 70 FR 30997; 72 FR 27624; 72 FR 21313; 72 FR 32703). Each of these 21 applicants has requested renewal of the exemption and has submitted evidence showing that the vision in the better eye continues to meet the standard specified at 49 CFR 391.41(b)(10) and that the vision impairment is stable. In addition, a review of each record of safety while driving with the respective vision deficiencies over the past two years indicates each applicant continues to meet the vision exemption standards. These factors provide an adequate basis for predicting each driver's ability to continue to drive safely in interstate commerce. Therefore, FMCSA concludes that extending the exemption for each renewal applicant for a period of two years is likely to achieve a level of safety equal to that existing without the exemption.

Request for Comments

FMCSA will review comments received at any time concerning a particular driver's safety record and determine if the continuation of the exemption is consistent with the requirements at 49 U.S.C. 31136(e) and 31315. However, FMCSA requests that interested parties with specific data concerning the safety records of these drivers submit comments by June 18, 2009.

FMCSA believes that the requirements for a renewal of an exemption under 49 U.S.C. 31136(e) and 31315 can be satisfied by initially granting the renewal and then requesting and evaluating, if needed, subsequent comments submitted by interested parties. As indicated above, the Agency previously published notices of final disposition announcing its decision to exempt these 21 individuals from the vision requirement in 49 CFR 391.41(b)(10). The final decision to grant an exemption to each of these individuals was based on the merits of each case and only after careful consideration of the comments received to its notices of applications. The notices of applications stated in detail the qualifications, experience, and medical condition of each applicant for an exemption from the vision requirements. That information is

available by consulting the above cited **Federal Register** publications.

Interested parties or organizations possessing information that would otherwise show that any, or all of these drivers, are not currently achieving the statutory level of safety should immediately notify FMCSA. The Agency will evaluate any adverse evidence submitted and, if safety is being compromised or if continuation of the exemption would not be consistent with the goals and objectives of 49 U.S.C. 31136(e) and 31315, FMCSA will take immediate steps to revoke the exemption of a driver.

Issued on: May 11, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

[FR Doc. E9–11662 Filed 5–18–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Open Meeting of the President's Economic Recovery Advisory Board (the PERAB)

AGENCY: Office of the Under Secretary for Domestic Finance, Treasury.

ACTION: Notice of meeting time change.

SUMMARY: The President's Economic Recovery Advisory Board will convene its first meeting on May 20, 2009, in the White House, 1600 Pennsylvania Avenue, NW., Washington, DC, beginning at 9:30 a.m. Eastern Time instead of 1 p.m. Eastern Time as originally announced in the May 5, 2009 Notice of Open Meeting. The meeting will be open to the public via live webcast at *http://www.whitehouse.gov.*

DATES: The meeting will be held on May 20, 2009 at 9:30 a.m. Eastern Time.

ADDRESSES: The PERAB will convene its first meeting in the White House, 1600 Pennsylvania Avenue, NW., Washington, DC. The public is invited to submit written statements to the Advisory Committee by any of the following methods:

Electronic Statements

- Send written statements to the PERAB's electronic mailbox at PERAB@do.treas.gov; or

Paper Statements

- Send paper statements in triplicate to Michelle Greene, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Room 2326, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

In general, all statements will be posted on the White House Web site (*http://www.whitehouse.gov*) without change, including any business or personal information provided, such as names, addresses, e-mail addresses, or telephone numbers. The Department will also make such statements available for public inspection and copying in the Department's Library, Room 1428, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect statements by telephoning (202) 622–0990. All statements, including attachments and other supporting materials received, are part of the public record and subject to public disclosure. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Michelle Greene, Designated Federal Officer, President's Economic Recovery Advisory Board, Office of the Under Secretary for Domestic Finance, Department of the Treasury, Main Department Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220, at (202) 622–2610.

SUPPLEMENTARY INFORMATION: On May 5, 2009, the Department published a Federal Register Notice announcing that the first open meeting of the PERAB would be held on May 20, 2009 at 1 p.m. Eastern Time. Due to exceptional circumstances resulting from the President seeking to attend and address the PERAB, the time of the meeting has been changed to accommodate the President's schedule. The meeting will now be held at 9:30 a.m. Eastern Time. In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. II, § 10(a), and the regulations thereunder, Michelle Greene, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the PERAB will convene its first meeting on May 20, 2009, in the White House, 1600 Pennsylvania Avenue, NW., Washington, DC, beginning at 9:30 a.m. Eastern Time. The meeting will be open to the public. While the meeting room will accommodate a reasonable number of interested members of the public, space is limited. Because the meeting will be held in a secured facility, members of the public who plan to attend the meeting must contact the Office of the Under Secretary for Domestic Finance, at (202) 622–2610, to inform the Department of the desire to attend the meeting and to provide the information that will be required to facilitate entry into the White House. In addition, the meeting can be viewed via live webcast at *http://www.whitehouse.gov.* The purpose of this meeting is to discuss general organizational matters of the PERAB and begin discussing the issues impacting the strength and competitiveness of the Nation's economy.

Andrew Mayock,

Executive Secretary.

[FR Doc. E9–11765 Filed 5–18–09; 8:45 am]

BILLING CODE 4810–25–P

Federal Register

Tuesday,
May 19, 2009

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover (*Charadrius melodus*) in Texas; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FWS–R2–ES–2008–0055; 92210–1117–0000–FY09–B4]

RIN 1018–AV46

Endangered and Threatened Wildlife and Plants; Revised Designation of Critical Habitat for the Wintering Population of the Piping Plover (*Charadrius melodus*) in Texas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), designate revised critical habitat for the wintering population of the piping plover (*Charadrius melodus*) in 18 specific units in Texas under the Endangered Species Act of 1973, as amended (Act). In total, approximately 139,029 acres (56,263 hectares) fall within the boundaries of the revised critical habitat designation. The revised critical habitat is located in Cameron, Willacy, Kenedy, Kleberg, Nueces, Aransas, Calhoun, Matagorda, and Brazoria Counties, Texas. Other previously designated critical habitat for the wintering piping plover in Texas or elsewhere in the United States remains unaffected.

DATES: This final rule becomes effective on June 18, 2009.

ADDRESSES: This final rule, the associated final economic analysis, and the final environmental assessment are available on the Internet at *http://www.regulations.gov* or *www.fws.gov/southwest/es/Library/*. Comments and materials we received, as well as supporting documentation we used in preparing this final rule, are available for public inspection, by appointment, during normal business hours, at the U.S. Fish and Wildlife Service, Corpus Christi Ecological Services Field Office, 6300 Ocean Drive, TAMU–CC, Unit 5837, Corpus Christi, TX 78412-5837.

FOR FURTHER INFORMATION CONTACT: Allan Strand, Field Supervisor, U.S Fish and Wildlife Service, Corpus Christi Ecological Services Office (see **ADDRESSES**); telephone 361–994–9005; facsimile 361–994–8262. If you use a telecommunications device for the deaf (TDD), call the Federal Information Relay Service (FIRS) at 800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

It is our intent to discuss only those topics directly relevant to the development and designation of revised critical habitat for the wintering population of the piping plover in Texas in this final rule. For more information on the biology and ecology of the wintering population of the piping plover, refer to the final listing rule we published in the **Federal Register** on December 11, 1985 (50 FR 50726). For information on piping plover wintering critical habitat, refer to the final rule designating critical habitat for the wintering populations of the piping plover we published in the **Federal Register** on July 10, 2001 (66 FR 36038), and the proposed rule to designate revised critical habitat for the wintering population of the piping plover in Texas we published in the **Federal Register** on May 20, 2008 (73 FR 29294). We made available the associated draft economic analysis and draft environmental assessment for the proposed rule to designate revised critical habitat via publication in the **Federal Register** on, December 9, 2008 (73 FR 74675).

Previous Federal Actions

We listed the piping plover as endangered in the Great Lakes watershed and threatened elsewhere within its range on December 11, 1985 (50 FR 50726). All piping plovers on migratory routes outside of the Great Lakes watershed or on their wintering grounds are listed as threatened under the Act due to the difficulty of knowing where they bred or were hatched.

On July 10, 2001, we designated 142 areas along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas as critical habitat for the wintering population of the piping plover (66 FR 36038). This designation included approximately 1,798 miles (mi) (2,892 kilometers (km)) of mapped shoreline and approximately 165,211 acres (ac) (66,881 hectares (ha)) of mapped areas along the Gulf and Atlantic coasts and along margins of interior bays, inlets, and lagoons.

In February 2003, Dare and Hyde Counties, North Carolina, and the Cape Hatteras Access Preservation Alliance challenged the designation of four critical habitat units on the Cape Hatteras National Seashore, North Carolina. A November 1, 2004, court opinion vacated and remanded these units for reconsideration (*Cape Hatteras Access Preservation Alliance* v. *U.S. Department of the Interior* (344 F. Supp. 2d108 (D.D.C. 2004)). On June 12, 2006, we published a proposed rule in the **Federal Register** (71 FR 33703) to amend the Service's critical habitat designation in North Carolina. We revised that proposal on May 15, 2008 (73 FR 28084), and published a final designation on October 21, 2008 (73 FR 62816).

The Texas General Land Office (GLO) filed suit on March 20, 2006, challenging our designation of 19 units of critical habitat along the Texas coast (Units 3, 4, 7, 8, 9, 10, 14, 15, 16, 17, 18, 19, 22, 23, 27, 28, 31, 32, and 33). In a July 26, 2006, stipulated settlement agreement and court order, the court vacated and remanded the designation for reconsideration (*Texas General Land Office* v. *U.S. Department of the Interior, et al.*, No. 06–CV–00032 (S.D. Tex.). This rule addresses only the court-vacated and remanded units (the 19 units referenced above). It also addresses minor edits to the regulatory language found in 50 CFR 17.95(b). All other areas remain as designated in the July 10, 2001, final critical habitat rule (66 FR 36038), including Texas Units 1, 2, 5, 6, 11, 12, 13, 20, 21, 24, 25, 26, 29, 30, 34, 35, 36, and 37.

Summary of Comments and Recommendations

We requested written comments from the public on the proposed revised designation of critical habitat for the piping plover during two comment periods. The first comment period, associated with the publication of the proposed rule (73 FR 29294), opened on May 20, 2008, and closed on July 21, 2008. We also requested comments on the associated draft economic analysis and draft environmental assessment during a second comment period, which opened December 9, 2008, and closed on January 8, 2009 (73 FR 74675). We did not receive any requests for a public hearing. We coordinated with the Texas General Land Office and also maintained project by project contact with other Federal, State, and local agencies and interested parties working in the South Texas coastal area as they needed assistance in determining presence of piping plover habitat and critical habitat. Additionally Federal, State, and local agencies; scientific organizations; and other interested parties could respond to the proposed rule and draft economic analysis during the comment periods.

During the first comment period, we received five sets of comments addressing the proposed critical habitat designation. During the second comment period, we received a single set of comments, from the GLO, on the draft economic analysis and environmental assessment. Comments were grouped into general issues relating to the proposed critical habitat designation for the wintering piping plover, and are addressed in the

following summary and incorporated into the final rule as appropriate.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we solicited expert opinions from five knowledgeable individuals with scientific expertise that included familiarity with the species, the geographic region in which the species occurs, and conservation biology principles. We received a response from one of the five peer reviewers. The peer reviewer generally concurred with our methods and conclusions and provided additional information, clarifications, and suggestions to improve the final critical habitat rule. Peer reviewer comments are addressed in the following summary and incorporated into the final rule as appropriate.

Peer Reviewer Comments:

(1) *Comment*: Designating critical habitat may not radically change the protection for the plover as it already has protection from take under section 7 of the Act. Also, designating critical habitat may not change the economic impacts from piping plover habitat protection since occupied habitat is still protected, also by section 7, regardless of critical habitat designation.

Our Response: We have noted these comments and addressed them in the economic analysis and environmental assessment for this rule. The economic impact (cost) in the areas we are designating as critical habitat is substantially lower than costs resulting from listing the species. However, the economic analysis anticipates that some impacts of the designation will be incurred, particularly from avoidance of stockpiling materials on sandflats and avoidance of discharging freshwater on tidal flats. The impacts of critical habitat designation are further discussed in the *Economic Analysis* section under **Exclusions**, below.

(2) *Comment:* The peer reviewer generally approved of the methods used to map critical habitat, but expressed concerns at the use of mean lower low water (MLLW) as the lower boundary for critical habitat, because during extreme low tides plovers feed in the exposed flats. He recommended adding a buffer to the MLLW boundary to capture the areas exposed during extreme low tides when piping plovers are present.

Our Response: The extreme low tides expose areas classified by our National Wetland Inventory (NWI) as subtidal with rooted vascular vegetation, usually seagrass. We are aware the plovers feed on organisms found on and around seagrass on the rare occasions when the seagrass is exposed during extreme low tides. Wintering piping plovers are active during daylight hours and spend the majority of that time foraging (Johnson and Baldassarre 1988, pp. 216–217). However, seagrass beds are usually submerged and unavailable to the plovers for foraging, so we do not consider them to be features essential to the conservation of the species (primary constituent elements).

A critical habitat designation does not signal that habitat outside the designated area is unimportant. Since we are aware that, when exposed, these areas provide food to the wintering plovers, we will focus on individual section 7 consultation jeopardy analyses to consider impacts to the species in these areas.

(3) *Comment:* The peer reviewer questioned the use of 2005 National Agriculture Imagery Program (NAIP) imagery and asked us to specify the Geographic Positioning System (GPS) unit used.

Our Response: The 2005 NAIP aerial photography was the most recent imagery available to us that covered all of the area we were considering for this revised designation of critical habitat. When using aerial photography in a Geographic Information System (GIS), the 2-dimensional photographs are applied to a 3-dimensional system that accounts for the curvature of the Earth. When that is done, each aerial photograph becomes distorted, with some parts of the photograph distorted more than others. We have no information on how GPS was used to generate the NAIP photographs. However, we used a Trimble GeoXT GPS unit with TerraSync version 3.01 software to measure the level of distortion in order to be certain that we are not including built structures in the units we are designating. See the *Criteria Used To Identify Critical Habitat* section, under **Critical Habitat**, below for additional discussion on our use of GPS.

(4) *Comment:* The peer reviewer commented on the dynamic nature of the coast and occurrence of hurricanes that might make it imprudent to designate critical habitat boundaries so precisely. Also, there was concern with the use of NWI dataset, which is about 15 years old. However, the reviewer believed these concerns might be ameliorated if occupied habitat is adequately protected under existing Endangered Species Act regulations.

Conversely, the GLO expressed interest in us establishing boundaries more precisely, commenting that more precise boundaries should limit the need for buffers. Also, they expressed concern that corrections of the gulf-side MLLW data using Unit TX–3 might have led to a false 184-foot (ft) (56-meter (m)) average that was too generalized and that this overgeneralization was then applied to all lower unit boundaries. Also, the GLO questions what was used to define boundaries, if the vegetation line was not used to delineate the landward limit.

Our Response: In *Cape Hatteras Access Preservation Alliance* v. *U.S. Dept. of the Interior*, 344 F. Supp. 2d 108 (D.D.C. 2004), the Court found that PCEs must be present in any occupied habitat, in order for us to designate that habitat. We are designating only occupied habitat for the piping plover wintering population in Texas. We have not included additional unoccupied coastal areas in the designation at this time because we cannot predict when and where a dynamic coastline shift may occur, and whether this will result in new or different areas that will develop the PCEs, or if these areas may support plovers.

In our proposed designation, we created the lines which make up the polygons delineating areas containing the essential features by using an unadjusted high level of precision for calculating the Universal Transverse Mercator coordinates (UTMs). In preparing this final designation, we realized that this was an artificial level of precision, because the aerial photographs we used in generating boundaries have some distortions (see our response to Comment 3 above), and because of other GIS-processing reasons (see *Methods* section under **Critical Habitat**). In other words, the data used did not actually have the degree of detail to provide accurate and consistent information to that level of precision. It was our desire to eliminate an unintentionally confusing and potentially inaccurate degree of precision in our calculations. To better reflect the degree of reasonable precision available from the existing data and techniques, we decided to smooth the lines defining the critical habitat polygons using a known and well-published algorithm with a 10-meter tolerance. We therefore recalculated the UTM coordinates using the resulting smoothed polygons. Using the smoothed polygons allowed us to determine the most accurate and reasonably precise delineation of the polygons, using the best available science.

We have effected this change in this final designation, and in so doing we have also responded to the comments of both the peer reviewer and the GLO by

using the most appropriate scale and reasonable level of precision, by smoothing the edges of the polygons of critical habitat slightly to avoid implying a false level of precision. We believe this provides the most accurate boundaries we can, using the best scientific information available. In the *Methods* section (under **Critical Habitat**), we describe our use of a polygon smoothing algorithm; it added and deleted slivers of area in all of the units and subunits. This resulted in a slight addition of area overall, although some units lost a small amount of area while others gained a small amount.

We chose to use the NWI maps and data in bayside areas because it allowed us to identify the types of habitat used by the plover and map those habitat types. We used this methodology only for bayside areas because those areas did not change appreciably over time. The *Criteria Used To Identify Critical Habitat* section below explains how we adjusted for areas where changes did occur.

In order to determine the MLLW, we used digitized data from the National Oceanic and Atmospheric Administration (NOAA) of the gulf coast in the area of Unit TX–3. It is important to include wetted beach areas exposed at low tides in our designation because they are heavily used by wintering plovers for foraging. We considered using Light Detection and Ranging imagery to map the MLLW; however, recent imagery that maps coastal areas that are under water was not available for much of the portion of the Texas coast where we are designating critical habitat. Therefore, the NOAA digitized data was the best scientific information available for use in determining the MLLW.

Using the NOAA digitized MLLW presented problems because, for most of the coastline we were mapping, erosion and accretion from storm events had shifted the beach and MLLW from what was digitized by NOAA. The exception was with the MLLW for Unit TX–3. The NOAA-defined MLLW for that unit runs approximately parallel to the shoreline, following the contours of the gulf floor. The metadata provided for the NOAA-defined MLLW did not provide the year when the MLLW was defined. However, based on the alignment of the MLLW approximately parallel to the shoreline in Unit TX–3, the MLLW may have been defined more recently for that area of the coast than for the other areas where we are designating critical habitat. We chose to measure the distance from the shoreline to the NOAA-defined MLLW every 328 ft (100 m) for over 30 miles (48 kilometers) in Unit TX–3 because that provided the most accurate way to estimate the MLLW available. We then calculated the average of the shoreline to MLLW distance, which was 184 ft (56 m), and applied that calculation to the other units.

We agree with the GLO that using a single number to estimate the MLLW is generalizing the MLLW. However, the average was calculated from 90 measurements from the shoreline to the NOAA-defined MLLW in TX–3, and we were unable to identify a better alternative. We used NOAA tidal station and bathymetric (ocean water depth) data to confirm that the 184-ft (56-m) distance from shore provided a reasonable estimate of the MLLW. See the *Criteria Used To Identify Critical Habitat* section below for additional discussion. We continue to believe that this method utilizes the best scientific information available to us in making this critical habitat designation.

The vegetation line in the NAIP photographs was used to delineate the landward limit in all but a few cases. We have added an explanation to the *Criteria Used To Identify Critical Habitat* section (under **Critical Habitat**) below of how we mapped the landward limit when the vegetation line was not used.

(5) *Comment:* The peer reviewer asked what distance was used to determine whether a unit was valuable to piping plovers due to the particular unit's proximity to other wintering piping plover occurrences.

Our Response: In this revised designation of critical habitat, we did not include areas that were in the original designation that were too small or too fragmented (i.e., separated from a larger area) to be of utility. In determining whether to include such areas in our revised designation, we also considered whether an area was occupied by the plover at least 2 years between 1997 and 2007, to compare more recent census data to the areas originally occupied at time of listing. We have modified our *Methods* section (under **Critical Habitat**) to reflect our use of these criteria. We did not use plover dispersal capability as a criterion for including the small or separated areas in the revised designation, and we did not use a specific size or distance to define them.

(6) *Comment:* The peer reviewer notes that piping plovers are highly mobile and may use different sites, depending on daily and seasonal tide conditions, and surveys need to be done more frequently to be really knowledgeable of site usage. The reviewer cautions against excluding Unit TX–17 due to lack of plover sightings there since 1997, and recommends we include all sites that have been occupied over the decades, so that we do not exclude a site because of potentially inadequate surveys.

Our Response: We deleted TX–17 as a critical habitat unit, because it has been reduced in size from 14 ac (6 ha) to less than 3 ac (1 ha) since the original designation. The best available science does not support the conclusion that this unit is still used by plovers, due to its small size and the lack of plovers documented there since 1997.

(7) *Comment:* What criteria explicitly define current occupancy?

Our Response: We define current occupancy as one or more wintering plovers being documented to be present in a unit two or more years from 1997 to 2007. We relied on international piping plover wintering survey data, peer-reviewed articles with survey data, Masters thesis results, Christmas Bird Count data, survey data obtained from Federal project reports, and data from local biologists. If there was a question as to whether a piping plover was reported from an area two or more times between 1997 and 2007, Ecological Services field office biologists made a site visit during the wintering season at the appropriate tidal range to confirm presence.

Further, all revised critical habitat units in Texas are within areas that we have determined were occupied at the time of listing, and that contain the PCEs in the appropriate spatial arrangement needed to support life history functions essential for the conservation of the species where it winters. All units which we designate as critical habitat have occurrence data that indicate a consistent use. That is, occupancy has been documented over two or more wintering seasons, which is the same criterion used in the original 2001 designation.

Comments from States

Section 4(i) of the Act states, ''the Secretary shall submit to the State agency a written justification for his failure to adopt regulations consistent with the agency's comments or petition.'' Comments received from the Texas GLO regarding the proposal to revise critical habitat designation for the wintering piping plover are addressed below.

(1) *Comment:* The GLO questioned whether we provided sufficient justification for designating the additional areas of vacated critical habitat (in addition to the areas that were not vacated), to show that habitat is essential to the conservation of the piping plover.

Our Response: We believe the proposed rule justifies designating the vacated critical habitat areas, because they contain features essential to the conservation of the plovers. These areas are used by wintering plovers that are endangered on their breeding grounds in the Great Lakes region and are, thus, in danger of extinction. These endangered individuals spend up to 10 months of the year on the wintering grounds, thus emphasizing the importance of sufficient and suitable wintering habitat (Drake *et al.* 2001, p. 260). Because piping plovers spend most of the annual cycle on nonbreeding areas, they would be negatively affected by loss of those sites, emphasizing the importance of conserving nonbreeding areas for this species. While on their wintering grounds in Texas, plovers are dependent on a mosaic of habitat patches, and move among these patches (Drake *et al.* 2001, pp. 262–264). The areas we are designating were occupied by the species at least twice in the last 10 years, and they contain the primary constituent elements for wintering plovers as required by our regulations at 50 CFR 424.12. Thus, we have determined that these areas have features which are essential to the conservation of the species.

(2) *Comment:* The GLO believes oil and gas exploration, including seismic survey, and production would be limited due to restrictions imposed by the Service due to critical habitat. They cited an example of a 2006 letter where the Service recommended that seismic crews stay out of critical habitat and a buffer of 1,000 feet around it.

Our Response: The Service has not made such recommendations to stay out of critical habitat when performing seismic work since 2006. On August 27, 2008, the Corpus Christi Ecological Services Office issued a memorandum that provides current guidance for conducting section 7 consultations for the wintering piping plover population in Texas. The guidance recommends ways to avoid or minimize adverse effects to the birds and their habitat, but it does not recommend avoidance of critical habitat areas. We anticipate that activities (including oil and gas exploration) could occur in critical habitat areas without conflicting with endangered species prohibitions. The Service's section 7 handbook states: ''In evaluating project effects on critical habitat, the Service must be satisfied that the constituent elements of the critical habitat likely will not be altered or destroyed by proposed activities to the extent that the survival and recovery of affected species would be appreciably reduced. Modification or destruction of designated critical habitat that does not reach this threshold is not prohibited by section 7.'' The constituent elements for wintering piping plover critical habitat are listed in the *Primary Constituent Elements (PCEs)* section under **Critical Habitat** below.

(3) *Comment:* The GLO questioned what authority the Service might have to control future impacts in critical habitats in areas not covered by Federal permits/section 7.

Our Response: To the extent that a particular activity affecting designated critical habitat does not involve a federal action, the Service has no direct regulatory authority with respect to such activities. The Service, is however, responsible for enforcing the prohibitions on unauthorized taking of a listed species under section 9 of the Act. Take is defined in the Act as ''to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect [a listed species], or attempt to engage in any such conduct.'' Where there is no federal action to which section 7 would apply, the Service can authorize take under section 10 of the Act. Section 10 provides authority to permit the take of listed species by non-Federal entities such as private landowners, cities, or counties. This is done through a permitting process where project effects must be mitigated, including effects to habitat.

(4) *Comment:* The GLO commented that the Service did not list the physical and biological features determined essential to the conservation of the piping plover.

Our Response: In our proposed rule we referenced the text of the July 10, 2001, rule (66 FR 36038), which specifies the physical and biological features essential to the conservation of the species. We consider these physical and biological features essential to the conservation of the species where it winters to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species, and which may require special management considerations or protection. The PCEs are listed below in the section *Primary Constituent Elements*. In this rule, we are designating as critical habitat areas which contain one or more of these eight features for this revised designation. We did not designate any areas in this rule containing salterns, which are bare sand flats in the center of mangrove ecosystems, because they do not occur in Texas, although they occur in other States where the plover winters.

(5) *Comment:* The GLO inquired as to what information the Service has that elevates normal recreational use to being a threat in 2008 when it was not considered a threat in 2001.

Our Response: We have observed more development on the South Texas coast and increased beach usage by pedestrians and motorists over the intervening 7 years. Increased beach use has produced conditions, such as increased numbers of joggers, cyclists, and unleashed dogs near the water's edge, that lead to additional disturbance to foraging and roosting piping plovers.

(6) *Comment:* The GLO observed that the Texas Open Beaches Act controls access to the beaches, requiring local governments to address access in Dune Protection and Beach Access Plans. There are concerns that in areas where there is critical habitat for the plover, the Service could impose beach driving closures or driving limitations during the plover wintering season, which would yield an economic loss for local governments.

Our Response: The Service has not recommended the closure of beaches in Texas due to the presence of wintering plovers, whether the beaches are in critical habitat areas or not. We may make recommendations to minimize driving in cases where driving has the potential to destroy or adversely modify critical habitat. For instance, when some oil and gas activities are planned that require the use of heavy trucks, we have recommended that the trucks form a convoy to limit tire rutting on beaches and to smooth over extensive ruts. We have not limited recreational driving in wintering plover critical habitat areas in the past, and we do not anticipate doing so in the future.

(7) *Comment:* The GLO asked how beach nourishment and cleaning might be detrimental to critical habitat in the long term.

Our Response: Critical habitat can be adversely modified by movement of sand that changes beach elevation and causes vegetation to encroach. Critical habitat could also be affected for one or more seasons by beach-cleaning vehicles making ruts, or beach nourishment activities that bury the shoreline benthic zone under extra sand so plover prey items are not as accessible. Cleaning activities that remove sargassum and natural debris such as driftwood also remove part of the prey base and objects behind which plovers take shelter when resting.

(8) *Comment:* The GLO suggested that, if the Service does designate the proposed critical habitat, it would be wise to develop a general permit type of approach to potential piping plover

consultations. It would help to develop guidelines to allow legal activities to occur consistently and efficiently.

Our Response: We agree, and we will pursue developing a list of best management practices for the critical habitat and programmatic consultations for Clean Water Act permits often required for work in piping plover habitat.

(9) *Comment:* The GLO expressed concern that minimizing beach driving, if it results in denied access, would conflict with the Texas Open Beaches Act (OBA). Also specifying the size and location of driving lanes could conflict with the OBA.

Our Response: As we explain in our response to GLO comment 2, our August 27, 2008, guidance does not recommend avoidance of critical habitat areas. In critical habitat areas, in instances where there is a federally permitted or funded activity that would involve creating driving lanes, we may suggest reducing the size of driving lanes to minimize effects to the plover, and would recommend that they not be in the intertidal zone where piping plovers feed.

(10) *Comment:* The GLO commented that there were not enough details to determine if the proposed restrictions would increase the cost of local government maintenance or conflict with the OBA. Also, local governments' costs for training staff on plover protection and preparation of annual reports are not eligible for reimbursement under the State Beach Cleaning and Maintenance Assistance Program.

Our Response: As noted above, there are no restrictions due to critical habitat alone, but rather recommendations in cases where Federal funding or permitting exists. Municipalities have no requirements to train staff, monitor piping plovers, or prepare annual monitoring reports based on the designation of piping plover critical habitat.

(11) *Comment:* The GLO commented that there may be areas of conflict between the OBA or private use and designated critical habitat such as: Preventing fill in sand flats, preventing planting of vegetation in sand flats, and placing fences to exclude beach access.

Our Response: Designation of critical habitat does not prohibit or require any of these activities. If activities in critical habitat areas are federally funded or permitted, such as some filling or planting activities, they would require consultation under section 7, in order for the federal funding or permit to be issued. Our August 27, 2008, guidance on section 7 consultations on critical habitat recommends not filling in sandflats, but designation of critical habitat will likely affect such filling only if a federal action agency determines that the filling would result in a federal action destroying or adversely modifying critical habitat.

Fencing is addressed in our economic analysis only with respect to minimizing the effects of residential development adjacent to designated critical habitat. Fencing would not prevent access to the beach, but only exclude access to it from the area under development.

(12) *Comment:* The GLO commented that further details are needed on how the Service plans to define ''harassment'' under the Endangered Species Act, as it applies to recreational beach activities like vehicle driving, pedestrian usage, and pet restrictions.

Our Response: The Act prohibits ''harassment'' of listed species. The Service's regulations define ''harassment'' as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering. For example, harassment in the form of disturbance from the increased use of vehicles, pedestrians, or pets may include noise and increased activity that may flush a bird from the habitat it uses to feed. The bird's inability to feed may lead to poor body condition. Additionally, flushing a bird from an area where it is sheltering may cause that bird to become more susceptible to predation. If any of the activities of concern (vehicular use, pedestrian use, or the presence of dogs on the beach) cause significant disruptions of normal behavior patterns, then such actions could meet the definition of harassment.

(13) *Comment:* The GLO noted that some possible areas for exclusion may be the Willacy County portion of Unit TX–3A, the Kleberg County portion of TX–3D, Unit TX–16, TX–22, TX–32, TX–10(A), and also the critical habitat in the Mollie Beattie Coastal Habitat Community in Unit TX–06.

Our Response: We have reviewed the areas identified above in the GLO's comment. We considered excluding areas based on specific protection plans being in place for the piping plover and its wintering habitat. We appreciate that the Coastal Barrier Resources Act (CBRA) and the OBA offer protection to the Willacy County portion of TX–3A by discouraging future development. The GLO-managed land in the Kleberg County portion of TX–3D is also CBRA protected and GLO protected and managed, with deed restrictions to prevent additional development. Also, we understand that the nonprofit organization, The Nature Conservancy, is to buy this property from GLO and transfer it to the Padre Island National Seashore. Shamrock Island, Unit TX–10(A), is owned by The Nature Conservancy. Units TX–16, TX–22, and TX–32 also all have CBRA protection and limited access because of their remote locations without roads or connections to the mainland. These authorities may provide some habitat protection, but none of these plans specifically target piping plover protection for those areas. The Mollie Beattie Coastal Habitat Community is in Unit TX–06 and was not vacated and, therefore, was not reconsidered for designation in this rule. We gratefully acknowledge the efforts of the GLO, Texas Parks and Wildlife Department, Coastal Bend Bays and Estuary Program, Coastal Conservation Association, Texas A&M University—Corpus Christi Center for Coastal Studies, and the Saltwater—Fisheries Enhancement Association for efforts in conservation of piping plover and other coastal resources at the 1100-ac Mollie Beattie preserve.

Public Comments

In addition to the comments from the Texas General Land Office, we received substantive comments from one individual and from two organizations, the Center for Biological Diversity and the Gulf Coast Bird Observatory. Comments are grouped into general issues relating to the proposed critical habitat designation for the wintering piping plover and are addressed below.

(1) *Comment:* The Center for Biological Diversity supports designation of critical habitat for the piping plover in Texas and elsewhere and believes the current proposal should be expanded to include additional currently unoccupied habitat so that plovers and their habitats can move and adapt to changing climate conditions and rising sea levels.

Our Response: Climate conditions are discussed in the Environmental Assessment for the rule. Climate change may cause changes in the arrangement of suitable habitat patches. We also believe the Texas coast may experience high rates of sea-level rise as well as increases in the frequency and intensity of storms. However, the information currently available on the effects of climate change does not make sufficiently accurate estimates of the location and magnitude of the effects, so we are unable to determine what additional areas would be needed, nor

where they would be located. We believe the critical habitat designated includes the areas that meet the definition of occupied critical habitat, and based on the best scientific and commercial data available, we have determined that the addition of unoccupied areas in Texas is not essential for the conservation of the species. This is discussed further in the *Criteria Used To Identify Critical Habitat* section below. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas we may later (with the benefit of additional information) determine are necessary for the recovery of the species. For this reason, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not promote the recovery of the species.

(2) *Comment:* The Service does not account for the destructive nature of off-road vehicle (ORV) use in plover habitat, as these can significantly reduce the overall abundance and diversity of benthic food items for the birds. The commenter cites a study of the reduction in abundance and diversity of benthic species conducted in Australia, where the beach received an average of 727 vehicles per day.

Our Response: We do not have evidence that South Texas beaches are receiving these levels of use, and data are not available regarding effects on benthic species for Texas beaches used by piping plovers. Our decision to designate critical habitat must be based on the best available data and the conclusions we can draw from it. We are aware of possible effects, and we review projects or situations on a case-by-case basis for data and indications of diminished or damaged food sources that might harm wintering plovers.

(3) *Comment:* The proposal to exclude National Wildlife Refuge lands is inappropriate.

Our Response: We considered whether to propose to exclude National Wildlife Refuge lands under section 4(b)(2) of the Act and have determined that we will not exclude them. The Refuge lands are included in the critical habitat designation.

(4) *Comment:* The Service needs to explain the difference in the size of the units designated in 2009 versus the same units described back in 2001.

Our Response: The units changed in size with removal of areas that do not contain PCE's, based on National Wetlands Inventory data, and they also changed in size due to shifts in coastal habitat patches since the 2001 mapping. This is explained in greater detail below in the *Criteria Used To Identify Critical Habitat* section.

(5) *Comment:* The Gulf Coast Bird Observatory is completing a 1–year study of the piping plover on the upper Texas coast that includes critical habitat Units TX–27, TX–28, TX–31, TX–32, and TX–33. The Gulf Coast Bird Observatory submitted piping plover sighting data and believes resizing some of these critical habitat units may affect the birds. Additionally, they are concerned that the Service may delete TX–29, TX–30, TX–34, TX–35, TX–36, TX–37 based on maps from *http://criticalhabitat.fws.gov*.

Our Response: We appreciate the plover sighting survey data and information from on-site field investigations showing bird usage and human threats. Units TX–29, TX–30, TX–34, TX–35, TX–36, and TX–37 remain as critical habitat and were not vacated by the settlement agreement, so they are not a subject of this revised designation. We reviewed the map viewer version of the map for the plover at *http://criticalhabitat.fws.gov*, and found the currently designated units in Texas to be correct as they were mapped for the original 2001 designation. The 19 units that were vacated by the court do not show. Following this revised designation, the map at *http://criticalhabitat.fws.gov* will be updated to reflect this designation.

Comments Related to the Draft Economic Analysis (DEA)

(1) *Comment:* One commenter states that the DEA must analyze and calculate all of the benefits of designating critical habitat. Since critical habitat contributes to the survival and recovery of the species, the economic analysis needs to consider the benefits of these contributions.

Our Response: The Service considers the designation of critical habitat to be of high benefit to the species by affording opportunities for conservation. In general, we may only exclude areas that meet the definition of critical habitat when the benefits of exclusion outweigh the benefits of designation, and the effect of the exclusion would not result in extinction of the species. The Secretary must consider economic and other relevant impacts as part of the final decision-making process under section 4(b)(2) of the Act. The Act also states that its purpose is to conserve threatened and endangered species and the ecosystems upon which they depend. The non-economic related benefits of designation are appropriately considered in the balancing portion of a 4(b)(2) exclusion analysis.

(2) *Comment:* One commenter states that previous economic analyses have overestimated the costs of the designation of critical habitat by ascribing coextensive costs to critical habitat. The commenter goes on to state that the Service must separate out all costs in the economic analysis that are attributable to listing alone, required by biological opinions, habitat conservation plans, state laws, or other regulatory measures, and that the costs associated with critical habitat must be considered alone.

Our Response: This economic analysis considers the costs associated with critical habitat separate from those likely to occur under the baseline, to the extent possible. Specifically, the economic 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 piping plover; for example, under the Federal listing and other Federal, State, and local regulations. The ''with critical habitat'' scenario includes the incremental impacts associated specifically with the designation of critical habitat for the species (since all of the potential economic impacts associated with the designation of critical habitat are considered incremental). The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the piping plover. These impacts are summarized in the Executive Summary under ''Summary of Incremental Impacts and Exhibit ES–4.''

(3) *Comment:* One public commenter states that higher exploration and development costs associated with oil and gas operations in coastal and marine environments, combined with time delays, regulatory uncertainty, and stigma associated with critical habitat could result in industry avoidance of critical habitat areas. Thus, critical habitat represents a functional condemnation of the State's mineral estate.

Our Response: Section 3.6.3 of the FEA acknowledges that increased impact minimization costs for oil and gas activities could lead to some voluntary avoidance of critical habitat areas by industry due to perceived limitations. However, these are not real limitations except in the very unlikely event that there is a federal action that would adversely modify or destroy the critical habitat. So the likelihood of this potential avoidance behavior is not known. The economic impacts of avoiding critical habitat areas could vary from no impacts, if a known

resource can be tapped without directional drilling from outside the critical habitat, to appreciable impacts (i.e., $125,000 to $520,000 per year), if the resource can only be accessed from within critical habitat areas, or if data that would have been gathered during a seismic survey fails to locate a resource that otherwise would have been found. The FEA assumes that restrictions on proposed drilling activities within critical habitat areas will result in use of suboptimal drilling locations that require directional drilling to access the resource. The FEA assumes that seismic exploration activities would be modified to avoid impacts related to driving in habitat areas.

(4) *Comment:* One commenter states that the assumption made in the DEA that the geographic distribution of seismic survey and drilling effort in the past is indicative of future activities is invalid based upon current trends. First, there is a trend towards unconventional reservoirs, such as shales, which are currently the focus of much activity within the oil and gas sector in the mid-continental U.S. Second, mid-depth, deep-depth, and ultra-deep depth development have not been fully explored. With these deeper depths to be evaluated it is unrealistic to believe that there will be a ''constant rate of well drilling over the next 20 years.'' Third, seismic imaging of the transition zone (the shallow water area near shorelines) only began recently—prior to this development the transition zone was under explored. Just because an area was surveyed several times between 1989 and 2007 does not mean that with continued improvements in seismic imaging that it will not be resurveyed in the next 20 years.

Our Response: Section 3 of the FEA highlights that ''the primary source of uncertainty in this analysis is the potential number and location of future seismic survey efforts and drilling sites.'' As the FEA and the commenter point out, and as confirmed by two academic experts in this field, specific projections of the future location and number of future seismic surveys and drilling sites are not available for critical habitat areas. As such, past data for this area, covering a 19-year span, was used to project future rates of drilling activity over the next 20 years. Although the drilling data suggests some increase in activity in the past three years of the study period, it is not clear that these years alone represent the likely future rate of drilling, particularly when taking into account the changing economic climate. As such, the analysis draws on data from a longer time period to capture what may be a more representative sample of data. Similarly, assumptions about the rate of seismic surveys draw from the past ten years of data (1998–2007). In both cases, however, a high level of uncertainty remains regarding the level of future surveying and drilling activity in critical habitat areas. In response to these public comments, Section 3.2 of the analysis has been revised to specifically acknowledge that contributing factors to the uncertainty surrounding the potential number and location of future seismic survey efforts and drilling sites within critical habitat areas include changes in the rate of oil and gas development activities, including exploration of new areas and depths.

(5) *Comment:* One commenter states that restrictions on and modifications of the shot point and receiver arrays for seismic surveys on or near the critical habitat designation will decrease fold and negatively impact the data acquired, even to the point that it is useless for evaluation of the subsurface. Further, gaps in an array caused by the exclusion of areas within the array reduce data quality not only within the excluded area but extend on each side for about the width of the excluded area, depending upon the depth being imaged. Therefore, the impacts to oil and gas exploration will affect areas many times larger than the critical habitat designation alone, and thereby will have an affect many times greater annually than the dollar amount estimated.

Our Response: As stated in section 3.3.4 of the FEA, the Service states that, in the future, it is more likely to recommend a series of project modifications for work within critical habitat than it is to recommend avoidance of the habitat areas altogether. The project modifications identified as likely to be recommended by the Service are summarized in Exhibit 3–7 of the FEA, and do not include avoiding surveying critical habitat areas. Therefore, the current estimates of likely impacts to surveying activities remain unchanged from the DEA.

(6) *Comment:* One commenter states that the DEA attempts to marginalize the Gulf Coast by stating that the ''largest concentration of oil reserves in Texas are found in West Texas, while the largest deposits of natural gas are found in the northeastern part of the State. Neither of these concentrations lies near proposed critical habitat for the piping plovers''.

Our Response: Section 3.3.2 of the FEA intends to provide context for understanding the importance of the Gulf Coast oil and gas development by providing information on production in other parts of Texas. The section FEA also states: ''The Gulf Coast Region, where critical habitat for the plover is located, produces a significant amount of oil and gas, with 15,484 active oil and 20,218 active gas wells operating in the nine counties that contain critical habitat. Gulf Coast wells comprise 22 percent and 10 percent of Texas wells, respectively''.

(7) *Comment:* One commenter states that the Texas General Land Office has leased significant amounts of acreage in the past several years that have not experienced extensive oil and gas activity in the past 18 years. Exploration and development of these lands will likely require access to areas proposed for critical habitat designation. The commenter states that, in many cases, potential environmental impacts are lessened by locating drilling and production equipment onshore for wells that are directionally drilled to a location underlying state waters, eliminating the need for access channels.

Our Response: The extent to which future drilling in critical habitat areas may occur in order to access resources located in offshore state waters is not known. As stated in earlier, specific projections of the future location and number of future drilling sites are not available for critical habitat areas. As such, the FEA uses past drilling data for this area to project future rates of well drilling in critical habitat areas. To the extent that directionally drilling from critical habitat areas to offsite areas did not occur in the past, but will occur in the future, this activity would be underrepresented in our data and projections, and could result in an underestimate of the number of expected drilling sites in critical habitat. A caveat has been added to the analysis to this effect.

(8) *Comment:* One commenter states that insufficient details were provided in the DEA to determine if the new proposed restrictions to beach maintenance activities (specifically, minimizing beach driving from August to March and specifications for the size and placement of driving lanes) will increase the cost of local government maintenance or conflict with the Texas Open Beaches Act.

Our Response: The FEA does not contemplate modification of beach maintenance projects to minimize beach driving from August to March, as there is no indication that the Service would recommend this modification for these projects. While specifications for the size and placement of driving lanes have been recommended as part of an

ongoing consultation with the City of Corpus Christi on beach maintenance activities, the City has not identified costs associated with meeting this recommendation to date. As such, no additional costs associated with modifying the size and placement of driving lanes are quantified in the analysis. There has been no indication that these restrictions would lead to a denial of beach access that would conflict with the Texas Open Beaches Act.

(9) *Comment:* One commenter states that some threats to plover posed by development activities may represent conflicts with the Open Beaches Act or private use. These situations include: (1) preventing fill in sandflats that are not intertidal; the Beach/Dune regulations discourage, but do not prohibit fill in sand flats for the purpose of land development; (2) Preventing planting of vegetation in sandflats that are not intertidal; landowners who build in sandflats often construct new vegetated sand dunes to protect against storm surge; (3) Exclusion fencing that restricts beach access would potentially violate the Texas Open Beaches Act.

Our Response: To date, the Service has recommended avoidance of dredge/fill activities during peak plover use, avoidance of planting vegetation in flats habitat, and use of exclusion fencing as project modifications for several planned development projects. However, none of these projects have been constructed, for various reasons unrelated to the plover. Chapter 4 of the economic analysis acknowledges that in the future such requirements could conflict with some planned private use, which would need to be modified to fit the plover needs. Costs associated with implementing the Service's recommendations are summarized in Section 4.1.1.

(10) *Comment:* The GLO expressed the concern that the economic impacts to oil and gas industries may be high, and that we should consider excluding areas on this basis.

Our Response: Section 4(b)(2) of the Act states that the Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor. Wintering plovers in Texas include plovers that are federally endangered on their breeding grounds in the Great Lakes region, as well as plovers that are federally threatened on their breeding grounds in the northern Great Plains and along the Atlantic coast. Those in the Great Lakes region number only about 60 breeding pairs and, by being listed as endangered, are considered by the Service to be in danger of extinction. These endangered individuals spend up to 10 months of the year on the wintering grounds, thus emphasizing the importance of sufficient and suitable wintering habitat. Although they are listed as federally threatened on their wintering grounds, impacts to their wintering habitat can affect whether they return to the Great Lakes region to breed or their breeding success while there. Thus, destruction or adverse modification of wintering habitat essential to plovers that breed in the Great Lakes region may increase their risk of extinction, emphasizing the importance of conserving nonbreeding habitat and essential features for this species through designation of critical habitat. By designating critical habitat for wintering plovers in Texas, the areas designated will be provided some regulatory protections so the plovers are not forced to other areas that are not designated and may be suboptimal. In designating critical habitat, the Service must also consider the recovery needs of the species, such that the essential features and habitat that are identified, if managed, could provide for the conservation of the species.

Weighing the potential economic effects and other potential regulatory effects of designating critical habitat for the piping plover in Texas, against the unique needs of wintering grounds in Texas for those plovers whose breeding grounds are in the Great Lakes, we have determined not to exercise our discretion to exclude areas from the final designation.

Summary of Changes From Proposed Rule

In preparing the final critical habitat revised designation for the wintering population of the piping plover in Texas, we reviewed and considered public and peer reviewer comments on the May 8, 2008, proposed designation of critical habitat (73 FR 29294) and the December 9, 2008, draft economic analysis and environmental assessment (73 FR 74675). Our final designation includes 18 of the 19 vacated units, as put forward in the May 8, 2008, proposed revised designation of critical habitat for the wintering population of the piping plover in Texas (Units TX–3, TX–4, TX–7, TX–8, TX–9, TX–10, TX–14, TX–15, TX–16, TX–18, TX–19, TX–22, TX–23, TX–27, TX–28, TX–31, TX–32, and TX–33), totaling approximately 138,881 ac (56,206 ha). We are not designating critical habitat for court-vacated Unit TX–17, because it did not meet our occupancy criterion (plovers were not documented there over two wintering seasons between 1997 and 2007).

Also, in 50 CFR § 17.95(b), ''Piping Plover *(Charadrius melodus)* Wintering Habitat,'' we are revising the text at paragraph 1 differently than proposed. In the May 8, 2008 proposed designation, we referred to mud flats as ''(between annual low tide and annual high tide)'', whereas in this final rule we describe the mud flats as ''(between mean lower low water line and annual high tide)'', as explained earlier in this preamble.

Moreover, we are not revising the text of the current 50 CFR § 17.95(b), ''Piping Plover *(Charadrius melodus)* Wintering Habitat,'' paragraph 2 as proposed (which describes areas not included in the critical habitat). Instead, we are maintaining the current CFR text for that paragraph, which was set forth in the final rule of October 21, 2008 (73 FR 62839), pertaining to wintering habitat for piping plover in North Carolina. We are doing this because we believe that the text established in the North Carolina final rule is more representative of the critical habitat areas that are excluded for all the States in the wintering habitat for piping plover.

Critical Habitat

Background

Critical Habitat is defined in section 3 of the Act as:

(i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) essential to the conservation of the species, and

(b) that may require special management considerations or protection; and

(ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species.

Conservation, as defined under section 3 of the Act, means the use of all methods and procedures that are necessary to bring any endangered species or threatened species to the point at which the measures provided

under the Act are no longer necessary. Such methods and procedures may include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, regulated taking.

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 non-Federal landowners. Where a landowner seeks or 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) of the Act would apply. However, 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 that are essential to the conservation of the species, and be included only if those features may require special management consideration or protection. Critical habitat designations identify, to the extent known and using the best scientific data available, habitat areas that provide essential life cycle needs of the species (areas on which are found those physical and biological features laid out in the appropriate quantity and spatial arrangement for the conservation of the species). Under the Act and regulations at 50 CFR 424.12, we can designate critical habitat in areas outside the geographical area occupied by the species at the time it is listed only when we determine that those areas are essential for the conservation of the species and that designation limited to those areas occupied at the time of listing would be inadequate to ensure the conservation of the species.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific and commercial data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines, provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be proposed 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 critical habitat designated at a particular point in time may not include all of the habitat areas we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be required for recovery of the species.

Areas that are important to the conservation of the species, 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. Areas that support populations 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 could 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 new information available at the time of these planning efforts calls for a different outcome.

Primary Constituent Elements (PCEs)

In accordance with section 3(5)(A)(i) and 4(b)(1)(A) of the Act and the regulations at 50 CFR 424.12, in determining which areas within the geographical area occupied at the time of listing to designate as critical habitat, we consider the physical and biological features essential to the conservation of the species where it winters to be the primary constituent elements (PCEs) laid out in the appropriate quantity and spatial arrangement for the conservation of the species, and which may require special management considerations or protection. These 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) Habitats that are protected from disturbance or are representative of the historic, geographical, and ecological distributions of a species.

Data concerning the wintering population of the piping plover found along the Texas Gulf Coast indicate that wintering piping plovers are found on islands along the Texas Gulf Coast as well as on certain areas of the mainland. These islands, known as barrier islands, form barriers to the direct action of the ocean tides on the Texas mainland. These barrier islands parallel much of the Texas coast, forming bays between the islands and the mainland. The ocean side of the barrier islands and the areas of the unprotected mainland are directly exposed to the wave action of the Gulf of Mexico, causing them to regularly erode and accrete. The coastal systems along the bays of the barrier islands and the mainland are less dynamic because they are not directly exposed to the wave action of the Gulf of Mexico.

We derive the specific PCEs required for the wintering population of the piping plover from the biological needs of the wintering population of the piping plover. Behavioral observations of piping plovers on the wintering grounds suggest that they spend the majority of their time foraging (Johnson and Baldassarre 1988, p. 217; Drake

1999, pp. 9–12). Primary prey for wintering plovers includes polychaete marine worms, various crustaceans, insects, and occasionally bivalve mollusks (Zonick and Ryan 1996, p. 26), which they peck from on top or just beneath the surface of moist or wet sand, mud, or fine shell. In some cases, this substrate may be covered by a mat of blue-green algae. When not foraging, plovers undertake various maintenance activities, including roosting, preening, bathing, aggressive encounters (with other piping plovers and other species), and moving among available habitat locations (Zonick and Ryan 1996, p. 27; Haig and Elliott-Smith 2004). The habitats used by wintering birds include beaches, mud flats (nearly flat areas made up of mud), sand flats (nearly flat areas made up of sand), algal flats (nearly flat areas with a layer of algae growing on a moist mud or sand substrate), and washover passes (areas where breaks in the sand dunes result in an inlet). Wintering plovers are dependent on a mosaic of habitat patches, and move among these patches, depending on local weather and tidal conditions (Drake *et al.* 2001, pp. 262–263).

These biological needs and the PCEs required for the wintering population of the piping plover were originally described in the Critical Habitat section of the original rule designating critical habitat for the wintering population of the piping plover (July 10, 2001, 66 FR 36038). In *Cape Hatteras Access Preservation Alliance* v. *U.S. Dept. of the Interior*, 344 F. Supp. 2d 108 (D.D.C. 2004), the Court upheld the PCEs identified in our July 10, 2001, final rule designating critical habitat for the wintering population of the piping plover (66 FR 36038). Thus, we did not change PCEs previously identified, which remain based on the best available scientific information. They constitute the features that are essential for the conservation of wintering piping plovers along the coasts of North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, and Texas.

Under the Act and its implementing regulations, we are required to identify the known physical and biological features within the geographical area known to be occupied at the time of listing that are essential to the conservation of the piping plover and which may require special management considerations or protections. The physical and biological features are those PCEs laid out in a specific spatial arrangement to be essential to the conservation of the species. All areas designated as critical habitat for the wintering population of the piping plover are occupied, are within the species' historic geographic range, and contain sufficient PCEs to support at least one life history function.

Based on the needs and our current knowledge of the life history, biology, and ecology of the species and the requirements of the habitat to sustain the essential life history functions of the species in its wintering grounds, we have determined that wintering piping plover's PCEs are the habitat components that support foraging, roosting, and sheltering and the physical features necessary for maintaining the natural processes that support these habitat components. The primary constituent elements are:

(1) Intertidal sand beaches (including sand flats) or mud flats (between the MLLW and annual high tide) with no, or very sparse, emergent vegetation for feeding. In some cases, these flats may be covered or partially covered by a mat of blue-green algae.

(2) Unvegetated or sparsely vegetated sand, mud, or algal flats above annual high tide for roosting. Such sites may have debris or detritus and may have micro-topographic relief (less than 20 in (50 cm) above substrate surface) offering refuge from high winds and cold weather.

(3) Surf-cast algae for feeding.

(4) Sparsely vegetated backbeach, which is the beach area above mean high tide seaward of the dune line, or in cases where no dunes exist, seaward of a delineating feature such as a vegetation line, structure, or road. Backbeach is used by plovers for roosting and refuge during storms.

(5) Spits, especially sand, running into water used for foraging and roosting.

(6) Salterns, or bare sand flats in the center of mangrove ecosystems that are found above mean high water and are only irregularly flushed with sea water.

(7) Unvegetated washover areas with little or no topographic relief for feeding and roosting. Washover areas are formed and maintained by the action of hurricanes, storm surges, or other extreme wave actions.

(8) Natural conditions of sparse vegetation and little or no topographic relief mimicked in artificial habitat types (e.g., dredge spoil sites).

This final designation is designed for the conservation of the PCEs necessary to support the life history functions that were the basis for the proposal and the areas containing those PCEs in the appropriate spatial arrangement essential for the conservation of the species where it winters. Because not all life history functions require all the PCEs, not all critical habitat will contain all the PCEs.

Furthermore, because this revised critical habitat designation is only for the wintering piping plover population in Texas, we did not consider features that are essential to the conservation of the species where it breeds.

Methods

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas occupied at the time of listing that contain the physical or biological features essential to the conservation of the wintering population of the piping plover, areas unoccupied at the time of listing that are essential to the conservation of the wintering population of the piping plover, or both. We only designate areas outside the geographical area occupied by a species when a designation limited to its present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). We are not designating any areas outside the geographical area presently occupied by the species, because occupied areas are sufficient for the conservation of the species, as explained in *Criteria Used To Identify Critical Habitat,* below.

We have also reviewed available information that pertains to the habitat requirements of this species. These sources included, but were not limited to, data in reports submitted during section 7 consultations and by biologists holding section 10(a)(1)(A) recovery permits, research published in peer-reviewed articles and presented in academic theses and agency reports, and recovery plans. We conducted additional censuses to verify that there are still present occurrences at the original occurrences at time of listing (1985). To determine the most current distribution of wintering piping plovers in Texas, we evaluated these areas using wintering piping plover occurrence data from 1991, 1996, 2001, and 2006 international piping plover winter population censuses. We considered these data along with other occurrence data (including presence or absence survey data), research published in peer-reviewed articles and presented in academic theses and agency reports, and information received during the development of the July 10, 2001, designation of critical habitat for the wintering population of the piping plover (see final rule at 66 FR 36038).

To map bayside areas containing physical and biological features determined to be essential to the conservation of the species (see Primary Constituent Elements for the Wintering

Population of the Piping Plover section below), we used data on known piping plover wintering locations, 1992 National Wetlands Inventory (NWI) data (except for Unit TX–22, which had 2001 data available) fitted to 2005 NAIP aerial photographs, and regional GIS coverages that defined shorelines. Based on their NWI classification, 10 wetland habitats for the bayside areas met our definition of PCEs (see *Primary Constituent Elements* section above). Their NWI codes and brief descriptions are provided below.

- M2USN - Marine sandy coastline (beach), regularly inundated by tides.
- M2USP - Marine sandy coastline (beach), irregularly inundated by tides.
- E2AB1N - Estuarine (bayside) algal mud or sand flats, regularly inundated by tides. Algal flats are nearly flat areas with a layer of algae growing on a moist mud or sand substrate; they are otherwise devoid of vegetation.
- E2AB1P - Estuarine (bayside) algal mud or sand flats, irregularly inundated by tides.
- E2AB3M - Estuarine (bayside) grass flats of mud or sand, irregularly inundated by tides. Grass flats are flat or nearly flat areas of mud or sand with seagrass.
- E2USM - Estuarine (bayside) sandy shore (beach/sandbar), rarely exposed due to tidal fluctuation.
- E2USN - Estuarine (bayside) sandy shore (beach/sandbar), regularly inundated by tides.
- E2USP - Estuarine (bayside) sandy shore (beach/sandbar), irregularly inundated by tides.
- L1UBKhs – Impounded, artificially flooded open water dredge spoil pit, greater than 20 ac (8 ha).
- L2USKhs – Impounded, artificially flooded sandy bottom dredge spoil pit, greater than 20 ac (8 ha).

We are aware that wintering piping plovers in Texas also use a NWI wetland habitat that is classified as subtidal with rooted vascular vegetation (submerged plants with roots in the sand or mud), which is usually five or more species of seagrass. Although that habitat is classified as subtidal and appears in the NAIP aerial photographs as such, when portions of it are occasionally exposed at very low tides, wintering plovers forage in them. However, seagrass beds are usually submerged and unavailable to the plovers for foraging, so we do not consider them to be features essential to the conservation of the species (primary constituent elements).

To map the gulfside areas, we used 2005 NAIP imagery as a base from which the vegetation and water lines were digitized at a scale of 1:5,000 (using ESRI ArcMap 9.2 software) to produce polygons of critical habitat. These polygons are our best and most accurate representation of vegetation lines, MLLW, and other boundaries. The MLLW was used as the lower limit of the intertidal habitat used by wintering piping plovers. For most of the coastline we were mapping, erosion and accretion from storm events had shifted the beach and, thus, the true MLLW from what was defined by NOAA. Therefore, the MLLW lines created by NOAA were often misaligned with the shoreline in the 2005 NAIP aerial photography, and did not run approximately parallel to the beach as the MLLW generally does. The exception was with the MLLW for Unit TX–3. The NOAA-defined MLLW for that unit runs approximately parallel to the beach, following the contours of the gulf floor. We used the NOAA-defined MLLW for Unit TX–3 to estimate the true MLLW for the other areas we are designating. In that unit, we measured the average distance from the well-aligned MLLW line to the shoreline in the 2005 NAIP aerial photographs. We took measurements every 328 ft (100 m) on the NAIP photography along Unit TX–3, and averaged them. The 184-ft (56-m) average distance was then used as the estimated MLLW line that was applied in all coastal (gulfside) areas. The only NOAA tidal station located along the gulfside of the coast in the area where critical habitat is being designated measured the MLLW at 4 ft (1.2 m) below the mean tide line at that site. Using NOAA bathymetric (ocean water depth) data, we confirmed that 184 ft (56 m) distance from shore provided a reasonable estimate of that MLLW. The landward limit of the gulfside critical habitat units was usually defined by densely vegetated dunes, which do not provide habitat for piping plovers. The vegetation line in the NAIP photographs was used to delineate the landward limit in all but a few cases. We excluded one building from the boundary by mapping around it. Where narrow beach access roads have been cut through the dunes, we mapped a line across the road to connect the gulfside edge of the vegetation on either side of the road. Access roads cut in the vegetated portion of dunes are not included within the critical habitat boundaries.

In our proposed designation, we created the lines delineating areas containing the essential features by using an unadjusted high level of precision for calculating the UTMs. In preparing this final designation, we realized that this was an artificial level of precision, because of several reasons, including but not limited to the following: the aerial photographs we used in generating boundaries characteristically have distortions; we used multiple sources of reference data with varying resolutions and precisions; and the heads-up digitizing utilized either directly or during development of source data may have introduced some error during our GIS processing. In other words, the data used did not actually have the degree of detail to accurately provide information to an unadjusted high level of precision. It was our desire to eliminate an unintentionally confusing and potentially inaccurate degree of precision in our calculations. To better reflect the degree of reasonable precision available from the existing data, we applied a smoothing algorithm to the lines defining the critical habitat polygons using a 10 meter tolerance. The type of polygon smoothing/simplification that we utilized during our GIS processing applied a published algorithm (Douglas and Peucker, 1973) with enhancements and is known within the ESRI ArcMap toolset as 'POINT_REMOVE'. The process removes extraneous bends and small intrusions and extrusions from a line without destroying its essential shape. It keeps the so-called critical points that depict the essential shape of a polygon and removes all other redundant details. We therefore recalculated the UTM coordinates using the resulting smoothed polygons. Leaving the calculations and coordinates at an unaltered high level of precision would, effectively, be inaccurate, and using the smoothed polygons allows us to determine the most accurate and reasonably precise delineation of the polygons, using the best available science.

All polygons generated in our mapping process were simplified using tools in ArcGIS 9.3 software as described above. The location of each remaining UTM coordinate point was then generated for **Federal Register** publication using XTools 5.2 software. The polygon smoothing function altered the edges of polygons; in so doing, it added and deleted slivers of area in all of the units and subunits. This resulted in a slight addition of area overall, although some units lost a small amount of area, while others gained a small amount of area. The smoothing resulted in a net gain of 148 ac. The use of the smoothing algorithm with a 10-meter tolerance resulted in a 99.6 per cent overlap of the original polygons, reduced extraneous and potentially erroneous, data points by 75 per cent, and resulted in a very slight size alteration (a 0.11 per cent increase) of

the originally proposed 138,881 acres. This also allowed a greater efficiency in the production of the description of designated areas, and results in one fourth the number of coordinate pairs required to describe the polygons. We believe this provides the most accurate and reasonably precise boundaries we can, using the best scientific information available.

When determining critical habitat boundaries within this final rule, we made every effort to avoid including developed areas such as lands covered by buildings, pavement, and other structures, because such lands lack PCEs for the piping plover. The scale of the maps we prepared under the parameters for publication within the Code of Federal Regulations may not reflect the exclusion of such developed lands.

We measured the accuracy of the aerial photographs we used by gathering GPS readings at 29 locations and plotting them over the photographs to determine how close those photo points were to actual locations. The offset distance ranged from 10 to 43 ft (3 to 13 m). This information is in the GIS metadata to document the data's horizontal accuracy. This offset distance was sufficiently small that we were able to conclude we had excluded built structures. Any such lands inadvertently left inside critical habitat boundaries shown on the maps of this final rule have been excluded by text in the rule and are not designated as critical habitat. Therefore, a Federal action involving these lands will not trigger section 7 consultation with respect to critical habitat and the requirement of no adverse modification, unless the specific action would affect the physical and biological features essential for the conservation of the species in the adjacent critical habitat.

The NWI data allowed areas without PCEs to be excluded from critical habitat designation and PCEs to be delineated more precisely. Areas without PCEs appear as holes in the designated unit or subunit. The maps that are included in this rule are at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate those maps can be viewed at a finer scale so that the holes where critical habitat is not designated within a unit or subunit boundary can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*.

We included those areas within or adjacent to the 19 court-vacated units that contain essential physical or biological features along bay and gulf shorelines for which occurrence data indicate a consistent use by piping plovers, with observations over two or more wintering seasons between 1997 and 2007. We have not included the area of Allyn's Bight (court-vacated Unit TX–17), because plovers were not documented there over two wintering seasons between 1997 and 2007. While Unit TX–17 continues to have some PCEs in two small, disjunct fragments, they are no longer in sufficient qualtity nor appropriate spatial arrangement to function in providing for the needs of the species, and, therefore, this unit is not included in this revised designation. It is not suitable for critical habitat designation. Within the remaining 18 court-vacated units, we also did not include very small areas (generally less than 5 ac (2.0 ha)) and areas separated from larger polygons containing the PCEs. We are unable to now determine, but believe that when these areas were mapped in our original designation in 2001, either there were PCEs present that connected them to the larger polygons of PCEs or they were included in error because our mapping methodology was not as precise as the methodology we are using for this revised designation. Plovers were not documented in these small and disjunct areas over two wintering seasons between 1997 and 2007. In contrast, we expanded the boundaries of units to capture complete polygons of PCEs, which we believe have shifted outside the boundaries we designated originally due to storms or other natural events. The boundaries of these units have expanded slightly in these areas, but their use by plovers and their occupancy have not significantly changed. By expanding some boundaries to capture larger polygons and shrinking other boundaries to remove small and disjunct polygons, we have provided an appropriate spatial arrangement of critical habitat for the wintering population of the piping plover in Texas.

Delineating specific locations for designation as critical habitat for the wintering population of the piping plover is difficult because the coastal areas they use are constantly changing due to storm surges, flood events, and other natural geophysical alterations of beaches and shoreline. Our textual descriptions of the boundaries of each unit use reference points (such as roads or channels), latitude/longitude coordinates, the edge of a PCE (such as the edge of a sand flat or mud flat), the MLLW line, or the edge of a management unit (such as a park or municipality). Within the external boundary for each unit, the unit itself is restricted to only those areas that contain the physical and biological features needed by wintering plovers (the PCEs). Within the external boundary, those areas that do not contain the PCEs were identified and explicitly excluded in the designation by drawing internal boundary lines around them. Unit boundaries were drawn to exclude manmade structures, such as roads or cuts to allow boat traffic. However, bollards, which are small posts placed to preclude driving on the beach, are not PCEs, and we exclude them from the boundary of critical habitat, although they are too small to delete from maps at the scale of 1:5,000 that we used to delineate the critical habitat boundaries.

Special Management Considerations or Protections

When designating critical habitat, we assess whether the specific areas within the geographical area occupied by the species at the time of listing contain the features that are essential to the conservation of the species and that may require special management considerations or protections. Activities that may destroy or adversely modify critical habitat are those for which the affected critical habitat would not remain functional to serve its intended conservation role for the species. More specifically, such activities could eliminate or reduce the habitat necessary for foraging by eliminating or reducing the piping plovers' food base; destroying or removing available upland habitats necessary for protection of the birds during storms or other harsh environmental conditions; increasing the amount of vegetation to levels that make foraging or roosting habitats unsuitable; and/or increasing recreational activities to such an extent that the amount of available undisturbed foraging or roosting habitat is reduced, with direct or cumulative adverse effects to individuals and completion of their life cycles. Examples of actions that have effects on wintering piping plover habitats include, but are not limited to:

(1) Disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals;

(2) Predation, especially by falcons, hawks, coyotes, bobcats and feral cats;

(3) Beach maintenance (e.g., nourishment (adding sand) and cleaning) and stabilization efforts (e.g., construction of jetties and other hard structures).

(4) Oil and other hazardous materials spills and cleanup;

(5) Discharge of freshwater from oil and gas activities;

(6) Construction of dwellings, roads, marinas, and other structures, and associated activities including staging of materials and equipment; and/or

(7) Dredging and dredge spoil placement, and associated activities including staging of equipment and materials.

These activities may destroy or adversely modify critical habitat by:

(1) Reducing the value of a site by significantly disturbing plovers from activities such as foraging and roosting (including levels of human presence, and predators that follow human presence, significantly greater than those currently experienced);

(2) Significantly and detrimentally altering the topography of a site (such alteration may affect hydrology of an area or may render an area unsuitable for roosting);

(3) Significantly and detrimentally altering the inputs of sediments and nutrients necessary for the maintenance of beach-shaping and biologic processes that ensure appropriately configured and productive systems;

(4) Introducing significant amounts of vegetation (through changes in hydrology such as severe rutting or changes in storm or wastewater discharges);

(5) Significantly and detrimentally altering the hydrology of tidal flats;

(6) Significantly and detrimentally altering water quality, which may lead to decreased diversity or productivity of prey organisms or may have direct detrimental effects on piping plovers (as in the case of an oil spill); and

(7) Impeding natural processes that create and maintain washover passes and sparsely vegetated intertidal feeding habitats.

As described in more detail in the unit descriptions below, we find that the PCEs within each unit may require special management considerations or protection due to threats to the wintering population of the piping plover or its habitat.

Criteria Used To Identify Critical Habitat

As required by section 4(b)(1)(A) of the Act, we used the best scientific and commercial data available in determining areas that contain the features that are essential to the conservation of the wintering population of the wintering population of the piping plover. All revised critical habitat units in Texas are within areas that we have determined were occupied at the time of listing, and that contain the PCEs in the appropriate spatial arrangement needed to support life history functions essential for the conservation of the species where it winters. All units which we designate as critical habitat have occurrence data that indicate a consistent use. That is, occupancy has been documented over two or more wintering seasons, which is the same criterion used in the original 2001 designation. We used the best scientific data available in determining areas that contain the features that are essential to the conservation of the wintering population of the piping plover, as discussed in the *Methods* section above. We have not included additional unoccupied coastal areas in the designation at this time that might become occupied at some point, because we cannot predict when and where a dynamic coastline shift may occur, and whether this will result in new or different areas that will develop the PCEs, or if these areas may support plovers.

The units were delineated by compiling existing relevant spatial data of the unit descriptions described in our 2001 final rule designating critical habitat for the wintering population of the piping plover (66 FR 36038), refining the existing descriptions using our National Wetlands Inventory data, and mapping in such a manner that the units contain the PCEs (as described) and do not contain any structures or other features that are not identified as PCEs. However, bollards are excluded, but are too small to be removed digitally from our maps. To further ensure that no manmade features are included in critical habitat, bollards are expressly excluded by text in the rule and are not included for designation as critical habitat. Using the information compiled above, GIS was used to analyze and integrate the relevant data layers for the areas of interest in order to determine those areas that include PCEs. See the *Methods* section above for additional discussion of mapping techniques.

We did not designate areas that do not contain one or more of the PCEs or areas that: (1) Are highly degraded and not restorable; and (2) are small, highly fragmented, or isolated and may provide little or no long-term conservation value. We included areas containing one or more PCEs where occurrence data exist and where the area: (1) Provides a patchwork of the features essential for the conservation of the species; (2) offers dispersal capabilities or is in proximity to other wintering piping plover occurrences that would allow for survival and recolonization following major natural disturbance events (e.g., hurricanes); (3) is of sufficient size to maintain the quantity and appropriate spatial arrangement of the physical and biological features to support occurrences; and (4) is representative of the historic geographic distribution of occupied areas that will help prevent further range collapse of the species and will provide for the conservation of the species.

Within the 19 areas (Units TX–3, TX–4, TX–7, TX–8, TX–9, TX–10, TX–14, TX–15, TX–16, TX–17, TX–18, TX–19, TX–22, TX–23, TX–27, TX–28, TX–31, TX–32, and TX–33) vacated and remanded to the Service for reconsideration, we found no unoccupied areas that we determined to be essential to the conservation of the species. The 18 units in Texas we designate (TX–17 was not designated) cover a small area relative to the total area used by wintering piping plovers along the coasts of the Gulf of Mexico, Atlantic Ocean, and Caribbean islands. That total occupied wintering area is vast. In comparison, unoccupied areas along the Texas coast are relatively small. Wintering plovers in Texas exhibit strong site fidelity and small home range size (Drake *et al.* 2001, pp. 262-264). In a study of 49 radio-marked plovers on a Texas barrier island, no plovers left the study area during a 9–month study (Drake 1999, p.11). We have no information to inform us where plovers go if they are not using the areas of documented use, so we are unable to predict which areas currently unoccupied might be occupied in the future. We recognize that climate change may cause changes in the arrangement of occupied habitat patches. However, the information currently available on the effects of climate change does not make sufficiently precise estimates of the location and magnitude of the effects, so we are unable to determine what additional areas would be needed. Thus, we do not consider unoccupied areas in Texas to be essential to the conservation of the species. Therefore, we propose no areas in Texas outside the geographical area occupied by the species at the time of listing.

In the vacated Unit TX–17, the PCEs have been reduced to two small and disjunct fragments, and the unit has not been observed to have been occupied since 1997. Therefore, we do not consider this unit currently suitable for critical habitat designation.

Final Critical Habitat Designation

We are designating 18 units as revised critical habitat in Texas for the wintering population of the piping plover. The critical habitat units described below constitute our current best assessment of areas that meet the

definition of critical habitat for wintering piping plovers in Texas. We have retained the same unit and subunit numbers that were vacated by the court. Units that were not vacated and remain critical habitat are not described, and vacated Unit TX–17 is not described because we did not designate it in this revised critical habitat designation. Table 1 shows the units that are occupied, the threats requiring special management or protections, land ownership, and approximate area encompassed within each unit.

TABLE 1.—CRITICAL HABITAT UNITS FOR THE WINTERING PIPING PLOVER.

Unit	Threats to PCE's that may require special management or protections	Land Ownership	Total Acres (Hectares)
Subunit TX–3A: South Padre Island – Gulf of Mexico Shoreline	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; residential and commercial development; recreational use, including beach maintenance, human, vehicle, and domestic animal disturbance, and predation	Federal, State, County, Private	2,891 (1,170)
Subunit TX–3B: South Padre Island –Interior	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; residential and commercial development; recreational use, including human, vehicle, and domestic animal disturbance, and predation	Federal, State, Private	44,137 (17,862)
Subunit TX–3C: North Padre Island – Interior	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; recreational use, including human, vehicle, and domestic animal disturbance	State, Private	50,897 (20,597)
Subunit TX–3D: North Padre Island – Gulf of Mexico	Oil and gas activities; residential and commercial development; recreational use, including beach maintenance, human, vehicle, and domestic animal disturbance, and predation	State, Private	270 (109)
Subunit TX–3E: Mesquite Rincon	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	9,623 (3,894)
TX–4. Lower Laguna Madre Mainland	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; recreational use, including human, vehicle, and domestic animal disturbance, and predation	Federal, State, Private	17,223 (6,970)
TX–7. Newport Pass/Corpus Christi Beach	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; residential and commercial development; recreational use, including beach maintenance, human, vehicle, and domestic animal disturbance, and predation	State, Private	294 (119)
TX–8. Mustang Island Beach	Oil and gas activities; residential and commercial development; recreational use, including beach maintenance, human, vehicle, and domestic animal disturbance, and predation	State, City, Private	623 (252)

TABLE 1.—CRITICAL HABITAT UNITS FOR THE WINTERING PIPING PLOVER.—Continued

Unit	Threats to PCE's that may require special management or protections	Land Ownership	Total Acres (Hectares)
TX–9. Fish Pass Lagoons	Oil and gas activities; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	168 (68)
Subunit TX–10A: Shamrock Island	Oil and gas activities; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	12 (5)
Subunit TX–10B: Mustang Island – Unnamed sand flat	Oil and gas activities; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State	2 (1)
Subunit TX–10C: Mustang Island – Lagoon Complex	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; residential and commercial development; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	331 (134)
TX–14. East Flats	Residential and commercial development; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	591 (239)
TX–15. North Pass	Residential and commercial development; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	805 (326)
TX–16. San Jose Beach	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; recreational use, including human, vehicle, and domestic animal disturbance, and predation	Federal, State, Private	1,378 (558)
TX–18. Cedar Bayou/ Vinson Slough	Oil and gas activities; recreational use, including human, vehicle, and domestic animal disturbance, and predation	Federal, State, Private	2,465 (998)
TX–19. Matagorda Island Beach	Recreational use, including human, vehicle, and domestic animal disturbance, and predation	Federal, State	2,413 (976)
TX–22. Decros Point	Oil and gas activities; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	544 (220)
TX–23. West Matagorda Peninsula Beach	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	1,808 (732)
TX–27. East Matagorda Bay/ Matagorda Peninsula Beach West	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	905 (366)

TABLE 1.—CRITICAL HABITAT UNITS FOR THE WINTERING PIPING PLOVER.—Continued

Unit	Threats to PCE's that may require special management or protections	Land Ownership	Total Acres (Hectares)
TX–28. East Matagorda Bay/ Matagorda Peninsula Beach East	Oil and gas activities, including stockpiling materials, dredge disposal, and discharging fresh water; recreational use, including human, vehicle, and domestic animal disturbance, and predation	State, Private	481 (194)
TX–31. San Bernard NWR Beach	Recreational use, including human, vehicle, and domestic animal disturbance, and predation	Federal, State, Private	401 (162)
TX–32. Gulf Beach Between Brazos and San Bernard Rivers	Recreational use, including human, vehicle, and domestic animal disturbance, and predation	State	556 (225)
TX–33. Bryan Beach and Adjacent Beach	Recreational use, including human, vehicle, and domestic animal disturbance, and predation	State	211 (85)
Total			139,029 (56,263)

The final economic analysis identified marine construction as a potential future impact threatening wintering piping plover critical habitat, but did not identify where it would occur. This is discussed further in the *Economic Analysis* section.

We divide the 18 revised critical habitat units into 24 areas:

(1)Subunit TX–3A: South Padre Island – Gulf of Mexico Shoreline;

(2)Subunit TX–3B: South Padre Island –Interior;

(3)Subunit TX–3C: North Padre Island – Interior;

(4)Subunit TX–3D: North Padre Island – Gulf of Mexico;

(5)Subunit TX–3E: Mesquite Rincon;

(6)Unit TX–4: Lower Laguna Madre Mainland;

(7)Unit TX–7: Newport Pass/Corpus Christi Pass Beach;

(8)Unit TX–8: Mustang Island Beach;

(9)Unit TX–9: Fish Pass Lagoons;

(10)Subunit TX–10A: Shamrock Island;

(11)Subunit TX–10B: Mustang Island – Unnamed sand flat;

(12)Subunit TX–10C: Mustang Island – Lagoon Complex;

(13)Unit TX–14: East Flats;

(14)Unit TX–15: North Pass;

(15)Unit TX–16: San Jose Beach;

(16)Unit TX–18: Cedar Bayou/Vinson Slough;

(17)Unit TX–19: Matagorda Island Beach;

(18)Unit TX–22: Decros Point;

(19)Unit TX–23: West Matagorda Peninsula Beach;

(20)Unit TX–27: East Matagorda Bay/ Matagorda Peninsula Beach West;

(21)Unit TX–28: East Matagorda Bay/ Matagorda Peninsula Beach East;

(22)Unit TX–31: San Bernard NWR Beach;

(23)Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers; and

(24)Unit TX–33: Bryan Beach and Adjacent Beach.

We present brief descriptions of all units, and reasons why they meet the definition of critical habitat for the wintering population of the piping plover, below.

Unit TX–3: Padre Island

Subunit TX–3A: South Padre Island – Gulf of Mexico Shoreline. This subunit consists of 2,891 ac (1170 ha) in Cameron and Willacy Counties, Texas. It is a beach 30.0 mi (48.2 km) in length on the gulfside of South Padre Island, which is a barrier island. The subunit is located within an area bounded on the south by the southern boundary of Andy Bowie County Park, and on the north by the south jetty of Mansfield Channel, which divides North and South Padre Islands. The jetty itself is outside the boundary of the subunit. The eastern boundary is the estimated MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW), and the western boundary is the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. The vegetated dune and Park Road 100, which runs north-south along the western side of the dune, separates Subunits TX–3A and 3B. This subunit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used.

Approximately one quarter of the subunit is in Federal ownership and managed by the Service's Laguna Atascosa National Wildlife Refuge (NWR), and approximately 64 percent is in private ownership. The Service does not own the subsurface mineral rights. Ten percent is State land managed by the GLO, and a small portion at the southern end is County park land managed by Andy Bowie County Park.

Subunit TX–3A is the southernmost unit of the revised critical habitat for the wintering population of the piping plover. It was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this subunit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1), surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation

due to recreational use; and modification and loss of habitat due to beach cleaning and nourishment for recreational use. These threats are of greatest magnitude at the southern end of the subunit where housing developments are to the west of the subunit. Laguna Atascosa NWR is preparing a Comprehensive Conservation Plan (CCP) that should address the wintering population of the piping plover as well as other listed species; however a draft CCP is not yet available. At this time, we are not aware of any additional management plans that address this species in this area.

Subunit TX–3B: South Padre Island –Laguna Madre side. This bayside subunit consists of 44,137 ac (17,862 ha) in Cameron and Willacy Counties, Texas. Its southern boundary extends along the north side of an existing earthen, manmade dike running from the edge of dense dune vegetation to the Laguna Madre along latitude 26° 09' 19.00'' N. The dike is not within the boundary of the subunit. The western boundary is the western edge of the intertidal mudflats bordering the eastern shore of the lower Laguna Madre, and the northern boundary is Mansfield Channel. The eastern boundary is dense vegetation of the dunes or, if there is no dense vegetation or dune, the western boundary of Park Road 100. Within that boundary, we have excluded from critical habitat designation areas that do not contain PCEs. Those areas appear as holes in the subunit. The map that is included in this rule is at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate the map can be viewed at a finer scale so that the holes where critical habitat is not designated within the subunit boundary can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*.

Approximately 42 percent of the land is federally owned and managed by the Service's Laguna Atascosa NWR, and approximately 38 percent is State-owned and managed by the GLO. The remaining 20 percent is in private ownership along the western side of the subunit. The Service does not own the subsurface mineral rights beneath the refuge.

This subunit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover, including intertidal sand and mud flats with no or very sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand and mud flats above high tide for roosting (PCE 2), and sand spits running into the Laguna for foraging and roosting (PCE 5). This subunit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. These threats, particularly vehicle access, are of greatest magnitude at the southern portion of the subunit where roads are near or adjacent to PCE 1. Laguna Atascosa NWR is preparing a Comprehensive Conservation Plan (CCP) that should address the wintering population of the piping plover as well as other listed species; however, a draft CCP is not yet available. At this time, we are not aware of any additional management plans that address this species in this area.

Subunit TX–3C: North Padre Island – Laguna Madre side. This bayside unit consists of 50,897 ac (20,597 ha) in Kenedy and Kleberg Counties, Texas. It is along and within the Laguna Madre and extends from the western boundary of Padre Island National Seashore (PAIS) to the Gulf Intracoastal Waterway (GIWW). The northern boundary of the subunit is a line extending westward from the PAIS (at latitude 27° 4' 29.9'' N), and its southern boundary is a line extending westward from the southern boundary of PAIS along the northern edge of the Mansfield Channel. The eastern boundary of this subunit is the western boundary of PAIS when the PCEs extend as far as PAIS or the eastern edge of the sand flats where the PCEs end. The portion of the western boundary north of longitude/latitude coordinate 26°48'38.2''N, 97°28'11.6''W is the eastern edge of the GIWW, and the portion of the western boundary south of the coordinate is the western edge of the intertidal mudflats bordering the eastern shore of the Laguna Madre. Within that boundary, we have excluded from critical habitat designation areas that do not contain PCEs. Those areas appear as holes in the subunit. The map that is included in this rule is at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate the map can be viewed at a finer scale so that the holes where critical habitat is not designated within the subunit boundary can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*.

Most of the land is State-owned and managed by the GLO. A small portion is in private ownership.

This subunit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover, including intertidal sand and mud flats with sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand, or mud flats above high tide for roosting (PCE 2), and sand spits running into the Laguna for foraging and roosting (PCE 5). This subunit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7). This subunit also contains sparse vegetation and little or no topographic relief mimicked in artificial habitat types (e.g., dredge spoil sites) for feeding (PCE 8).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation due to recreational use; and modification and loss of habitat due to beach cleaning and nourishment for recreational use. At this time we are not aware of any management plans that address this species in this area.

Subunit TX–3D: North Padre Island – Gulf of Mexico. This gulfside subunit consists of 270 ac (109 ha) of beach in Kleberg County, Texas. It extends along the gulf shore of North Padre Island from the northern boundary of PAIS northward 6.2 mi (10 km) to the Nueces County line. The southern boundary is the north boundary of the northeast section of the PAIS. The subunit extends eastward to the MLLW of the Gulf of Mexico (see the *Methods* section

for our derivation of MLLW), and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This subunit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Most of the land is owned by the State and managed by the GLO. Approximately one-fifth is in private ownership.

It was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this subunit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation due to recreational use; and modification and loss of habitat due to beach cleaning and nourishment for recreational use. These threats are of greater magnitude at the north end of the subunit, where more roads provide easy access to the PCEs and the subunit is in close proximity to houses. At this time, we are not aware of any management plans that address this species in this area.

Subunit TX–3E: North Padre Island – Mesquite Rincon. This triangular bayside subunit of 9,6238 acres (3,894 hectares) lies on the western shore of the lower Laguna Madre in Kenedy County, Texas. The subunit is generally bounded by Rincon de la Soledad on the southwestern side, Mesquite Rincon on the north, and the GIWW and Rincon de San Jose on the east. The southwestern boundary is an irregular line along the PCEs between the latitude/longitude coordinate points: 26° 44' 10.5'' N, 97° 28' 04.5'' W at the southeastern point of Rincon de San Jose and 26° 50' 58.1'' N, 97° 34' 19.5'' W. The northern boundary is the line described between the latitude/longitude coordinate points: 26° 51' 24.2'' N, 97° 33' 25.8'' W and 26° 51' 24.2'' N, 97° 27' 52.7'' W. The northern portion of the eastern boundary is the western edge of the GIWW south to latitude/longitude coordinate point 26° 48' 52.7'' N, 97° 28' 12.9'' W. There the subunit curves westward and skirts a small horseshoe-shaped inlet in the Laguna Madre to the northeastern point of Rincon de San Jose at latitude/longitude coordinate point 26° 48' 43.9'' N, 97° 29' 4.7'' W. There it continues south in an irregular line along the edge of the PCEs to the southeastern point of Rincon San Jose. Within that boundary (especially the southeastern portion of the subunit and northwestern-running edge), we have excluded from critical habitat designation areas that do not contain PCEs. Those areas appear as holes in the subunit. The map that is included in this rule is at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate the map can be viewed at a finer scale so that the holes where critical habitat is not designated within the subunit boundary can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*. Most of the land is in private ownership with a small portion that is State-owned and managed by the GLO.

This subunit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand and mud flats with no or very sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand, or mud flats above high tide for roosting (PCE 2), and sand spits running into the Laguna for foraging and roosting (PCE 5). This subunit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7). This subunit also contains sparse vegetation and little or no topographic relief mimicked in artificial habitat types (e.g., dredge spoil sites) for feeding (PCE 7).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation due to recreational use; and modification and loss of habitat due to beach cleaning and nourishment for recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–4: Lower Laguna Madre Mainland

This bayside unit consists of 17,223 ac (6,970 ha) in Cameron and Willacy Counties, Texas, and lies along the western shoreline of the Lower Laguna Madre. The southern boundary is an east-west line at the northern tip of Barclay Island, approximately following latitude 26° 14' 42.2'' N. The northern boundary is an east-west line located near the northern tip of El Sauz Island, approximately 1.2 mi (1.9 km) south of the center of the city of Port Mansfield, Willacy County, Texas, and approximately following latitude 26° 32' 7.8'' N. The eastern boundary of the unit is the eastern edge of the line of dredge spoils that parallel the western side of the GIWW. The western boundary runs from southeast to northwest and is the western edge of sandy beach and mudflat habitat, approximately following the latitude/longitude coordinate points: latitude/longitude coordinate points: 26° 14' 42.45'' N, 97° 19' 32.75'' W; 26° 17' 15.54'' N, 97° 20' 47.31'' W; 26° 20' 10.17'' N, 97° 21' 10.94'' W; 26° 21' 31.54'' N, 97° 22' 48.10'' W; 26° 24' 26.64'' N, 97° 23' 53.27'' W; 26° 26' 8.55'' N, 97° 25' 13.33'' W; and 26° 32' 5.44'' N, 97° 27' 6.91'' W. Within that boundary, we have excluded from critical habitat designation areas that do not contain PCEs. Those areas appear as holes in the unit. The map that is included in this rule is at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate the map can be viewed at a finer scale so that the holes where critical habitat is not designated within the unit boundary can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*.

Approximately one-third of this unit is within the Service's Laguna Atascosa NWR. Approximately half is State-owned and managed by the GLO. The remainder is in private ownership. The Service does not own the subsurface mineral rights beneath the surface of the refuge.

This unit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains

PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover, including intertidal sand and mud flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand or mud flats above high tide for roosting (PCE 2). This unit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7). This unit also contains sparse vegetation and little or no topographic relief mimicked in artificial habitat types (e.g., dredge spoil sites) for feeding (PCE 8).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. Laguna Atascosa NWR is preparing a Comprehensive Conservation Plan (CCP) that should address the wintering population of the piping plover as well as other listed species; however, a draft CCP is not yet available. At this time, we are not aware of any additional management plans that address this species in this area.

Unit TX–7: Newport Pass/Corpus Christi Pass Beach

This unit consists of 294 ac (119 ha) in Nueces County, Texas. It is a gulfside beach unit approximately 5.1-mi (8.2-km) long. The southern boundary is the gulfward extension of Saint Bartholomew Avenue, adjacent to the north end of the seawall. The northern boundary is the edge of the south jetty of the Fish Pass Structure at Mustang Island State Park. The eastern boundary is MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW), and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dune. Packery Channel cuts the beach approximately 0.3 mi (0.5 km) north of the south boundary. The seawall, jetty, bollards, and open water of Packery Channel are not within the boundaries of the unit. This unit is in State and private ownership; the State portion is managed by the Mustang Island State Park.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains PCEs in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation due to recreational use; and modification and loss of habitat due to beach cleaning and nourishment for recreational use. Due to its close proximity to Corpus Christi, this unit receives considerable recreational use and beach cleaning and nourishment. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–8: Mustang Island Beach

This unit consists of 623 ac (252 ha) in Nueces County, Texas. It is a gulfside beach unit approximately 12.5 mi (20.1 km) long. The southern boundary is the edge of the north jetty of the Fish Pass Structure at Mustang Island State Park. The northern boundary is the south side of the Horace Calder Pier in Port Aransas, Texas. The unit is bounded on the east by the MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW)) and on the west by the dune line, where the habitat changes from lightly vegetated sandy beach to densely vegetated. The jetty and pier are not within the boundary of the unit. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. The unit is in State and private ownership, with a small municipal park owned and managed by the City of Port Aransas. The State land is managed by the GLO.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development activities; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation due to recreational use; and modification and loss of habitat due to beach cleaning and nourishment for recreational use. Due to its close proximity to Corpus Christi, this unit receives considerable recreational use and beach cleaning and nourishment. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–9: Fish Pass Lagoons

This bayside unit consists of 168 ac (68 ha) in Nueces County, Texas. This unit encompasses flats facing Corpus Christi Bay that extend 1.0 km (0.6 mi) on either side of Fish Pass. The inland boundary is a line of dense vegetation, and the bayside boundary is the northeast edge of the tidal sand flats that are a PCE. This unit includes all areas of habitat that contain PCEs 1, 2, 5, and 6 within the area described by a polygon with the following latitude/longitude coordinate points: 27° 42' 14.63'' N, 97° 10' 44.70'' W; 27° 41' 56.97'' N, 97° 10' 8.13'' W; 27° 41' 24.35'' N, 97° 10' 36.89'' W; 27° 41' 18.98'' N, 97° 11' 16.79'' W; 27° 41' 23.51'' N, 97° 11' 31.32'' W and 27° 42' 14.63'' N, 97° 10' 44.70'' W. Within that polygon, six moderate to large polygons from 5 to 64 ac (2 to 25 ha) each and two small polygons less than 1 ac (0.4 ha) each are PCEs and comprise the unit. Most of the unit is owned by the State and managed by the GLO. A few acres are in private ownership.

This unit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover,

including intertidal sand and/or mud flats with no or very sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand, or mud flats above high tide for roosting (PCE 2), and sand spits running into the bay for foraging and roosting (PCE 5). This unit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development activities; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats

Subunit TX–10A: Shamrock Island. This 12-ac (5-ha) island in Nueces County, Texas, was a peninsula extending off of Mustang Island in Corpus Christi Bay until erosion separated the island from the mainland. Five small polygons of sand flats from 1.1 to 6.8 ac (0.4 to 2.7 ha) comprise the subunit. Most of the land is State-owned and managed by the GLO; the remainder is privately owned.

This subunit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development activities; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Subunit TX–10B: Mustang Island: Unnamed sand flat. This 2-ac (1-ha) subunit in Nueces County, Texas, is a small, unnamed sand flat near the north edge of the mouth of Wilson's Cut in Corpus Christi Bay. The subunit is the western half of the island that is sand flats landward (easterly) to the western edge of tidal marsh. It is entirely State-owned and managed by the GLO.

This subunit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover, including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2), and sand spits running into the bay for foraging and roosting (PCE 5).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development activities; recreational disturbance of foraging and roosting plovers by humans and domestic animals; and increased predation due to recreational use. The location of the subunit, and the configuration of the polygons of PCEs that comprise this subunit, limit recreational access by vehicles to PCEs 1 and 2. At this time, we are not aware of any management plans that address this species in this area.

Subunit TX–10C: Mustang Island: Lagoon Complex. This 331-ac (134-ha) subunit in Nueces County, Texas, is an extensive lagoon complex that consists of 11 polygons within a larger polygon that extends 2.2 mi (3.5 km) south of Wilson's Cut in Corpus Christi Bay. The southern boundary of the larger polygon begins at the western end at latitude/longitude coordinate point 27° 43' 2,4'' N, 97° 10' 19.4'' W at the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. It follows the dune line southeast approximately 830 ft (253 m) to a road, then follows the road approximately 945 ft (288 m) to the edge of the tidal sand flat PCE. It follows the southeastern edge of the sand flat northeast to the western edge of a north-south road, where it follows the edge of the sand flat northward to the south edge of a road that runs east-west parallel to the southwestern edge of Wilson's Cut. The northern edge of the boundary is the south edge of the road or the northern extent of the sand flat when it does not reach the road. The western boundary follows the PCEs along their eastern edge at Corpus Christi Bay beginning 409 ft (125 m) southwest of the southwestern edge of Wilson's Cut to the coordinate point at the western edge of the southern boundary. A road transects the larger polygon described above, forming two polygons that exclude the road. The PCEs within the 11 polygons comprise the subunit. Within that boundaries of the 11 polygons, we have excluded from critical habitat designation areas that do not contain PCEs. Those areas appear as holes in the polygons that comprise the subunit. The map that is included in this rule is at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate the map can be viewed at a finer scale so that the holes where critical habitat is not designated within the subunit boundaries can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*. The subunit consists of private and State-owned lands.

This subunit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This subunit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2).

The PCEs in this subunit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation due to recreational use; and modification and loss of habitat due to uncontrolled recreational access and beach cleaning and stabilization efforts. Road access to the PCEs is extensive. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–14: East Flats

This bayside unit consists of 591 ac (239 ha) in Nueces County, Texas. It is an irregularly shaped intertidal sand flat south of the Corpus Christi Ship Channel. The north boundary is the northern edge of the sand flat near or adjacent to dredge spoil areas bordering

the south side of the Corpus Christi Ship Channel. The northwestern latitude/longitude coordinate is 27° 49' 54.49'' N, 97° 6' 14.28'' W, and the northeastern latitude/longitude coordinate is 27° 49' 55.29'' N, 97° 5' 12.86'' W. From there, the sand flat curves southward, and the southeastern edge of it forms a highly irregular line that ends in the southwest portion of the polygon at the eastern edge of a navigation channel from the Corpus Christi Ship Channel to Corpus Christi Bay at latitude/longitude coordinate 51.93'' N, 97° 5' 52.58'' W. The sand flat continues on the western edge of the navigation channel in a northwesterly direction to latitude/longitude coordinate 27° 49' 22.08'' N, 97° 6' 37.04'' W. It then curves northeasterly and across the cut to the northern edge at the northwest coordinate. On the east, it abuts the City of Port Aransas. There is a small marshland within the sand flat that bisects the sand flat that is not a PCE and is not included in the unit. The unit is mostly in private ownership, with a small portion of State land managed by the GLO.

This unit was occupied at the time of listing and is currently occupied. Current ocupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover, including intertidal sand and mud flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–15: North Pass

This bayside unit consists of 805 ac (326 ha) in Aransas County, Texas. The unit is bounded on the northeast by a line between latitude/longitude coordinates 27° 54' 8.70'' N, 97° 0' 36.97'' W and 27° 54' 54.53'' N, 97° 1' 18.17'' W, on the northwest and west by the edge of tidal sand flats in Aransas Bay, on the south by a line running east from coordinate 27° 53' 16.96'' N, 97° 2' 22.44'' W to unit TX–16, and on the southeast by the landward boundary of unit 16. The unit is all areas that contain the PCEs for the species within a larger area described by a polygon with the following sets of latitude/longitude coordinate points: 27° 54' 8.70'' N, 97° 0' 36.97'' W; 27° 53' 10.68'' N, 97° 1' 21.36'' W; 27° 53' 16.96'' N, 97° 2' 22.44'' W; 27° 53' 33.08'' N, 97° 2' 33.05'' W; 27° 54' 42.68'' N, 97° 2' 4.83'' W; 27° 54' 47.59'' N, 97° 1' 51.73'' W; 27° 54' 54.53'' N, 97° 1' 18.17'' W and 27° 54' 8.70'' N, 97° 0' 36.97'' W. Within that boundary, we have excluded from critical habitat designation areas that do not contain PCEs. Those areas appear as holes in the unit. The map that is included in this rule is at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate the map can be viewed at a finer scale, so that the holes where critical habitat is not designated within the unit boundary can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*.

This unit is a remnant of a hurricane washover on San Jose Island. Approximately 18 percent is State-owned and managed by the GLO; the remainder is in private ownership.

This unit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover, including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1) and unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2). This subunit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–16: San Jose Beach

This unit consists of 1,378 ac (558 ha) in Aransas County, Texas. It is a gulfside beach unit approximately 19.8 mi (31.9 km) long. The southern boundary is the edge of the north jetty of Aransas Pass. The jetty is not within the boundary of the unit. The south edge of Cedar Bayou Pass is the northern boundary. The eastern boundary is the MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW), and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. A small section is in Federal ownership and managed by the Service's Matagorda Island NWR. The Service does not own the subsurface mineral rights. Approximately half of the unit is State-owned and managed by the GLO, and nearly as much is in private ownership.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. The refuge is preparing a CCP that should address the wintering population of the piping plover as well as other listed species; however, the CCP is not yet available. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–18: Cedar Bayou/Vinson Slough

This bayside unit consists of 2,465 ac (998 ha) in Aransas County, Texas. It is a remnant of a hurricane washover area and includes the highly dynamic area of Cedar Bayou, the pass that separates San Jose Island and Matagorda Island. Beginning at the confluence of Vinson Slough and Cedar Bayou, the boundary

follows the shore of Spalding Cove to Long Reef, then continues along a line extending 2.5 miles southwest of Long Reef to the shore of San Jose Island, then along the shore of the island to the landward boundary of Unit TX–16. Within that area, the unit consists of numerous polygons of PCEs; areas that are not PCEs within the described area are not within the boundaries of the unit. Those areas appear as holes in the unit. The map that is included in this rule is at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate the map can be viewed at a finer scale so that the holes where critical habitat is not designated within the unit boundary can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*. The southern and southeastern boundary of the unit is described by a line with the following sets of latitude/longitude coordinate points: 28° 1' 21.76'' N, 96° 57' 51.24'' W; 28° 1' 12.77'' N, 96° 57' 31.18'' W; 28° 2' 3.07'' N, 96° 56' 45.84'' W; 28° 2' 15.92'' N, 96° 56' 25.10'' W; 28° 2' 30.32'' N, 96° 56' 11.97'' W; 28° 3' 15.62'' N, 96° 54' 20.01'' W; 28° 3' 58.58'' N, 96° 53' 24.65'' W; 28° 4' 1.15'' N, 96° 52' 14.65'' W; 28° 3' 31.74'' N, 96° 51' 38.29'' W and 28° 3' 17.69'' N, 96° 51' 38.47'' W. The specific northern boundary is described by a line with the following sets of latitude/longitude coordinate points: 28° 5' 44.24'' N, 96° 54' 8.16'' W; 28° 5' 13.23'' N, 96° 52' 44.85'' W; 28° 4' 33.99'' N, 96° 50' 46.55'' W; 28° 4' 38.92'' N, 96° 50' 40.79'' W and 28° 4' 22.98'' N, 96° 50' 22.94'' W. The eastern boundary at the northeastern end of the unit is units TX–16 and TX–19 on the gulfside. The western boundary is the western edge of tidal sand flats in Aransas Bay.

This area includes a small section of federally owned land managed by the Service's Matagorda Island NWR and a small section of State-owned land. The remaining area is privately owned. The Service does not own the subsurface mineral rights beneath the NWR.

This unit was occupied at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. This unit contains PCEs in the appropriate spatial arrangement essential to the conservation of the piping plover including intertidal sand flats with no or very sparse emergent vegetation for feeding (PCE 1), unvegetated or sparsely vegetated sand flats above high tide for roosting (PCE 2), and sand spits running into the bay for foraging and roosting (PCE 5). This unit also includes unvegetated washover areas with little or no topographic relief for feeding and roosting (PCE 7).

The PCEs in this unit may require special management considerations or protections to ameliorate the threats oil and gas exploration and development activities; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation due to recreational use. Vehicle use of the unit may be limited somewhat by accessibility. The refuge is preparing a CCP that should address the wintering population of the piping plover as well as other listed species; however, the CCP is not yet available. At this time, we are not aware of any additional management plans that address this species in this area.

Unit TX–19: Matagorda Island Beach

This unit consists of 2,413 ac (976 ha) in Calhoun County, Texas. It is a gulfside beach unit approximately 37.1 mi (59.7 km) long. The southern boundary is the northern edge of Cedar Bayou Pass, and the northern boundary is the southern edge of Pass Cavallo. At Pass Cavallo, the unit curves from the eastern gulfside passing between the south edge of the pass and the north edge of the dunes to a small area on the bayside. The eastern boundary is the MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW), and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. The federally owned land in this unit is managed by the Service's Matagorda Island NWR, which does not own the subsurface mineral rights. This unit also includes a small section of land in State ownership.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; increased predation due to recreational use; and access by refuge staff and others for sea turtle monitoring efforts. The refuge is preparing a CCP that should address the wintering population of the piping plover as well as other listed species; however, a CCP is not yet available. At this time, we are not aware of any additional management plans that address this species in this area.

Unit TX–22: Decros Point

This unit consists of 544 ac (220 ha) at the Matagorda/Calhoun County line, in Texas. It is a gulfside beach unit approximately 4.8 mi (7.7 km) long that wraps around to the bayside. This unit was originally the southern tip of the Matagorda Peninsula. It was made into an island by the dredging of the Matagorda Ship Channel, the edge of which is the northern boundary of the unit. The unit is horseshoe in shape with the east side along the Gulf of Mexico and the west side along Matagorda Bay; the two are connected at their southern boundary by habitat from the north edge of Pass Cavallo northward to the dune line. Densely vegetated sand dunes run north to south in the center of the horseshoe and are not within the boundary of the critical habitat because they are not a PCE. The eastern boundary is the MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW), and the western boundary is the western edge of tidal sand flats on the east side of Matagorda Bay. Within the bayside of the boundary, we have excluded from critical habitat designation areas that do not contain PCEs. Those areas appear as holes in the unit. The map that is included in this rule is at such a large scale that the holes where critical habitat is not designated do not appear in them. However, the GIS coverages that we used to generate the map can be viewed at a finer scale so that the holes where critical habitat is not designated within the unit boundary can be seen. Those GIS coverages can be accessed at *http://criticalhabitat.fws.gov*. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used.

Approximately 60 percent of the unit is in State ownership managed by the GLO. The remainder is privately owned.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy

has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach (PCE 4) for roosting and sheltering.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development activities; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. Due to a lack of road access, this unit does not receive much recreational vehicle use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–23: West Matagorda Peninsula Beach

This unit consists of 1,808 ac (732 ha) of shoreline in Matagorda County, Texas. It is a gulfside beach unit approximately 23.9 mi (38.5 km) long. The southern boundary is the northern jetty of the Matagorda Ship Channel. The northern boundary is the Old Colorado River channel. The MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW) is the eastern boundary, and the western boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Just under half of the unit is State-owned and managed by the GLO; the remainder is privately owned.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–27: East Matagorda Bay/ Matagorda Peninsula Beach West

This unit consists of 905 ac (366 ha) of shoreline in Matagorda County, Texas. It is a gulfside beach unit approximately 14.1 mi (22.8 km) long. The southwestern boundary is the northeastern edge of the Old Colorado River channel. The unit runs along the beach 14 mi (23 km) to the northeastern boundary opposite Eidelbach Flats described by a line between the latitude/longitude coordinate points: 28° 41' 2.26'' N, 95° 46' 29.04''W and 28° 41' 6.74'' N, 95° 46' 32.46'' W. The southeastern boundary is the MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW). The northwestern boundary runs along the dune line, where the habitat changes from lightly vegetated sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Just over half of the unit is State-owned and managed by the GLO; the remainder is privately owned.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–28: East Matagorda Bay/ Matagorda Peninsula Beach East

This gulfside unit consists of 481 ac (194 ha) in Matagorda County, Texas. It extends along the Gulf beach southwest and northeast of Brown Cedar Cut. The cut is not within the boundary of the unit. This unit abuts portions of the southeastern edges of units TX–29 and TX–30, which are on the East Matagorda Bay side. The southwestern boundary is approximately 4 mi (6.5 km) southwest of Brown Cedar Cut at a line described by the following sets of latitude/ longitude coordinate points: 28° 43' 11.91''N, 95° 42' 25.47''W and 28° 43' 17.09''N, 95° 42' 28.56''W. The northeastern boundary is approximately 2.8 mi (4.5 km) northeast of Brown Cedar Cut to the point where Texas Farm to Market Road 457 intersects the beach. The southeastern boundary is the MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW). The northwestern boundary runs along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat boundaries, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Approximately one-third is in State ownership and managed by the GLO; the remaining two-thirds is privately owned.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and

discharging fresh water across unvegetated tidal flats; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–31: San Bernard NWR Beach

This gulfside unit consists of 401 ac (162 ha) in Matagorda and Brazoria Counties, Texas. It is a 6.2-mi (10-km) segment of beach on the Gulf of Mexico near the mouth of the San Bernard River. The northeastern boundary is at the southwestern edge of the mouth of the San Bernard River. The southwestern boundary follows a line described by the following sets of latitude/longitude coordinate points: 28° 47' 54.39'' N, 95° 33' 26.21'' W, and 28° 47' 57.69'' N, 95° 33' 27.75'' W. The southeastern boundary is the MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW). The northwestern boundary runs along the dune line, where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. There is a cut through the beach from the Gulf of Mexico to a lake 3.5 mi (5.6 km) southwest of the San Bernard River, which is not within the unit. Bollards also are not within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. Approximately 30 percent of this unit is in Federal ownership and managed by the Service's San Bernard NWR, which does not own the subsurface mineral rights. Approximately 48 percent is State-owned and managed by the GLO with the remaining area in private ownership.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of oil and gas exploration and development, including stockpiling materials on sand flats or disposing of dredged material on them, and discharging fresh water across unvegetated tidal flats; activities associated with residential and commercial development; recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. The federally owned portion has pedestrian recreational access, but no vehicle access. The refuge is preparing a CCP that should address the wintering population of the piping plover as well as other listed species; however, a CCP is not yet available. At this time, we are not aware of any additional management plans that address this species in this area.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers

This gulfside unit consists of 556 ac (225 ha) of shoreline in Brazoria County, Texas. This unit is a 6.1-mi (9.8-km) segment of beach on the Gulf of Mexico between the mouths of the San Bernard and Brazos Rivers. The southwestern boundary is the northeastern edge of the mouth of the San Bernard River. The northeastern boundary is the western edge of the mouth of the Brazos River. The southeastern boundary is the MLLW of the Gulf of Mexico (see the *Methods* section for our derivation of MLLW). The northwestern boundary runs along the dune line, where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. It is entirely in State ownership and managed by the GLO.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of recreational disturbance of foraging and roosting plovers by humans and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Unit TX–33: Bryan Beach and Adjacent Beach

This unit consists of 211 ac (85 ha) in Brazoria County, Texas. It is gulfside beach approximately 3.5 mi (5.7 km) in length on the Gulf of Mexico near the mouth of the Brazos River. The southwestern boundary is the northeastern edge of the Brazos River. The northeastern boundary is Farm-to-Market Road 1495 (Bryan Beach Rd). The southeastern boundary is the MLLW (see the *Methods* section for our derivation of MLLW). The northwestern boundary follows along the dune line where the habitat changes from lightly vegetated, sandy beach to densely vegetated dunes. This unit does not include bollards within the critical habitat designation, although they may be present within the described area because they are too small to be detected with the mapping methodology used. The unit is entirely in State ownership and managed by the Texas Department of Parks and Wildlife.

The unit was occupied by piping plovers at the time of listing and is currently occupied. Current occupancy has been confirmed by species experts at least 2 years out of the last 10 years. Habitat in this unit contains features in the appropriate spatial arrangement that are essential to the conservation of the wintering population of the piping plover, including sand flats with little or no emergent vegetation (PCE 1) and surf-cast algae (PCE 3) for feeding, and unvegetated or sparsely vegetated sandy backbeach and washovers (PCEs 4 and 7) for roosting, sheltering, and feeding.

The PCEs in this unit may require special management considerations or protections to ameliorate the threats of recreational disturbance of foraging and roosting plovers by humans, vehicles, and domestic animals; and increased predation due to recreational use. At this time, we are not aware of any management plans that address this species in this area.

Effects of Critical Habitat Designation

Section 7 Consultation

Section 7 of the Act requires Federal agencies, including the Service, to ensure that actions they fund, authorize, or carry out are not likely to destroy or adversely modify critical habitat. Decisions by the 5th and 9th Circuit Courts 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, 442 (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 the agency's discretionary involvement or control is authorized by law). Consequently, Federal agencies may sometimes need to request reinitiation of consultation with us on actions for which formal consultation has been completed, if those actions with discretionary involvement or control may affect subsequently listed species or designated critical habitat.

Federal activities that may affect the wintering population of the piping plover or its designated critical habitat will require consultation under section 7(a)(2) of 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(a)(1)(B) 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 subject to the section 7(a)(2) consultation process. Federal actions not affecting listed species or critical habitat, and actions on State, tribal, local or private lands that are not federally funded, authorized, or permitted, do not require section 7(a)(2) consultations.

Application of the Adverse Modification Standard

The key factor related to the adverse modification determination is whether, with implementation of the proposed Federal action, the affected critical habitat would continue to serve its intended conservation role for the species, or retain those PCEs that relate to the ability of the area to periodically support the species. 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 the piping plover. Generally, the conservation role of piping plover critical habitat units is to support viable core area populations.

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 should result in consultation for the wintering population of the piping plover are identified in our original rule designating critical habitat published in the **Federal Register** on July 10, 2001 (66 FR 36038). These activities include, but are not limited to:

(1) Actions, such as excessive beach nourishment, that would significantly and detrimentally alter the hydrology of tidal mud and sand flats.

(2) Actions, such as filling from oil and gas activities, that would significantly and detrimentally alter the input of sediments and nutrients necessary for the maintenance of beach-shaping and biologic processes that ensure appropriately configured and productive beach systems.

(3) Actions that would introduce significant amounts of emergent vegetation (either through actions such as marsh restoration on naturally unvegetated sites, or through changes in hydrology such as severe rutting or changes in storm or wastewater discharges).

(4) Actions that would significantly and detrimentally alter the topography of a site (such alteration may affect the hydrology of an area or may render an area unsuitable for roosting).

(5) Actions that would reduce the value of a site by significantly disturbing plovers from activities such as foraging and roosting (including levels of human presence significantly greater than those currently experienced).

(6) Actions that would significantly and detrimentally alter water quality, which may lead to decreased diversity or productivity of invertebrate organisms for food or may have direct detrimental effects on piping plovers (as in the case of an oil spill).

(7) Actions, such as excessive beach nourishment, that would impede natural processes that create and maintain washover passes and sparsely vegetated intertidal feeding habitats.

We consider all of the units designated as critical habitat to contain features essential to the conservation of the wintering population of the piping plover in Texas. All units are within the geographic range of the species, all are occupied by the species and are likely to be used by the wintering population of the piping plover. Under section 7 of the Act, Federal agencies already

consult with us on activities in areas currently occupied by the piping plover, or if the species may be affected by the action, the consultation is to ensure that their actions do not jeopardize the continued existence of the piping plover.

Exemptions

Application of Section 4(a)(3) of the Act

The Sikes Act Improvement Act of 1997 (Sikes Act) (16 U.S.C. 670a) required each military installation that includes land and water suitable for the conservation and management of natural resources to complete an integrated natural resource management plan (INRMP) by November 17, 2001. An INRMP integrates implementation of the military mission of the installation with stewardship of the natural resources found on the base. Each INRMP includes:

- An assessment of the ecological needs on the installation, including the need to provide for the conservation of listed species;
- A statement of goals and priorities;
- A detailed description of management actions to be implemented to provide for these ecological needs; and
- A monitoring and adaptive management plan.

Among other things, each INRMP must, to the extent appropriate and applicable, provide for fish and wildlife management; fish and wildlife habitat enhancement or modification; wetland protection, enhancement, and restoration where necessary to support fish and wildlife; and enforcement of applicable natural resource laws.

The National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136) amended the Act to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the Act (16 U.S.C. 1533(a)(3)(B)(i)) now provides: ''The Secretary shall not designate as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense, or designated for its use, that are subject to an integrated natural resources management plan prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

There are no Department of Defense lands with a completed INRMP within the proposed critical habitat designation. As a result, we are not exempting DOD lands from this designation of critical habitat.

Exclusions

Application of Section 4(b)(2) of the Act

Section 4(b)(2) of the Act states that the Secretary must designate and revise critical habitat on the basis of the best available scientific data after taking into consideration the economic impact, national security impact, and any other relevant impact of specifying any particular area as critical habitat. The Secretary may exclude an area from critical habitat if he determines that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat, unless he determines, based on the best scientific data available, that the failure to designate such area as critical habitat will result in the extinction of the species. In making that determination, the legislative history is clear that the Secretary has broad discretion regarding which factor(s) to use and how much weight to give to any factor.

Under section 4(b)(2) of the Act, we may exclude an area from designated critical habitat based on economic impacts, impacts on national security, or any other relevant impacts. In considering whether to exclude a particular area from the designation, we must identify the benefits of including the area in the designation, identify the benefits of excluding the area from the designation, and determine whether the benefits of exclusion outweigh the benefits of inclusion. If based on this analysis, we make this determination, then we can exclude the area only if such exclusion would not result in the extinction of the species.

Exclusions Based on Economic Impacts

Under section 4(b)(2) of the Act, we consider the economic impacts of specifying any particular area as critical habitat. In order to consider economic impacts, we prepared a draft economic analysis, which we made available for public review on December 9, 2008 (73 FR 74675), based on the May 20, 2008, proposed rule (73 FR 29294). We accepted comments on the draft analysis until January 8, 2009. 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 intent of the final economic analysis (FEA) is to quantify the economic impacts of all potential conservation efforts for the wintering population of the piping plover in Texas; some of these costs will likely be incurred regardless of whether we designate critical habitat (baseline). The economic impact of the final critical habitat designation is analyzed by comparing scenarios both ''with critical habitat'' and ''without critical habitat.'' The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already in place for the species (e.g., under the Federal listing and other Federal, State, and local regulations). The baseline, therefore, represents the costs incurred regardless of whether critical habitat is designated. The ''with critical habitat'' scenario describes the incremental impacts associated specifically with the designation of critical habitat for the species. The incremental conservation efforts and associated impacts are those not expected to occur absent the designation of critical habitat for the species. In other words, the incremental costs are those attributable solely to the designation of critical habitat above and beyond the baseline costs; these are the costs we consider in the final designation of critical habitat. The analysis looks retrospectively at baseline impacts incurred since the species was listed, and forecasts both baseline and incremental impacts likely to occur with the designation of critical habitat.

Consistent with the Court's order in *Cape Hatteras Access Preservation Alliance*, the FEA also estimates the foreseeable economic impacts of conservation measures associated with the revised designation of critical habitat for the wintering population of the piping plover in Texas on government agencies, private businesses, and individuals (incremental costs). The FEA addressed four main types of activities: Oil and gas development, residential and commercial development, recreation, and marine construction.

The FEA considers the economic efficiency effects that may result from the revised designation. 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 oil and gas development). It 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. The FEA measures lost economic efficiency associated with residential and commercial development and public project and activities, such as economic impacts on beach management, small

entities, and the energy industry. Decision makers can use this information to assess whether the effects of the designation might unduly burden a particular group or economic sector. Finally, the FEA looks retrospectively at costs that have been incurred since 1985 (the year of the species' listing) (50 FR 50726) and considers those costs that may occur in the 19 years following the designation of critical habitat.

The economic analysis examines activities taking place both within and adjacent to the designation. Although oil and gas development in the future are somewhat uncertain, our DEA estimates impacts based on activities that are ''reasonably foreseeable,'' including, but not limited to, activities that are currently authorized, permitted, or funded, or for which proposed plans are currently available to the public. Accordingly, the analysis bases estimates on activities that are likely to occur within a 20–year timeframe from when the proposed rule became available to the public (May 20, 2008, 73 FR 29294). The 20–year timeframe was chosen for the analysis because, as the time horizon for an economic analysis is expanded, the assumptions on which the projected number of projects and cost impacts associated with those projects are based become increasingly speculative.

The economic analysis forecasts that incremental impacts associated with the revised designation of critical habitat for the wintering population of the piping plover in Texas range from $8.5 million to $72.5 million ($573,000 to $4.87 million annualized over 20 years), assuming a 3 percent discount rate, or $6.3 million to $53.7 million ($595,000 to $5.07 million annualized), assuming a 7 percent discount rate. The majority of incremental impacts (98 percent) are anticipated to be associated with oil and gas development activities. Conservation efforts related to vehicle use for recreation would have been required in section 7 consultations absent critical habitat for the piping plover, and are therefore considered baseline impacts of critical habitat designation. The project modifications incremental to the baseline with the largest economic impacts are expected to be recommendations to avoid freshwater discharge across tidal flats and depositing fill material. Of the 18 units proposed as critical habitat, Unit TX–3 is calculated to experience the highest estimated costs, most of which is attributed to impacts to oil and gas development. Most other impacts quantified in the final economic analysis are considered baseline impacts and are not expected to be affected by the critical habitat designation.

We have evaluated the potential economic impact of the revised designation under section 4(b)(2) of the Act as identified in the final economic analysis. Based on this evaluation, we believe that there are no disproportionate economic impacts resulting in the benefits of excluding an area outweighing the benefits of including an area. Further, in weighing the potential economic effects and other potential regulatory effects of designating critical habitat for the piping plover in Texas, against the unique needs of wintering grounds in Texas for those plovers whose breeding grounds are in the Great Lakes, we have determined not to exercise our discretion to exclude areas from the final designation. (Additional discussion can be found above in *Our Response* to *Comments from States* (14) *Comment*.) Therefore, we have not excluded any areas from this revised designation of critical habitat for the wintering population of piping plover in Texas based on economic impacts.

A copy of the final economic analysis with supporting documents may be obtained by contacting the Corpus Christi Ecological Services Field Office (see **ADDRESSES**) or by downloading from the Internet at *http://www.regulations.gov* or *http://www.fws.gov/southwest/es/Library/*.

Exclusions Based on National Security Impacts

Under section 4(b)(2) of the Act, we consider whether there are lands owned or managed by the Department of Defense (DOD) where a national security impact might exist. In preparing this final rule, we have determined that the lands within the designation of critical habitat for the wintering population of piping plover in Texas are not owned or managed by the DOD, and therefore, anticipate no impact to national security. There are no areas excluded from this final designation based on impacts on national security.

Exclusions Based on Other Relevant Impacts

Under section 4(b)(2) of the Act, we consider any other relevant impacts, in addition to economic impacts and impacts on national security. We consider a number of factors including whether the landowners have developed any HCPs or other management plans for the area, or whether there are conservation partnerships that would be encouraged by designation of, or exclusion from, critical habitat. In addition, we look at any tribal issues, and consider the government-to-government relationship of the United States with tribal entities. We also consider any social impacts that might occur because of the designation.

In preparing this final rule, we have determined that there are currently no HCPs or other management plans for the wintering population of piping plover in Texas, and the final designation does not include any tribal lands or trust resources. We anticipate no impact to tribal lands, partnerships, or HCPs from this critical habitat designation. Further, given the relatively small potential economic effects and other potential regulatory effects of designating critical habitat for the piping plover in Texas, and the unique needs of wintering grounds in Texas for those plovers whose breeding grounds are in the Great Lakes, we have determined not to exercise our discretion to exclude areas from the final designation. (Additional discussion can be found above in *Our Response* to *Comments from States* (14) *Comment*.) There are no areas excluded from this final designation based on other relevant impacts.

Required Determinations

Regulatory Planning and Review—Executive Order 12866

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) of 1996), whenever an agency must publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small

entities (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. SBREFA amended RFA to require Federal agencies to provide a 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 the wintering population of the piping plover 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; small governmental jurisdictions, including school boards and city and town governments that serve fewer 50,000 residents; as well as small businesses. 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 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 consider the types of activities that might trigger regulatory impacts under this rule, 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 consider the number of small entities affected within particular types of economic activities (e.g., housing development, grazing, oil and gas production, timber harvesting). 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 authorized, funded, or carried out 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 if their activities may affect the species. 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).

In our FEA, we evaluated the potential economic effects on small business entities resulting from conservation actions related to the listing of the wintering population of the piping plover in Texas and the designation of critical habitat. The analysis estimated prospective economic impacts due to the implementation of wintering piping plover conservation efforts in four categories: (1) Marine construction; (2) oil and gas activities; (3) recreation; and (4) residential and commercial development.

The FEA did not anticipate that any small entities would be affected by marine construction. It found that only three small entities are involved in the oil and gas industry in the area and comprise only 2 percent of the industry there. This is not a substantial number and, therefore, not a significant impact due to critical habitat designation. There is no way of determining if these three small entities will be involved in future projects, but because they represent only a small percentage of the industry, the FEA assumed that they are unlikely to be involved.

Few impacts on small businesses serving individuals engaging in recreational beach use are anticipated from this revised critical habitat designation. Instead, the majority of the impacts due to recreational beach use will be borne by coastal cities and towns which undertake beach maintenance projects, such as beach cleaning. Those projects require a Federal permit under the Clean Water Act, which leads to section 7 consultation with respect to critical habitat. Projects are anticipated to be undertaken by the City of Port Aransas (2007 estimated population of 3,775), and the Town of South Padre Island (2007 estimated population of 2,752). Since both have populations under 50,000, they are considered small entities. The FEA estimated that over the next 20 years, the incremental impacts to each of these municipalities due to critical habitat designation will range from $61,900 to $98,400. Annually, the impacts to recreation in these municipalities will range from $5,850 to $9,290, which is not a substantial amount, and thus not a significant impact due to critical habitat designation.

The FEA anticipated piping plover conservation efforts from this revised critical habitat designation to affect small developers in the nine counties where critical habitat is being designated. Of the total number of developers engaged in single-family construction, multi-family construction, and land subdivision, 91 percent are small entities. The FEA estimates that over the next 20 years the incremental impact due to critical habitat designation will range from $150 to $5,000 per small developer. Annually, the impact will range from $10 to $337, which is a small amount, and, therefore, not considered to be a significant impact due to critical habitat designation.

In summary, we have considered whether this would result in significant economic effect on a substantial number of small entities. Based on information analyzed in the FEA, we certify that this rule will not have a significant economic impact on a substantial number of small business entities. Federal involvement, and thus section 7 consultations, would be limited to a subset of the area designated. The most likely Federal involvement could include U.S. Army Corps of Engineers permitted actions such as beach maintenance, seismic exploration, and oil and gas production. A regulatory flexibility analysis is not required.

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 final 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 Executive Order 13211: ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' 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 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, significant adverse energy-related impacts associated with wintering piping plover 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 *et seq.*), we make the following findings:

(a) This amended rule will not produce a Federal mandate. In general, a Federal mandate is a provision in legislation, statute, or regulation that would impose an enforceable duty upon State, local, or tribal governments, or the private sector and includes both ''Federal intergovernmental mandates'' and ''Federal private sector mandates.'' These terms are defined in 2 U.S.C. 658(5)(7). ''Federal intergovernmental mandate'' includes a regulation that ''would impose an enforceable duty upon State, local, or [T]ribal governments,'' with two exceptions. It excludes ''a condition of Federal assistance.'' It also excludes ''a duty arising from participation in a voluntary Federal program,'' unless the regulation ''relates to a then-existing Federal program under which $500,000,000 or more is provided annually to State, local, and 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 section 7 of the Act, the only regulatory effect is that Federal agencies must ensure that their actions do not result in the destruction or adverse modification of critical habitat. Non-Federal entities that receive Federal funding, assistance, or permits, or that otherwise require approval or authorization from a Federal agency for an action, may be indirectly impacted by the designation of critical habitat. 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 onto State governments.

(b) The FEA estimated that beach maintenance projects for recreation to be undertaken by the City of Port Aransas and the Town of South Padre Island. Annually, the costs to these small government municipalities will range from $5,850 to $9,290, which is not a substantial amount. Consequently, we do not believe that the designation of critical habitat for the wintering population of the piping plover in Texas 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 county governments. 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 designating approximately 138,881 ac (56,206 ha) of lands in Cameron, Willacy, Kenedy, Kleberg, Nueces, Aransas, Calhoun, Matagorda, and Brazoria Counties, Texas, as critical habitat for the wintering population of the piping plover in a takings implication assessment. The takings implications assessment concludes that this final designation of critical habitat does not pose significant takings implications for lands within or affected by the designation.

Federalism

In accordance with E.O. 13132 (Federalism), this 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 critical habitat designation with appropriate State resource agencies in Texas. The designation of critical habitat on lands currently occupied by the wintering population of the piping plover may impose nominal additional regulatory restrictions to those currently in place and, therefore, may have 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 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 consultations to occur).

Civil Justice Reform

In accordance with E.O. 12988 (Civil Justice Reform), the regulation meets the applicable standards set forth in 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 wintering population of the piping plover.

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

It is our position that, outside the jurisdiction of the Circuit Court of the United States for the Tenth Circuit, we do not need to prepare environmental analyses as defined by the National Environmental Policy Act (NEPA) (42 U.S.C. 4321 *et seq.*) in connection with designating critical habitat under the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This assertion was upheld by the Circuit Court of the United States for the Ninth Circuit (*Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)). However, the court ruling in *Cape Hatteras Access Preservation Alliance* v. *U.S. Department of Interior* (344 F. Supp. 2d 108 (D.D.C. 2004)) ordered us to revise the critical habitat designation for wintering piping plovers in North Carolina and to prepare an environmental analysis. To comply with that court's order, we prepared an environmental assessment for that action pursuant to NEPA, and, as an exercise of our discretion, have chosen to prepare an environmental assessment for critical habitat designation for the wintering population of the piping plover in Texas. The environmental assessment included an evaluation of the impact of the proposed designation of the 18 revised critical habitat units (Units TX–3, TX–4, TX–7, TX–8, TX–9, TX–10, TX–14, TX–15, TX–16, TX–18, TX–19, TX–22, TX–23, TX–27, TX–28, TX–31, TX–32, and TX–33) for the wintering population of the piping plover in Texas. The draft environmental assessment presented the purpose and need for critical habitat designation, the No Action and Preferred alternatives, and an evaluation of the direct, indirect, and cumulative effects of the alternatives. We notified the public of the availability of the draft environmental assessment for the proposed rule in the **Federal Register** on December 9, 2008 (73 FR 74675).

The Service has prepared a final environmental assessment and a Finding of No Significant Impact (FONSI) on the designation of these 18 units (Units TX–3, TX–4, TX–7, TX–8, TX–9, TX–10, TX–14, TX–15, TX–16, TX–18, TX–19, TX–22, TX–23, TX–27, TX–28, TX–31, TX–32, and TX–33) for the wintering population of the piping plover in Texas. Overall, the action is likely to have only a small impact on the human environment. The action does not produce a change in the existing environment, but merely seeks to maintain the natural characteristics of the barrier islands that are important for the wintering population of the piping plover in Texas. The designation of critical habitat is not likely to limit activities within the areas. The designation of critical habitat would require the Service and other Federal agencies to consider the winter habitat requirements of the piping plover when proposing actions that influence the designated units; the Texas General Land Office would be required to consider the winter habitat requirements of the piping plover only when Federal authorization or funding is part of their proposed action. However, since the areas to be designated as critical habitat are known to be used by the piping plover, as well as other federally listed species, the additional environmental analysis required by the designation of critical habitat for wintering population of the piping plover in Texas would represent only a small increase above that required by sections 7 and 9 of the Act. The final environmental assessment and FONSI are available upon request from the Field Supervisor, Corpus Christi Ecological Services Field Office (see **ADDRESSES**) or on our website at *http://www.fws.gov/southwest/es/Library/*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, ''Government-to-Government Relations with Native American Tribal Governments'' (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We have determined that there are no tribal lands occupied at the time of listing with features essential for the conservation, and no tribal lands that are essential for the conservation, of the wintering population of the piping plover in Texas. Therefore, critical habitat for the wintering population of the piping plover in Texas has not been designated on tribal lands.

References Cited

A complete list of all references cited in this rulemaking is available on the Internet at *http://www.regulations.gov* and upon request from the Field Supervisor, Corpus Christi Ecological Services Field Office (see **ADDRESSES**).

Author(s)

The primary authors of this package are the staff members of the Corpus Christi 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; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

■ 2. In § 17.95(b), amend the entry for ''Piping Plover *(Charadrius melodus)* Wintering Habitat'' as follows:

■ a. Revise the first sentence of paragraph 1(1) as set forth below;

■ b. In paragraph 3, remove the words ''*Texas* (Maps were digitized using 1995 and 1996 DOQQs and National Oceanic and Atmospheric Administration's (NOAA) Medium Resolution Digital Vector Shoreline)'' and add in their place a new header and introductory text as set forth below;

■ c. Revise the critical habitat description for Unit TX–3 as set forth below;

■ d. Revise the critical habitat description for Unit TX–4 as set forth below;
■ e. Revise the critical habitat description for Unit TX–7 as set forth below;
■ f. Revise the critical habitat description for Unit TX–8 as set forth below;
■ g. Revise the critical habitat description for Unit TX–9 as set forth below;
■ h. Revise the critical habitat description for Unit TX–10 as set forth below;
■ i. Revise the critical habitat description for Unit TX–14 as set forth below;
■ j. Revise the critical habitat description for Unit TX–15 as set forth below;
■ k. Revise the critical habitat description for Unit TX–16 as set forth below;
■ l. Remove the critical habitat description for Unit TX–17;
■ m. Revise the critical habitat description for Unit TX–18 as set forth below;
■ n. Revise the critical habitat description for Unit TX–19 as set forth below;
■ o. Revise the critical habitat description for Unit TX–22 as set forth below;
■ p. Revise the critical habitat description for Unit TX–23 as set forth below;
■ q. Revise the critical habitat description for Unit TX–27 as set forth below;
■ r. Revise the critical habitat description for Unit TX–28 as set forth below;
■ s. Revise the critical habitat description for Unit TX–31 as set forth below;
■ t. Revise the critical habitat description for Unit TX–32 as set forth below;
■ u. Revise the critical habitat description for Unit TX–33 as set forth below;
■ v. Remove the map ''Texas Units: 1, 2, 4 and southern 3'' and the map ''Texas Units: 5 and northern 3'' and add in their place one new map ''Texas Units 1 to 5'' as set forth below;
■ w. Remove the map ''Texas Units: 6 to 14'' and add in its place two new maps ''Texas Units 6 to 10 and 14'' and ''Texas Units 11 to 13'' as set forth below;
■ x. Remove the map ''Texas Units: 15 to 21'' and add in its place a new map ''Texas Units 15, 16 and 18 to 21'' as set forth below;
■ y. Remove the map ''Texas Units: 22, 23, 24, 25 and 26'' and add in its place a new map ''Texas Units 22 to 27'' as set forth below; and
■ z. Remove the map ''Texas Units: 26, 27, 28, 29 and 30'' and the map for ''Texas Units 31, 32, 33, and 34'' and add in their place a new map ''Texas Units 28 to 34'' as set forth below.

§ 17.95 Critical habitat—fish and wildlife.

* * * * *

(b) *Birds.*

* * * * *

Piping Plover (*Charadrius melodus*) Wintering Habitat

1. * * *

(1) Intertidal sand beaches (including sand flats) or mud flats (between the mean lower low water line and annual high tide) with no or very sparse emergent vegetation for feeding. * * *

* * * * *

3. * * *

Texas (Data layers defining map units 1, 2, 5, 6, 11, 12, 13, 20, 21, 24, 25, 26, 29, 30, 34, 35, 36, and 37 were digitized using 1995 and 1996 DOQQs and National Oceanic and Atmospheric Administration's (NOAA) Medium Resolution Digital Vector Shoreline. Data layers defining map units 3, 4, 7, 8, 9, 10, 14, 15, 16, 18, 19, 22, 23, 27, 28, 31, 32, and 33 were created using 1992 National Wetlands Inventory data (except for Unit TX–22, which had 2001 data available) and/or digitized using 2005 National Agriculture Imagery Program data and NOAA mean lower low water vector data).

* * * * *

Unit TX–3: Padre Island. This unit consists of five subunits:

(1) Subunit TX–3A: South Padre Island—Gulf of Mexico Shoreline: 1,170 hectares (2,891 acres) in Cameron and Willacy Counties, Texas.

(i) Unit TX–3, Subunit A, in Cameron County, Texas. Coordinates are in UTM Zone 14N North American Datum 1983 (meters E, meters N):

677316, 2921614; 677420, 2921300; 677477, 2921036; 677576, 2920752; 677587, 2920643; 677639, 2920497; 677730, 2920091; 677915, 2919428; 678126, 2918581; 678368, 2917507; 678413, 2917409; 678588, 2916617; 678758, 2916031; 679074, 2914695; 679149, 2914477; 679434, 2913339; 679449, 2913232; 679565, 2912851; 679651, 2912493; 679808, 2911764; 679987, 2911020; 680041, 2910701; 680141, 2910358; 680324, 2909490; 680408, 2909179; 680458, 2908905; 680484, 2908841; 680527, 2908625; 680552, 2908572; 680703, 2907730; 680721, 2907693; 680803, 2907240; 680895, 2906845; 680906, 2906733; 680996, 2906347; 681070, 2905861; 681196, 2905325; 681322, 2904670; 681350, 2904592; 681380, 2904382; 681413, 2904290; 681435, 2904108; 681552, 2903585; 681563, 2903476; 681729, 2902633; 681973, 2901088; 682003, 2900981; 682087, 2900472; 682464, 2897457; 682604, 2896539; 682634, 2896212; 682700, 2895830; 682880, 2894451; 682909, 2894346; 682968, 2893886; 683014, 2893686; 683098, 2892852; 683180, 2892260; 683097, 2892260; 683047, 2892488; 682998, 2892495; 682995, 2892510; 683027, 2892531; 683041, 2892592; 683027, 2892699; 683007, 2892723; 682971, 2892712; 682968, 2892722; 682999, 2892739; 683016, 2892786; 682985, 2893058; 682935, 2893060; 682934, 2893107; 682861, 2893152; 682769, 2893152; 682768, 2893221; 682883, 2893220; 682868, 2893341; 682876, 2893381; 682853, 2893557; 682804, 2893691; 682806, 2893754; 682701, 2893949; 682710, 2894040; 682740, 2894055; 682689, 2894104; 682681, 2894156; 682713, 2894193; 682726, 2894288; 682687, 2894331; 682627, 2894337; 682623, 2894365; 682728, 2894369; 682721, 2894449; 682708, 2894473; 682691, 2894464; 682690, 2894488; 682755, 2894666; 682721, 2894686; 682706, 2894773; 682643, 2894808; 682688, 2894824; 682707, 2894860; 682704, 2894904; 682637, 2894954; 682603, 2895002; 682559, 2895114; 682550, 2895203; 682672, 2895199; 682668, 2895297; 682578, 2895296; 682617, 2895448; 682574, 2895521; 682575, 2895612; 682551, 2895712; 682520, 2895722; 682522, 2895767; 682493, 2895885; 682483, 2896037; 682497, 2896084; 682454, 2896117; 682465, 2896163; 682380, 2896601; 682346, 2896608; 682227, 2897577; 682182, 2898085; 682201, 2898109; 682180, 2898259; 682201, 2898280; 682178, 2898328; 682186, 2898401; 682174, 2898430; 682231, 2898459; 682244, 2898483; 682235, 2898579; 682213, 2898593; 682185, 2898577; 682197, 2898640; 682217, 2898666; 682213, 2898767; 682176, 2898760; 682166, 2898847; 682126, 2898937; 682073, 2898932; 682066, 2898960; 682092, 2898953; 682111, 2898973; 682100, 2899003; 682118, 2899078; 682082, 2899308; 682032, 2899467; 682011, 2899621; 682025, 2899646; 682013, 2899740; 681989, 2899755; 681987, 2899797; 682021, 2899806; 682009, 2899832; 681985, 2899842; 681981, 2899913; 681935, 2899934; 681807, 2900673; 681858, 2900716; 681839, 2900788; 681864, 2900849; 681852, 2900916; 681836, 2900967; 681756, 2901060; 681717, 2901187; 681460, 2902658; 681505, 2902676; 681511, 2902716; 681434, 2902756; 681214, 2903993;

681155, 2904075; 681119, 2904071; 681012, 2904606; 681029, 2904710; 680978, 2904773; 680977, 2904828; 680896, 2905004; 680880, 2905243; 680932, 2905337; 680901, 2905436; 680924, 2905565; 680947, 2905707; 680915, 2905794; 680816, 2905965; 680846, 2906102; 680842, 2906220; 680767, 2906374; 680767, 2906423; 680804, 2906481; 680779, 2906658; 680788, 2906703; 680737, 2906768; 680667, 2906952; 680666, 2906992; 680637, 2907074; 680652, 2907167; 680696, 2907184; 680694, 2907237; 680652, 2907317; 680578, 2907558; 680544, 2907670; 680559, 2907720; 680528, 2907739; 680491, 2907864; 680442, 2907915; 680377, 2908122; 680303, 2908195; 680245, 2908202; 680225, 2908246; 680239, 2908288; 680224, 2908356; 680262, 2908544; 680236, 2908558; 680241, 2908624; 680205, 2908642; 680204, 2908680; 680263, 2908669; 680284, 2908705; 680284, 2908759; 680262, 2908811; 680173, 2908905; 680152, 2909076; 680166, 2909101; 680118, 2909145; 680068, 2909267; 680089, 2909331; 680063, 2909415; 680076, 2909447; 680059, 2909475; 680051, 2909591; 680027, 2909638; 680022, 2909735; 680005, 2909791; 680010, 2909840; 680087, 2909853; 680077, 2909974; 680049, 2910008; 680028, 2910124; 680081, 2910106; 680063, 2910178; 679976, 2910342; 679926, 2910373; 679850, 2910377; 679637, 2911203; 679584, 2911291; 679575, 2911306; 679594, 2911313; 679580, 2911343; 679587, 2911379; 679554, 2911406; 679546, 2911472; 679523, 2911497; 679500, 2911656; 679447, 2911720; 679428, 2911781; 679430, 2911820; 679449, 2911838; 679419, 2911972; 679418, 2912005; 679448, 2912044; 679430, 2912069; 679444, 2912114; 679429, 2912120; 679416, 2912125; 679404, 2912129; 679378, 2912134; 679333, 2912282; 679389, 2912300; 679436, 2912370; 679409, 2912405; 679385, 2912404; 679334, 2912489; 679323, 2912553; 679348, 2912594; 679349, 2912650; 679329, 2912674; 679303, 2912701; 679266, 2912689; 679240, 2912735; 679298, 2912774; 679366, 2912980; 679337, 2913029; 679274, 2913079; 679279, 2913096; 679310, 2913097; 679322, 2913129; 679299, 2913214; 679308, 2913226; 679300, 2913296; 679281, 2913301; 679262, 2913455; 679229, 2913506; 679230, 2913560; 679171, 2913739; 679148, 2913866; 679035, 2913910; 679014, 2913950; 678918, 2914258; 678930, 2914427; 678912, 2914449; 678818, 2914489; 678799, 2914476; 678779, 2914534; 678648, 2914626; 678647, 2914726; 678683, 2914728; 678749, 2914616; 678776, 2914596; 678862, 2914530; 678907, 2914471; 678951, 2914472; 678975, 2914538; 678919, 2914568; 678923, 2914627; 678943, 2914643; 678900, 2914740; 678860, 2914786; 678789, 2914810; 678726, 2914797; 678647, 2914746; 678642, 2915013; 678709, 2915037; 678709, 2915064; 678747, 2915105; 678767, 2915178; 678767, 2915235; 678732, 2915305; 678742, 2915344; 678710, 2915351; 678711, 2915414; 678663, 2915442; 678608, 2915441; 678586, 2915441; 678565, 2915417; 678517, 2915416; 678516, 2915531; 678585, 2915523; 678615, 2915565; 678623, 2915654; 678578, 2915669; 678574, 2915772; 678545, 2915799; 678540, 2915839; 678501, 2915893; 678498, 2915947; 678462, 2915996; 678472, 2916058; 678458, 2916100; 678485, 2916113; 678489, 2916149; 678473, 2916236; 678406, 2916274; 678401, 2916290; 678334, 2916527; 678321, 2916600; 678333, 2916633; 678321, 2916674; 678299, 2916690; 678304, 2916732; 678279, 2916818; 678259, 2916834; 678227, 2916859; 678036, 2917661; 678105, 2917700; 678133, 2917697; 678210, 2917802; 678197, 2917910; 678143, 2918074; 678048, 2918578; 677986, 2918793; 677992, 2918821; 677898, 2919216; 677865, 2919279; 677853, 2919380; 677727, 2919847; 677698, 2919914; 677606, 2920288; 677565, 2920303; 677571, 2920317; 677597, 2920317; 677475, 2920746; 677458, 2920783; 677396, 2920843; 677398, 2920906; 677353, 2920884; 677338, 2920954; 677371, 2921010; 677375, 2921085; 677284, 2921309; 677253, 2921300; 677235, 2921331; 677248, 2921413; 677236, 2921421; 677222, 2921521; 677254, 2921543; 677218, 2921575; 677193, 2921569; 677181, 2921621; 677205, 2921622; 677204, 2921639; 677144, 2921773; 677065, 2921866; 677005, 2921912; 676980, 2921957; 676947, 2921969; 676868, 2922311; 676880, 2922371; 676872, 2922412; 676896, 2922472; 676897, 2922475; 677102, 2922481; Thence returning to 677316, 2921614.

Excluding:

Unit TX–3 Subunit A, Cameron County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

675897, 2922460; 676718, 2922470; 676897, 2922475; 676896, 2922472; 676837, 2922377; 676776, 2922314; 676569, 2922172; 676466, 2922133; 676432, 2922145; 676422, 2922172; 676495, 2922208; 676488, 2922231; 676393, 2922213; 676277, 2922154; 676106, 2922206; 676075, 2922227; 675990, 2922374; Thence returning to 675897, 2922460.

675842, 2922460; 675938, 2922385; 675980, 2922268; 676037, 2922167; 676062, 2922153; 676234, 2922141; 676273, 2922087; 676323, 2922055; 676330, 2922028; 676320, 2921969; 676257, 2921890; 676221, 2921857; 676136, 2921833; 676093, 2921734; 676041, 2921668; 675958, 2921626; 675863, 2921676; 675826, 2921733; 675802, 2921806; 675798, 2921937; 675846, 2921972; 676059, 2921967; 676049, 2922021; 676024, 2922007; 675910, 2922008; 675799, 2922038; 675783, 2921989; 675732, 2921941; 675726, 2921854; 675703, 2921803; 675651, 2921772; 675572, 2921776; 675544, 2921783; 675492, 2921838; 675334, 2922069; 675325, 2922126; 675337, 2922256; 675370, 2922340; 675484, 2922385; 675626, 2922347; 675639, 2922323; 675687, 2922316; 675683, 2922387; 675625, 2922369; 675530, 2922399; 675525, 2922427; 675579, 2922437; 675583, 2922457; Thence returning to 675842, 2922460.

677065, 2921866; 677144, 2921773; 677204, 2921639; 677205, 2921622; 677181, 2921621; 677193, 2921569; 677218, 2921575; 677254, 2921543; 677222, 2921521; 677236, 2921421; 677248, 2921413; 677235, 2921331; 677253, 2921300; 677284, 2921309; 677375, 2921085; 677371, 2921010; 677338, 2920954; 677353, 2920884; 677398, 2920906; 677396, 2920843; 677458, 2920783; 677475, 2920746; 677597, 2920317; 677571, 2920317; 677565, 2920303; 677606, 2920288; 677698, 2919914; 677727, 2919847; 677853, 2919380; 677865, 2919279; 677898, 2919216; 677992, 2918821; 677986, 2918793; 678048, 2918578; 678143, 2918074; 678197, 2917910; 678210, 2917802; 678133, 2917697; 678105, 2917700; 678030, 2917774; 677989, 2917790; 677957, 2917842; 677970, 2917929; 677943, 2917993; 677962, 2918037; 677913, 2918039; 677893, 2918072; 677887, 2918111; 677921, 2918133; 677921, 2918154; 677859, 2918163; 677844, 2918182; 677847, 2918198; 677877, 2918201; 677869, 2918249; 677891, 2918292; 677824, 2918326; 677861, 2918375; 677848, 2918382; 677755, 2918349; 677637, 2918282; 677620, 2918300; 677628, 2918328; 677661, 2918337; 677630, 2918442; 677645, 2918466; 677720, 2918490; 677715, 2918533; 677742, 2918561; 677742, 2918603; 677774, 2918642; 677770, 2918676; 677719, 2918650; 677702, 2918699; 677676, 2918577; 677587, 2918524; 677535, 2918462; 677508, 2918471; 677510, 2918521; 677571, 2918614; 677593, 2918697; 677569, 2918683; 677480, 2918519; 677447, 2918535;

677415, 2918591; 677423, 2918674; 677396, 2918755; 677408, 2918799; 677440, 2918826; 677483, 2918827; 677523, 2918854; 677621, 2918830; 677598, 2918887; 677525, 2918876; 677511, 2918903; 677537, 2918955; 677586, 2918925; 677614, 2919047; 677608, 2919056; 677573, 2919034; 677571, 2919078; 677598, 2919174; 677586, 2919181; 677562, 2919137; 677548, 2919140; 677543, 2919259; 677523, 2919250; 677525, 2919100; 677504, 2919023; 677385, 2918950; 677359, 2918976; 677351, 2919023; 677335, 2919018; 677330, 2919059; 677312, 2918949; 677288, 2918940; 677214, 2919030; 677195, 2919135; 677208, 2919167; 677273, 2919206; 677293, 2919185; 677307, 2919115; 677345, 2919149; 677347, 2919213; 677379, 2919231; 677396, 2919281; 677381, 2919297; 677356, 2919267; 677340, 2919286; 677345, 2919308; 677378, 2919333; 677356, 2919407; 677342, 2919411; 677334, 2919328; 677285, 2919229; 677216, 2919207; 677192, 2919173; 677175, 2919172; 677154, 2919205; 677151, 2919242; 677168, 2919334; 677195, 2919378; 677177, 2919385; 677154, 2919370; 677133, 2919303; 677133, 2919249; 677109, 2919229; 677085, 2919300; 677000, 2919391; 676980, 2919437; 676977, 2919509; 676996, 2919597; 677062, 2919613; 677097, 2919598; 677126, 2919637; 677197, 2919663; 677189, 2919737; 677158, 2919684; 677100, 2919655; 677084, 2919661; 677064, 2919712; 677024, 2919678; 676997, 2919707; 676967, 2919698; 676952, 2919712; 676949, 2919740; 677020, 2919786; 677040, 2919867; 677070, 2919896; 677072, 2919952; 677103, 2919978; 677149, 2919978; 677204, 2920014; 677207, 2920025; 677182, 2920036; 677238, 2920056; 677275, 2920102; 677300, 2920098; 677336, 2920051; 677432, 2919992; 677471, 2920027; 677455, 2920044; 677400, 2920043; 677363, 2920070; 677356, 2920100; 677398, 2920098; 677370, 2920134; 677250, 2920123; 677217, 2920075; 677189, 2920080; 677163, 2920110; 677147, 2920170; 677177, 2920169; 677182, 2920200; 677207, 2920206; 677170, 2920235; 677134, 2920308; 677095, 2920335; 677101, 2920397; 677051, 2920401; 677037, 2920547; 677006, 2920568; 677055, 2920712; 677001, 2920662; 676952, 2920514; 676892, 2920485; 676827, 2920511; 676769, 2920393; 676687, 2920335; 676639, 2920342; 676631, 2920393; 676653, 2920447; 676675, 2920456; 676709, 2920410; 676710, 2920472; 676755, 2920515; 676742, 2920532; 676688, 2920521; 676683, 2920544; 676711, 2920552; 676734, 2920598; 676736, 2920651; 676825, 2920726; 676795, 2920737; 676736, 2920690; 676673, 2920687; 676674, 2920708; 676737, 2920744; 676716, 2920812; 676683, 2920816; 676754, 2920823; 676820, 2920773; 676868, 2920788; 676917, 2920776; 676926, 2920789; 676891, 2920819; 676817, 2920812; 676796, 2920861; 676764, 2920880; 676680, 2920850; 676607, 2920760; 676558, 2920727; 676517, 2920730; 676484, 2920762; 676371, 2920814; 676353, 2920838; 676358, 2920892; 676373, 2920933; 676400, 2920951; 676432, 2920934; 676472, 2920882; 676456, 2920802; 676485, 2920807; 676505, 2920836; 676518, 2920929; 676489, 2920944; 676496, 2921004; 676478, 2921031; 676513, 2921113; 676515, 2921173; 676495, 2921163; 676476, 2921066; 676441, 2921043; 676395, 2921043; 676306, 2921100; 676300, 2921005; 676365, 2921006; 676378, 2920987; 676337, 2920907; 676283, 2920891; 676223, 2920901; 676166, 2920941; 676135, 2920978; 676134, 2921021; 676072, 2921101; 676086, 2921164; 676235, 2921286; 676382, 2921381; 676448, 2921390; 676516, 2921625; 676600, 2921746; 676705, 2921832; 676774, 2921819; 676854, 2921900; 676980, 2921957; 677005, 2921912; 677065, 2921866; 677320, 2919502; 677342, 2919499; 677347, 2919529; 677326, 2919534; Thence returning to 677320, 2919502.

676628, 2920575; 676622, 2920538; 676592, 2920545; 676574, 2920570; 676588, 2920595; 676610, 2920596; Thence returning to 676628, 2920575.

676998, 2920436; 677019, 2920398; 676973, 2920378; 676946, 2920418; 676910, 2920423; 676894, 2920389; 676865, 2920433; 676873, 2920449; 676947, 2920457; 676990, 2920505; Thence returning to 676998, 2920436.

676962, 2920360; 676961, 2920312; 676983, 2920315; 676988, 2920273; 677036, 2920260; 677068, 2920280; 677105, 2920275; 677121, 2920220; 677125, 2920089; 677116, 2920053; 677074, 2920030; 677029, 2919953; 676907, 2919811; 676862, 2919799; 676836, 2919851; 676842, 2919898; 676899, 2919943; 676927, 2919940; 676904, 2920009; 676943, 2920057; 676976, 2920070; 676996, 2920107; 676985, 2920178; 676961, 2920198; 676950, 2920093; 676889, 2920034; 676828, 2920141; 676827, 2920172; 676846, 2920195; 676922, 2920201; 676905, 2920276; 676925, 2920287; 676906, 2920366; 676944, 2920375; Thence returning to 676962, 2920360.

676884, 2920255; 676828, 2920214; 676798, 2920238; 676774, 2920310; 676829, 2920341; Thence returning to 676884, 2920255.

676806, 2920167; 676820, 2920060; 676802, 2920050; 676779, 2920078; 676771, 2920052; 676843, 2920024; 676852, 2919980; 676843, 2919931; 676817, 2919890; 676722, 2920040; 676716, 2920088; 676736, 2920127; 676717, 2920166; 676747, 2920193; 676716, 2920225; 676725, 2920267; 676766, 2920254; Thence returning to 676806, 2920167.

674796, 2919758; 674769, 2919739; 674754, 2919768; 674763, 2919805; 674794, 2919785; Thence returning to 674796, 2919758.

674502, 2919598; 674466, 2919597; 674408, 2919704; 674424, 2919719; 674500, 2919730; 674523, 2919693; 674526, 2919651; Thence returning to 674502, 2919598.

674843, 2919519; 674816, 2919498; 674788, 2919525; 674757, 2919597; 674760, 2919647; 674787, 2919678; 674824, 2919644; 674846, 2919595; Thence returning to 674843, 2919519.

674103, 2919412; 674060, 2919387; 674026, 2919451; 674025, 2919516; 674049, 2919537; 674069, 2919531; 674103, 2919486; Thence returning to 674103, 2919412.

674392, 2919304; 674370, 2919280; 674348, 2919291; 674320, 2919336; 674330, 2919373; 674364, 2919378; 674399, 2919358; Thence returning to 674392, 2919304.

673649, 2919176; 673619, 2919168; 673588, 2919240; 673660, 2919258; 673665, 2919208; Thence returning to 673649, 2919176.

673977, 2919125; 673949, 2919090; 673917, 2919102; 673917, 2919139; 673935, 2919157; 673967, 2919157; Thence returning to 673977, 2919125.

673162, 2919009; 673159, 2918948; 673137, 2918949; 673123, 2919016; 673152, 2919023; Thence returning to 673162, 2919009.

673541, 2918884; 673514, 2918871; 673484, 2918895; 673472, 2918924; 673479, 2918953; 673559, 2918939; Thence returning to 673541, 2918884.

672938, 2918854; 672929, 2918828; 672893, 2918852; 672896, 2918914; 672926, 2918897; Thence returning to 672938, 2918854.

677390, 2918871; 677361, 2918862; 677343, 2918881; 677333, 2918915; 677342, 2918937; 677387, 2918893; Thence returning to 677390, 2918871.

672511, 2918627; 672499, 2918608; 672465, 2918613; 672452, 2918630; 672463, 2918696; 672506, 2918661; Thence returning to 672511, 2918627.

672835, 2918538; 672812, 2918538; 672798, 2918562; 672796, 2918603; 672812, 2918621; 672849, 2918576; Thence returning to 672835, 2918538.

674094, 2918377; 674057, 2918370; 673997, 2918415; 673985, 2918505; 673993, 2918537; 674012, 2918550;

674061, 2918545; 674117, 2918509; 674114, 2918403; Thence returning to 674094, 2918377.

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682449, 2894721; 682376, 2894660; 682251, 2894619; 682237, 2894638; 682249, 2894674; 682259, 2894690; 682302, 2894684; 682306, 2894703; 682289, 2894719; 682296, 2894729; Thence returning to 682449, 2894721.

(ii) Unit TX–3, Subunit A, Willacy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

672377, 2939107; 672358, 2939033; 672349, 2938817; 672371, 2938573; 672462, 2938034; 672615, 2937365; 672731, 2937001; 672904, 2936341; 672951, 2936233; 673054, 2935821; 673261, 2935201; 673393, 2934726; 673470, 2934511; 673512, 2934325; 673552, 2934246; 673790, 2933481; 673817, 2933347; 673964, 2932913; 674031, 2932607; 674274, 2931854; 674329, 2931635; 674350, 2931604; 674458, 2931184; 674555, 2930940; 674696, 2930494; 674730, 2930344; 674939, 2929739; 675106, 2929161; 675278, 2928649; 675309, 2928493; 675498, 2927859; 675626, 2927479; 675713, 2927142; 675832, 2926800; 675893, 2926536; 676043, 2926099; 676084, 2925915; 676158, 2925718; 676196, 2925519; 676285, 2925283; 676304, 2925175; 676370, 2925004; 676491, 2924560; 676608, 2924248; 676668, 2924035; 676716, 2923791; 677102, 2922481; 676897, 2922475; 676918, 2922541; 676897, 2922580; 676920, 2922628; 676885, 2922640; 676886, 2922693; 676924, 2922732; 676911, 2922766; 676888, 2922781; 676873, 2922968; 676761, 2923318; 676641, 2923450; 676658, 2923598; 676624, 2923639; 676546, 2923681; 676546, 2923714; 676572, 2923712; 676564, 2923747; 676471, 2923834; 676447, 2923920; 676409, 2923949; 676380, 2924026; 676338, 2924038; 676317, 2924071; 676300, 2924148; 676275, 2924155; 676273, 2924235; 676197, 2924264; 676189, 2924309; 676165, 2924363; 676155, 2924493; 676171, 2924561; 676152, 2924580; 676152, 2924601; 676163, 2924620; 676150, 2924652; 676102, 2924727; 676080, 2924860; 676088, 2924884; 676059, 2924966; 676031, 2924996; 676029, 2925044; 675995, 2925128; 676000, 2925172; 675970, 2925303; 675993, 2925360; 675981, 2925445; 676014, 2925477; 676061, 2925459; 676070, 2925494; 676029, 2925521; 676013, 2925565; 676002, 2925571; 676006, 2925600; 675986, 2925619; 675915, 2925612; 675855, 2925625; 675740, 2925707; 675745, 2925796; 675690, 2925916; 675681, 2926024; 675629, 2926091; 675601, 2926092; 675514, 2926299; 675509, 2926386; 675487, 2926431; 675495, 2926506; 675520, 2926542; 675535, 2926541; 675653, 2926506; 675700, 2926534; 675665, 2926668; 675602, 2926666; 675548, 2926693; 675527, 2926772; 675537, 2926824; 675569, 2926855; 675550, 2926901; 675532, 2926909; 675575, 2927027; 675531, 2927078; 675451, 2927115; 675453, 2927169; 675438, 2927208; 675425, 2927210; 675388, 2927214; 675355, 2927252; 675401, 2927267; 675421, 2927292; 675429, 2927302; 675401, 2927333; 675408, 2927367; 675451, 2927413; 675467, 2927452; 675441, 2927466; 675469, 2927484; 675444, 2927510; 675435, 2927589; 675407, 2927594; 675418, 2927645; 675377, 2927674; 675349, 2927741; 675346, 2927817; 675370, 2927850; 675274, 2927945; 675300, 2927960; 675292, 2928000; 675306, 2928025; 675297, 2928060; 675268, 2928084; 675276, 2928125; 675227, 2928195; 675239, 2928228; 675270, 2928251; 675267, 2928281; 675236, 2928298; 675208, 2928395; 675171, 2928454; 675120, 2928488; 675108, 2928526; 675080, 2928553; 675020, 2928538; 674974, 2928549; 674898, 2928593; 674841, 2928600; 674713, 2928698; 674703, 2928705; 674729, 2928796; 674711, 2928876; 674730, 2928906; 674729, 2928930; 674724, 2929000; 674694, 2929075;

674689, 2929155; 674701, 2929181; 674719, 2929190; 674713, 2929207; 674612, 2929219; 674621, 2929255; 674635, 2929272; 674696, 2929253; 674632, 2929352; 674644, 2929395; 674633, 2929418; 674628, 2929450; 674654, 2929445; 674664, 2929458; 674627, 2929521; 674634, 2929572; 674665, 2929580; 674695, 2929641; 674728, 2929632; 674757, 2929595; 674773, 2929600; 674763, 2929643; 674797, 2929671; 674815, 2929719; 674791, 2929737; 674788, 2929784; 674753, 2929818; 674679, 2929853; 674598, 2929932; 674542, 2929931; 674499, 2929958; 674475, 2929972; 674440, 2930048; 674521, 2930081; 674526, 2930100; 674553, 2930252; 674537, 2930315; 674544, 2930369; 674498, 2930404; 674418, 2930500; 674432, 2930531; 674402, 2930563; 674375, 2930639; 674352, 2930779; 674334, 2930801; 674300, 2930772; 674263, 2930766; 674238, 2930763; 674182, 2930854; 674180, 2930859; 674146, 2930955; 674146, 2930966; 674097, 2931110; 674089, 2931134; 674087, 2931139; 674078, 2931154; 674067, 2931175; 674027, 2931260; 674020, 2931312; 673996, 2931328; 673940, 2931426; 673939, 2931442; 673966, 2931463; 673937, 2931530; 673915, 2931530; 673905, 2931605; 673871, 2931631; 673866, 2931659; 673841, 2931663; 673773, 2931772; 673761, 2931972; 673712, 2932081; 673696, 2932107; 673715, 2932121; 673747, 2932206; 673762, 2932245; 673790, 2932261; 673831, 2932283; 673908, 2932343; 673951, 2932386; 673967, 2932429; 673978, 2932468; 673964, 2932514; 673941, 2932549; 673902, 2932566; 673870, 2932560; 673864, 2932647; 673836, 2932674; 673859, 2932714; 673861, 2932761; 673832, 2932836; 673728, 2932906; 673688, 2933008; 673659, 2933024; 673635, 2933017; 673631, 2933030; 673625, 2933052; 673605, 2933059; 673558, 2933097; 673591, 2933130; 673628, 2933129; 673649, 2933146; 673648, 2933199; 673645, 2933294; 673594, 2933248; 673484, 2933201; 673446, 2933214; 673408, 2933316; 673342, 2933336; 673310, 2933376; 673303, 2933411; 673318, 2933411; 673318, 2933494; 673290, 2933536; 673293, 2933570; 673260, 2933556; 673211, 2933608; 673208, 2933641; 673176, 2933671; 673176, 2933725; 673131, 2933778; 673123, 2933801; 673143, 2933812; 673128, 2933846; 673100, 2933883; 673055, 2933993; 673069, 2934010; 673054, 2934074; 673034, 2934079; 673016, 2934142; 673046, 2934210; 673117, 2934302; 673090, 2934319; 673075, 2934361; 673102, 2934385; 673136, 2934483; 673208, 2934542; 673184, 2934598; 673146, 2934625; 673150, 2934658; 673123, 2934670; 673114, 2934778; 673082, 2934916; 673028, 2934915; 673006, 2934906; 672962, 2934880; 672907, 2934846; 672854, 2934870; 672821, 2934908; 672772, 2935019; 672719, 2935154; 672694, 2935347; 672653, 2935425; 672639, 2935445; 672593, 2935510; 672575, 2935581; 672484, 2935804; 672469, 2935819; 672428, 2935863; 672417, 2935874; 672421, 2935918; 672450, 2935983; 672521, 2936035; 672591, 2936049; 672611, 2936077; 672595, 2936168; 672679, 2936198; 672719, 2936294; 672675, 2936344; 672666, 2936379; 672626, 2936602; 672626, 2936671; 672583, 2936669; 672561, 2936686; 672555, 2936725; 672571, 2936766; 672545, 2936782; 672504, 2936852; 672474, 2936988; 672495, 2937082; 672458, 2937104; 672461, 2937142; 672409, 2937264; 672362, 2937299; 672310, 2937307; 672369, 2937354; 672356, 2937399; 672332, 2937418; 672349, 2937463; 672225, 2937605; 672221, 2937610; 672270, 2937626; 672285, 2937663; 672240, 2937712; 672237, 2937756; 672269, 2937834; 672221, 2937894; 672238, 2937948; 672204, 2938255; 672135, 2938543; 672133, 2938638; 672150, 2938697; 672133, 2938731; 672099, 2938943; 672066, 2939019; 672029, 2939067; 671919, 2939080; 671920, 2939105; 672382, 2939136; Thence returning to 672377, 2939107.

Excluding:

Unit TX–3 Subunit A, Willacy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

670308, 2938922; 670266, 2938896; 670266, 2938944; 670298, 2938959; Thence returning to 670308, 2938922.

664147, 2938654; 664188, 2938639; 664246, 2938654; 664286, 2938615; 664321, 2938634; 664395, 2938421; 664290, 2938374; 664242, 2938297; 664223, 2938295; 664134, 2938303; 664011, 2938460; 663991, 2938458; 664023, 2938388; 664012, 2938371; 663964, 2938435; 663969, 2938476; 664001, 2938530; 664099, 2938633; Thence returning to 664147, 2938654.

665325, 2938543; 665337, 2938487; 665316, 2938500; 665313, 2938539; Thence returning to 665325, 2938543.

670176, 2938554; 670275, 2938515; 670181, 2938502; 670178, 2938485; 670227, 2938451; 670177, 2938421; 670105, 2938453; 670101, 2938478; 670129, 2938496; 670118, 2938512; 670061, 2938522; 669996, 2938506; 669978, 2938525; 669987, 2938560; 670018, 2938572; Thence returning to 670176, 2938554.

666246, 2938378; 666222, 2938375; 666170, 2938419; 666152, 2938521; 666239, 2938399; Thence returning to 666246, 2938378.

669961, 2938415; 669951, 2938390; 669841, 2938432; 669815, 2938500; 669826, 2938516; 669910, 2938522; 669923, 2938488; Thence returning to 669961, 2938415.

666005, 2938398; 666043, 2938123; 666019, 2938124; 666000, 2938190; 665988, 2938334; Thence returning to 666005, 2938398.

665928, 2938293; 665892, 2938262; 665884, 2938295; 665902, 2938357; Thence returning to 665928, 2938293.

669107, 2938109; 669076, 2938097; 669038, 2938141; 669083, 2938163; 669106, 2938141; Thence returning to 669107, 2938109.

668922, 2938132; 669028, 2938067; 669078, 2938079; 669125, 2938043; 669157, 2938040; 669183, 2938012; 669254, 2938007; 669263, 2937981; 669212, 2937968; 669210, 2937939; 669318, 2937867; 669331, 2937856; 669325, 2937835; 669176, 2937902; 669121, 2937894; 669078, 2937915; 669077, 2937932; 669149, 2937935; 669159, 2937962; 669130, 2937985; 669059, 2938003; 668933, 2938018; 668880, 2938061; 668860, 2938106; Thence returning to 668922, 2938132.

671738, 2938092; 671717, 2938054; 671656, 2938087; 671655, 2938113; Thence returning to 671738, 2938092.

669920, 2937911; 669889, 2937892; 669852, 2937917; 669847, 2937938; 669884, 2937945; Thence returning to 669920, 2937911.

670110, 2937852; 670192, 2937808; 670107, 2937749; 670067, 2937797; 670024, 2937800; 669992, 2937830; 670012, 2937846; 670060, 2937839; Thence returning to 670110, 2937852.

670246, 2937808; 670310, 2937781; 670342, 2937790; 670363, 2937772; 670412, 2937766; 670348, 2937721; 670294, 2937707; 670256, 2937675; 670232, 2937676; 670176, 2937713; 670268, 2937731; 670269, 2937762; 670241, 2937796; Thence returning to 670246, 2937808.

671097, 2937743; 671164, 2937692; 671160, 2937671; 671096, 2937695; 671068, 2937675; 671004, 2937687; 671036, 2937734; Thence returning to 671097, 2937743.

672409, 2937264; 672461, 2937142; 672458, 2937104; 672495, 2937082; 672474, 2936988; 672504, 2936852; 672545, 2936782; 672571, 2936766; 672555, 2936725; 672561, 2936686; 672583, 2936669; 672626, 2936671; 672626, 2936602; 672666, 2936379; 672675, 2936344; 672719, 2936294; 672679, 2936198; 672595, 2936168; 672611, 2936077; 672591, 2936049; 672521, 2936035; 672466, 2936060;

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671787, 2937518; 671852, 2937488; 671759, 2937493; 671761, 2937511; Thence returning to 671787, 2937518.

671766, 2937310; 671605, 2937204; 671585, 2937207; 671582, 2937266; 671609, 2937327; 671766, 2937430; 671826, 2937445; 671871, 2937428; 671877, 2937409; Thence returning to 671766, 2937310.

669370, 2937355; 669412, 2937306; 669425, 2937338; 669453, 2937336; 669470, 2937317; 669487, 2937327; 669515, 2937286; 669532, 2937311; 669516, 2937353; 669536, 2937356; 669598, 2937275; 669590, 2937242; 669528, 2937219; 669459, 2937253; 669460, 2937207; 669436, 2937193; 669378, 2937263; Thence returning to 669370, 2937355.

669874, 2937134; 669909, 2937069; 669883, 2937056; 669858, 2937094; 669847, 2937045; 669830, 2937041; 669825, 2937077; 669843, 2937117; Thence returning to 669874, 2937134.

669687, 2937121; 669727, 2937078; 669748, 2937101; 669770, 2937087; 669779, 2937034; 669762, 2936967; 669737, 2937017; 669705, 2937043; 669681, 2937098; Thence returning to 669687, 2937121.

669674, 2937030; 669723, 2936973; 669743, 2936913; 669687, 2936968; 669641, 2936932; 669646, 2936904; 669615, 2936915; 669611, 2936985; 669639, 2937005; 669659, 2936997; Thence returning to 669674, 2937030.

671433, 2936638; 671451, 2936561; 671562, 2936508; 671591, 2936457; 671592, 2936419; 671575, 2936388; 671487, 2936378; 671475, 2936390; 671489, 2936422; 671471, 2936427; 671439, 2936413; 671429, 2936386; 671366, 2936374; 671172, 2936490; 671147, 2936522; 671203, 2936603; 671222, 2936547; 671275, 2936529; 671298, 2936538; 671273, 2936573; 671282, 2936590; 671371, 2936573; 671391, 2936592; 671378, 2936630; 671309, 2936671; 671297, 2936745; 671265, 2936776; 671257, 2936824; 671300, 2936854; 671350, 2936817; 671337, 2936752; 671444, 2936704; 671449, 2936680; Thence returning to 671433, 2936638.

671863, 2936665; 671816, 2936624; 671798, 2936625; 671778, 2936721; 671795, 2936772; 671830, 2936788; 671848, 2936767; Thence returning to 671863, 2936665.

670928, 2936625; 670913, 2936623; 670907, 2936639; 671007, 2936735; 671149, 2936749; 671217, 2936735; Thence returning to 670928, 2936625.

671681, 2936715; 671713, 2936648; 671803, 2936577; 671915, 2936676; 671907, 2936590; 671935, 2936578; 671983, 2936652; 672029, 2936662; 672051, 2936696; 672085, 2936713; 672271, 2936642; 672274, 2936603; 672171, 2936496; 672139, 2936476; 672071, 2936475; 671996, 2936369; 671941, 2936361; 671877, 2936400; 671855, 2936389; 671899, 2936335; 671998, 2936335; 672045, 2936322; 672066, 2936298; 672064, 2936216; 672019, 2936092; 671933, 2936073; 671874, 2936158; 671838, 2936180; 671830, 2936235; 671807, 2936276; 671714, 2936362; 671730, 2936491; 671721, 2936552; 671696, 2936565; 671669, 2936557; 671612, 2936513; 671477, 2936571; 671462, 2936594; 671464, 2936636; 671517, 2936697; 671545, 2936712; 671584, 2936700; Thence returning to 671681, 2936715.

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671262, 2936305; 671354, 2936274; 671365, 2936291; 671328, 2936331; 671355, 2936335; 671491, 2936273; 671594, 2936199; 671588, 2936182; 671529, 2936192; 671507, 2936178; 671495, 2936158; 671503, 2936098; 671489, 2936083; 671457, 2936100; 671420, 2936185; 671367, 2936182; 671318, 2936230; 671302, 2936210; 671352, 2936136; 671347, 2936115; 671311, 2936147; 671271, 2936115; 671218, 2936126; 671171, 2936189; 671086, 2936216; 671050, 2936252; 671041, 2936289; 671055, 2936360; 671082, 2936372; 671083, 2936319; 671096, 2936304; Thence returning to 671262, 2936305.

671704, 2935988; 671678, 2935982; 671600, 2936002; 671569, 2936042; 671532, 2936049; 671543, 2936066; 671605, 2936083; 671662, 2936059; 671711, 2936025; Thence returning to 671704, 2935988.

671909, 2936007; 671893, 2935990; 671822, 2936050; 671867, 2936058; Thence returning to 671909, 2936007.

671461, 2935998; 671491, 2935949; 671525, 2935955; 671546, 2935931; 671560, 2935896; 671548, 2935854; 671456, 2935864; 671416, 2935841; 671358, 2935841; 671332, 2935907; 671345, 2935924; 671413, 2935906; 671437, 2935920; 671445, 2936001; Thence returning to 671461, 2935998.

672068, 2935683; 671863, 2935580; 671807, 2935591; 671723, 2935573; 671682, 2935571; 671659, 2935597; 671654, 2935689; 671688, 2935780; 671761, 2935858; 671839, 2935899; 671935, 2935922; 672017, 2935914; 672073, 2935870; 672080, 2935819; 672047, 2935748; 672075, 2935704; Thence returning to 672068, 2935683.

672428, 2935863; 672387, 2935857; 672379, 2935869; 672421, 2935918; 672417, 2935874; Thence returning to 672428, 2935863.

672349, 2935807; 672318, 2935788; 672308, 2935823; 672343, 2935838; Thence returning to 672349, 2935807.

672421, 2935710; 672392, 2935701; 672342, 2935713; 672358, 2935752; 672411, 2935757; 672469, 2935819; 672484, 2935804; 672486, 2935768; Thence returning to 672421, 2935710.

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(2) Subunit TX–3B: South Padre Island—Laguna Madre side: 17,862 hectares (44,137 acres) in Cameron and Willacy Counties, Texas.

(i) Unit TX–3, Subunit B, Cameron County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

680954, 2904601; 680932, 2904612; 680932, 2904755; 680956, 2904703; Thence returning to 680954, 2904601.

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(ii) Unit TX–3, Subunit B, Willacy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

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(3) Subunit TX–3C: North Padre Island—Laguna Madre side: 20,597 hectares (50,897 acres) in Kenedy and Willacy Counties, Texas.

(i) Unit TX–3, Subunit C, Kenedy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

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Excluding:

Unit TX–3 Subunit C, Kenedy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

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654378, 2973841; 654359, 2973831; 654347, 2973871; Thence returning to 654378, 2973841.

656418, 2973826; 656442, 2973826; 656460, 2973878; 656475, 2973827; 656508, 2973796; 656511, 2973764; 656475, 2973685; 656520, 2973664; 656547, 2973560; 656599, 2973491; 656601, 2973360; 656570, 2973315; 656500, 2973279; 656404, 2973303; 656347, 2973355; 656304, 2973442; 656337, 2973445; 656393, 2973416; 656378, 2973480; 656396, 2973529; 656419, 2973545; 656487, 2973551; 656447, 2973608; 656445, 2973654; 656463, 2973676; 656324, 2973698; 656304, 2973673; 656253, 2973686; 656211, 2973570; 656097, 2973563; 656059, 2973590; 656042, 2973726; 655988, 2973821; 655993, 2973848; 656039, 2973783; 656065, 2973770; 656247, 2973758; 656326, 2973820; 656338, 2973810; 656378, 2973896; 656388, 2973849; Thence returning to 656418, 2973826.

656064, 2973881; 656038, 2973842; 656020, 2973856; 656026, 2973885; Thence returning to 656064, 2973881.

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655923, 2973818; 655903, 2973799; 655904, 2973847; 655918, 2973848; Thence returning to 655923, 2973818.

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657562, 2973810; 657567, 2973771; 657551, 2973777; 657551, 2973808; Thence returning to 657562, 2973810.

656936, 2973763; 656903, 2973756; 656912, 2973789; 656938, 2973776; Thence returning to 656936, 2973763.

654291, 2973731; 654347, 2973690; 654353, 2973639; 654325, 2973579; 654284, 2973546; 654226, 2973543; 654158, 2973578; 654142, 2973646; 654103, 2973712; 654124, 2973726; 654206, 2973708; Thence returning to 654291, 2973731.

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653251, 2970052; 653263, 2969994; 653238, 2969995; 653207, 2970049; 653221, 2970069; Thence returning to 653251, 2970052.

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653513, 2969715; 653575, 2969654; 653631, 2969658; 653680, 2969634; 653699, 2969662; 653717, 2969663; 653779, 2969592; 653779, 2969575; 653728, 2969557; 653762, 2969466; 653722, 2969467; 653678, 2969500; 653609, 2969487; 653523, 2969550; 653469, 2969559; 653479, 2969519; 653569, 2969461; 653545, 2969439; 653567, 2969386; 653439, 2969414; 653357, 2969499; 653368, 2969556; 653345, 2969645; 653445, 2969653; 653460, 2969674; 653452, 2969715; 653462, 2969729; Thence returning to 653513, 2969715.

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654298, 2968754; 654290, 2968714; 654241, 2968743; 654255, 2968776; Thence returning to 654298, 2968754.

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654863, 2968434; 654847, 2968425; 654823, 2968486; 654829, 2968559; 654848, 2968547; 654862, 2968505; Thence returning to 654863, 2968434.

655522, 2968471; 655503, 2968394; 655488, 2968399; 655478, 2968461; 655487, 2968487; Thence returning to 655522, 2968471.

654863, 2968203; 654859, 2968170; 654802, 2968194; 654746, 2968338; 654744, 2968422; 654764, 2968423; 654791, 2968393; 654813, 2968390; 654824, 2968365; Thence returning to 654863, 2968203.

653914, 2968175; 653903, 2968164; 653820, 2968169; 653801, 2968175; 653797, 2968199; 653803, 2968340; 653822, 2968347; 653853, 2968318; 653902, 2968315; 653898, 2968227; 653923, 2968208; Thence returning to 653914, 2968175.

656186, 2968179; 656173, 2968142; 656137, 2968166; 656132, 2968194; 656144, 2968204; Thence returning to 656186, 2968179.

654622, 2968099; 654660, 2968038; 654680, 2968089; 654694, 2968091; 654710, 2968049; 654704, 2967980; 654649, 2967979; 654600, 2967898; 654554, 2967884; 654521, 2967908; 654487, 2967955; 654466, 2968025; Thence returning to 654622, 2968099.

654936, 2968009; 654910, 2968006; 654865, 2968029; 654860, 2968060; 654884, 2968098; 654914, 2968102; 654934, 2968083; 654945, 2968054; Thence returning to 654936, 2968009.

655361, 2967847; 655350, 2967807; 655284, 2967822; 655256, 2967857; 655272, 2967882; 655333, 2967908; Thence returning to 655361, 2967847.

652176, 2966624; 652145, 2966621; 652140, 2966660; 652169, 2966665; Thence returning to 652176, 2966624.

657682, 2959612; 657636, 2959603; 657607, 2959632; 657610, 2959792; 657668, 2959877; 657715, 2959903; 657756, 2959900; 657784, 2959834; 657768, 2959717; 657736, 2959651; Thence returning to 657682, 2959612.

661817, 2954973; 661899, 2954916; 661921, 2954875; 661879, 2954857; 661869, 2954812; 661833, 2954786; 661782, 2954778; 661748, 2954792; 661678, 2954843; 661640, 2954923; 661657, 2954966; 661741, 2954950; 661745, 2954982; 661777, 2954990; Thence returning to 661817, 2954973.

661982, 2954574; 661944, 2954563; 661829, 2954659; 661808, 2954694; 661820, 2954714; 661954, 2954713; 662001, 2954686; 662019, 2954643; 662013, 2954609; Thence returning to 661982, 2954574.

660556, 2949639; 660500, 2949583; 660448, 2949592; 660415, 2949627; 660393, 2949679; 660355, 2949835; 660358, 2949856; 660413, 2949899; 660493, 2949865; 660546, 2949808; 660579, 2949727; 660576, 2949675; Thence returning to 660556, 2949639.

661092, 2949601; 661066, 2949585; 660984, 2949597; 660952, 2949643; 660918, 2949766; 660929, 2949852; 660955, 2949881; 660986, 2949884;

661018, 2949828; 661083, 2949813; 661102, 2949729; Thence returning to 661092, 2949601.

660832, 2949631; 660823, 2949596; 660796, 2949596; 660770, 2949618; 660765, 2949756; 660792, 2949760; Thence returning to 660832, 2949631.

660741, 2949679; 660706, 2949674; 660694, 2949686; 660693, 2949727; 660708, 2949743; 660724, 2949738; Thence returning to 660741, 2949679.

659982, 2949083; 659957, 2949071; 659937, 2949107; 659967, 2949125; Thence returning to 659982, 2949083.

663288, 2946483; 663237, 2946471; 663181, 2946502; 663026, 2946760; 662912, 2946910; 662900, 2946969; 662917, 2947043; 663001, 2947060; 663061, 2947011; 663182, 2946769; 663300, 2946588; 663314, 2946513; Thence returning to 663288, 2946483.

(ii) Unit TX–3, Subunit C, Willacy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

667115, 2940198; 667414, 2939295; 667380, 2939298; 667306, 2939259; 667098, 2939258; 666957, 2939228; 666889, 2939171; 666865, 2939110; 666824, 2939105; 666835, 2939178; 666807, 2939224; 666790, 2939224; 666750, 2939165; 666709, 2939207; 666670, 2939223; 666538, 2939217; 666415, 2939236; 666405, 2939215; 666426, 2939165; 666384, 2939127; 666383, 2939079; 666355, 2939076; 666339, 2939076; 666355, 2939098; 666338, 2939223; 666294, 2939272; 666286, 2939231; 666311, 2939183; 666287, 2939074; 666254, 2939074; 666256, 2939121; 666177, 2939154; 666136, 2939198; 666113, 2939253; 666081, 2939276; 665931, 2939330; 665871, 2939300; 665844, 2939343; 665810, 2939364; 665789, 2939436; 665704, 2939541; 665767, 2939197; 665816, 2939088; 665827, 2939078; 665868, 2939095; 665920, 2939141; 665925, 2939170; 665896, 2939203; 665910, 2939216; 666070, 2939160; 666124, 2939118; 666134, 2939092; 665981, 2939137; 665915, 2939058; 665712, 2939052; 665623, 2939094; 665585, 2939060; 665492, 2939042; 665447, 2939113; 665533, 2939090; 665593, 2939127; 665637, 2939184; 665669, 2939153; 665690, 2939094; 665728, 2939077; 665744, 2939093; 665692, 2939270; 665618, 2939447; 665585, 2939501; 665566, 2939507; 665527, 2939411; 665446, 2939327; 665449, 2939139; 665439, 2939130; 665412, 2939152; 665455, 2939044; 665429, 2939028; 665321, 2939039; 665270, 2939024; 665207, 2939067; 665117, 2939071; 665062, 2939016; 664889, 2938974; 664382, 2938994; 664122, 2938932; 663761, 2938924; 663293, 2938881; 663284, 2938908; 663323, 2938909; 663353, 2938931; 663518, 2938929; 663751, 2938982; 664155, 2938975; 664252, 2939008; 664300, 2939053; 664340, 2939122; 664446, 2939115; 664600, 2939021; 664814, 2939019; 664843, 2939047; 664906, 2939257; 664980, 2939393; 665008, 2939542; 664994, 2939626; 664773, 2940159; 664477, 2940663; 664241, 2941138; 664002, 2941544; 663831, 2941796; 663561, 2942341; 663289, 2942843; 663170, 2943023; 663031, 2943195; 666036, 2943243; 667115, 2940198; 665283, 2939163; 665290, 2939105; 665263, 2939147; 665246, 2939131; 665270, 2939070; 665292, 2939052; 665319, 2939060; 665329, 2939080; 665266, 2939244; 665283, 2939163; 664422, 2939083; 664407, 2939077; 664410, 2939055; 664449, 2939014; 664473, 2939016; 664480, 2939046; Thence returning to 664422, 2939083.

Excluding:

Unit TX–3 Subunit C, Willacy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

665266, 2939244; 665329, 2939080; 665319, 2939060; 665292, 2939052; 665270, 2939070; 665246, 2939131; 665263, 2939147; 665290, 2939105; 665283, 2939163; Thence returning to 665266, 2939244.

664473, 2939016; 664449, 2939014; 664410, 2939055; 664407, 2939077; 664422, 2939083; 664480, 2939046; Thence returning to 664473, 2939016.

(4) Subunit TX–3D: North Padre Island—Gulf of Mexico: 109 hectares (270 acres) in Kleberg County, Texas.

(i) Unit TX–3, Subunit TX–3, Subunit D, Kleberg County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

673980, 3048165; 672224, 3044203; 671961, 3043590; 671894, 3043382; 671360, 3042145; 671223, 3042143; 671722, 3043337; 671910, 3043749; 671949, 3043864; 672116, 3044204; 672647, 3045437; 673307, 3046888; 673312, 3046935; 673493, 3047302; 673797, 3048007; 673831, 3048053; 673837, 3048092; 673814, 3048097; 673763, 3048071; 673739, 3048085; 673760, 3048085; 673778, 3048107; 673700, 3048191; 673694, 3048228; 673705, 3048240; 673770, 3048233; 673845, 3048110; 674208, 3048945; 674402, 3049344; 675090, 3050888; 675202, 3051105; 675253, 3051246; 675356, 3051449; 675444, 3051401; 674870, 3050176; Thence returning to 673980, 3048165.

(5) Subunit TX–3E: North Padre Island—Mesquite Rincon: 3,894 hectares (9,623 acres) in Kenedy County, Texas.

(i) Unit TX–3, Subunit E, Kenedy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

650814, 2961209; 650823, 2961183; 650791, 2961109; 650638, 2961142; 650589, 2961194; 650675, 2961175; Thence returning to 650814, 2961209.

651785, 2961238; 651751, 2961241; 651762, 2961261; 651740, 2961323; 651773, 2961292; Thence returning to 651785, 2961238.

650761, 2961323; 650734, 2961295; 650667, 2961282; 650585, 2961234; 650614, 2961300; 650665, 2961316; 650688, 2961355; 650765, 2961393; 650772, 2961351; Thence returning to 650761, 2961323.

651683, 2961584; 651713, 2961529; 651693, 2961499; 651636, 2961522; 651571, 2961521; 651500, 2961593; 651613, 2961576; 651663, 2961599; Thence returning to 651683, 2961584.

651837, 2961624; 651826, 2961501; 651807, 2961455; 651762, 2961429; 651688, 2961455; 651684, 2961465; 651734, 2961457; 651811, 2961514; 651810, 2961542; 651743, 2961601; 651757, 2961615; 651796, 2961589; 651770, 2961689; 651817, 2961671; Thence returning to 651837, 2961624.

650466, 2961772; 650487, 2961782; 650506, 2961823; 650557, 2961795; 650596, 2961829; 650625, 2961813; 650678, 2961843; 650694, 2961836; 650691, 2961749; 650681, 2961742; 650648, 2961782; 650627, 2961782; 650555, 2961719; 650570, 2961663; 650518, 2961649; 650490, 2961613; 650500, 2961564; 650524, 2961541; 650612, 2961519; 650605, 2961469; 650556, 2961470; 650515, 2961506; 650479, 2961497; 650417, 2961630; 650419, 2961703; 650399, 2961734; 650369, 2961721; 650358, 2961652; 650306, 2961691; 650357, 2961761; 650345, 2961829; 650363, 2961851; 650419, 2961852; Thence returning to 650466, 2961772.

651280, 2962209; 651300, 2962168; 651254, 2962201; 651247, 2962177; 651214, 2962177; 651199, 2962158; 651160, 2962208; 651153, 2962260; 651166, 2962276; 651197, 2962271; Thence returning to 651280, 2962209.

650062, 2962315; 650040, 2962320; 650019, 2962365; 650051, 2962417; 650076, 2962352; Thence returning to 650062, 2962315.

648564, 2964157; 648625, 2964160; 648625, 2964137; 648540, 2964071; 648524, 2964074; 648524, 2964090; 648549, 2964120; 648544, 2964133; 648467, 2964120; 648451, 2964139; 648459, 2964164; 648491, 2964173; Thence returning to 648564, 2964157.

648452, 2964382; 648500, 2964334; 648552, 2964380; 648595, 2964342; 648554, 2964312; 648496, 2964306; 648418, 2964360; Thence returning to 648452, 2964382.

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650968, 2966016; 650980, 2965986; 650956, 2965941; 651002, 2965841; 650983, 2965839; 650848, 2965956; 650776, 2965969; 650795, 2965991; 650733, 2966003; 650710, 2965971; 650852, 2965929; 650927, 2965868; 650976, 2965795; 650983, 2965700; 651061, 2965587; 651072, 2965434; 651104, 2965346; 651104, 2965227; 651147, 2965165; 651180, 2965037; 651220, 2964986; 651216, 2964965; 651186, 2964951; 651184, 2964841; 651298, 2964465; 651286, 2964459; 651261, 2964489; 651253, 2964482; 651248, 2964395; 651285, 2964289; 651286, 2964241; 651245, 2964203; 651224, 2964087; 651203, 2964145; 651186, 2964139; 651175, 2963537; 651190, 2963416; 651255, 2963358; 651257, 2963282; 651348, 2962961; 651413, 2962600; 651390, 2962573; 651380, 2962698; 651364, 2962713; 651355, 2962591; 651375, 2962527; 651410, 2962502; 651432, 2962462; 651450, 2962321; 651425, 2962306; 651330, 2962397; 651311, 2962404; 651308, 2962379; 651393, 2962292; 651441, 2962280; 651468, 2962139; 651533, 2962068; 651529, 2961982; 651558, 2961931; 651544, 2961863; 651470, 2961700; 651470, 2961760; 651505, 2961852; 651508, 2961904; 651490, 2962043; 651426, 2962145; 651403, 2962251; 651359, 2962280; 651263, 2962308; 651190, 2962427; 651137, 2962484; 651128, 2962588; 651143, 2962654; 651249, 2962695; 651324, 2962807; 651334, 2962886; 651263, 2963199; 651180, 2963372; 651144, 2963490; 651147, 2964059; 651099, 2964120; 650941, 2964170; 650899, 2964175; 650842, 2964143; 650799, 2964143; 650754, 2964210; 650712, 2964339; 650711, 2964381; 650733, 2964447; 650952, 2964747; 651025, 2964883; 651051, 2964966; 651035, 2965040; 650944, 2965164; 650896, 2965272; 650767, 2965437; 650757, 2965549; 650738, 2965593; 650609, 2965696; 650549, 2965788; 650463, 2965877; 650476, 2965899; 650586, 2965924; 650836, 2965692; 650883, 2965691; 650866, 2965727; 650641, 2965951; 650535, 2966089; 650514, 2966222; 650558, 2966357; 650571, 2966500; 650612, 2966512; 650696, 2966468; 650696, 2966436; 650818, 2966325; 650872, 2966239; 650922, 2966196; 650914, 2966134; 650895, 2966102; 650968, 2966016; 650685, 2965800; 650612, 2965826; 650604, 2965802; 650623, 2965781; 650695, 2965756; 650778, 2965675; 650785, 2965654; 650765, 2965649; 650684, 2965709; 650642, 2965717; 650791, 2965575; 650797, 2965442; 650815, 2965408; 650829, 2965412; 650828, 2965489; 650885, 2965370; 650931, 2965340; 650857, 2965532; 650842, 2965628; 650770, 2965728; 650685, 2965800; 651078, 2965041; 651097, 2965049; 651083, 2965097; 651011, 2965208; 650946, 2965263; 650951, 2965231; 651044, 2965062; 651078, 2965041; 651130, 2964669; 651132, 2964562; 651153, 2964521; 651158, 2964599; 651182, 2964642; 651168, 2964715; 651146, 2964707; 651130, 2964669; 651058, 2964567; 650987, 2964508; 650994, 2964492; 651072, 2964516; 651058, 2964567; 651173, 2964496; 651166, 2964448; 651192, 2964393; 651220, 2964376; 651188, 2964484; 651173, 2964496; 651027, 2964464; 650900, 2964424; 650934, 2964384; 650970, 2964384; 651023, 2964427; 651027, 2964464; 650984, 2964565; 650993, 2964592; 650952, 2964631; 650949, 2964585; 650958, 2964568; 650984, 2964565; 651104, 2964308; 651024, 2964299; 650984, 2964271; 650999, 2964254; 651137, 2964243; 651149, 2964261; 651137, 2964326; 651117, 2964341; 651104, 2964308; 651238, 2964269; 651266, 2964279; 651250, 2964325; 651234, 2964331; 651221, 2964315; Thence returning to 651238, 2964269.

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Excluding:

Unit TX–3 Subunit E, Kenedy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

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646171, 2970961; 646107, 2970947; 646084, 2970960; 646091, 2970989; 646077, 2970999; 646073, 2971053; 645998, 2971065; 645990, 2971089; 646020, 2971092; 646022, 2971105; 645941, 2971148; 645925, 2971204; 645934, 2971226; 646023, 2971184; 646091, 2971179; 646234, 2971106; 646239, 2971044; 646219, 2971007; Thence returning to 646171, 2970961.

651771, 2971214; 651746, 2971164; 651688, 2971166; 651664, 2971202; 651688, 2971220; 651687, 2971262; 651746, 2971286; 651765, 2971276; Thence returning to 651771, 2971214.

649583, 2971226; 649568, 2971221; 649566, 2971247; 649585, 2971251; Thence returning to 649583, 2971226.

649345, 2971094; 649314, 2971082; 649285, 2971111; 649316, 2971215; 649403, 2971216; 649409, 2971192; 649395, 2971141; Thence returning to 649345, 2971094.

651068, 2970738; 651012, 2970717; 650876, 2970727; 650849, 2970751; 650854, 2970809; 650813, 2970847; 650812, 2970916; 650831, 2970940; 650903, 2970962; 650923, 2971080; 650992, 2971088; 650994, 2971133; 651045, 2971205; 651092, 2971229; 651112, 2971205; 651093, 2970766; Thence returning to 651068, 2970738.

650563, 2971141; 650540, 2971108; 650523, 2971116; 650504, 2971178; 650594, 2971192; 650606, 2971159; Thence returning to 650563, 2971141.

645372, 2970942; 645318, 2970922; 645232, 2970924; 645209, 2970954; 645218, 2970969; 645367, 2971014; 645326, 2971076; 645350, 2971121; 645375, 2971123; 645395, 2971107; 645428, 2971052; 645416, 2970981; Thence returning to 645372, 2970942.

646490, 2970976; 646475, 2970908; 646417, 2970915; 646396, 2970934; 646403, 2970956; 646349, 2970968; 646318, 2971023; 646331, 2971133; 646406, 2971118; 646482, 2971067; Thence returning to 646490, 2970976.

650982, 2971143; 650967, 2971137; 650960, 2971163; 650974, 2971173; Thence returning to 650982, 2971143.

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647187, 2970858; 647162, 2970856; 647163, 2970885; 647183, 2970877; Thence returning to 647187, 2970858.

645356, 2970829; 645327, 2970827; 645314, 2970857; 645365, 2970855; Thence returning to 645356, 2970829.

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650094, 2970874; 650142, 2970823; Thence returning to 650123, 2970802.

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649441, 2969975; 649383, 2969956; 649340, 2969968; 649314, 2970023; 649358, 2970076; 649422, 2970078; 649446, 2970043; Thence returning to 649441, 2969975.

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643660, 2969189; 643659, 2969165; 643629, 2969182; 643631, 2969201; Thence returning to 643660, 2969189.

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643727, 2969165; 643712, 2969159; 643702, 2969182; 643721, 2969186; Thence returning to 643727, 2969165.

643922, 2969117; 643858, 2969062; 643863, 2969123; 643902, 2969172; 643932, 2969180; 643942, 2969160; Thence returning to 643922, 2969117.

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643770, 2968772; 643733, 2968763; 643727, 2968779; 643799, 2968815; 643808, 2968798; Thence returning to 643770, 2968772.

643822, 2968749; 643782, 2968735; 643825, 2968775; Thence returning to 643822, 2968749.

644308, 2968523; 644265, 2968522; 644224, 2968553; 644210, 2968721; 644224, 2968746; 644248, 2968746; 644280, 2968704; 644323, 2968573; Thence returning to 644308, 2968523.

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651620, 2960698; 651596, 2960685; 651531, 2960725; 651530, 2960773; 651569, 2960777; 651605, 2960745; Thence returning to 651620, 2960698.

651244, 2960743; 651252, 2960700; 651174, 2960700; 651190, 2960737; 651223, 2960757; Thence returning to 651244, 2960743.

651471, 2960560; 651474, 2960533; 651441, 2960533; 651421, 2960588; 651448, 2960588; Thence returning to 651471, 2960560.

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651598, 2960529; 651545, 2960522; 651518, 2960548; 651520, 2960562; 651558, 2960567; 651589, 2960555; Thence returning to 651598, 2960529.

651903, 2959857; 651843, 2959804; 651757, 2959862; 651785, 2959890; 651881, 2959896; 651901, 2959887; Thence returning to 651903, 2959857.

651524, 2959720; 651530, 2959678; 651476, 2959689; 651466, 2959738; 651497, 2959735; Thence returning to 651524, 2959720.

651833, 2959641; 651835, 2959627; 651784, 2959620; 651779, 2959604; 651804, 2959584; 651866, 2959576; 651869, 2959540; 651843, 2959529; 651761, 2959571; 651741, 2959570; 651741, 2959536; 651729, 2959535; 651695, 2959583; 651656, 2959599; 651668, 2959633; 651712, 2959628; 651758, 2959653; 651804, 2959662; Thence returning to 651833, 2959641.

651924, 2959599; 651905, 2959594; 651898, 2959626; 651923, 2959648; Thence returning to 651924, 2959599.

Unit TX–4: Lower Laguna Madre Mainland: 6,970 hectares (17,223 acres) in Cameron and Willacy Counties, Texas.

(1) Unit TX–4, Cameron County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

669971, 2904321; 669974, 2904185; 669933, 2904077; 669841, 2903994; 669765, 2903995; 669735, 2904053; 669734, 2904090; 669753, 2904111; 669839, 2904140; 669866, 2904170; 669910, 2904262; 669921, 2904388; 669951, 2904381; 669971, 2904321; 669864, 2904093; 669831, 2904091; 669798, 2904059; 669761, 2904065; 669757, 2904052; 669785, 2904014; 669799, 2904014; 669906, 2904097; 669939, 2904163; 669957, 2904250; 669946, 2904318; 669912, 2904166; Thence returning to 669864, 2904093.

671690, 2904370; 671743, 2904369; 671803, 2904404; 671808, 2904393; 671803, 2904269; 671838, 2904226; 671847, 2904184; 671831, 2904163; 671776, 2904158; 671767, 2904115; 671790, 2904040; 671723, 2904039; 671694, 2904121; 671695, 2904212; 671752, 2904248; 671759, 2904269; 671703, 2904274; 671670, 2904307; 671627, 2904320; 671610, 2904341; 671593, 2904434; 671632, 2904547; 671690, 2904601; 671747, 2904582; 671761, 2904561; 671760, 2904536; 671736, 2904511; 671657, 2904493; 671630, 2904463; 671635, 2904410; 671656, 2904381; Thence returning to 671690, 2904370.

671681, 2904742; 671670, 2904712; 671639, 2904690; 671596, 2904705; 671599, 2904736; 671651, 2904764; 671681, 2904742; 671650, 2904715; 671663, 2904718; 671659, 2904740; 671646, 2904734; Thence returning to 671650, 2904715.

669205, 2904387; 668894, 2904153; 668918, 2904152; 669008, 2904200; 669068, 2904161; 669190, 2904186; 669321, 2904133; 669395, 2904147; 669491, 2904209; 669517, 2904277; 669517, 2904307; 669493, 2904342; 669514, 2904379; 669555, 2904381; 669594, 2904335; 669608, 2904219; 669522, 2903987; 667612, 2903941; 667652, 2904001; 667724, 2904056; 667895, 2904137; 667956, 2904150; 668086, 2904166; 668164, 2904159; 668217, 2904136; 668210, 2904084; 668238, 2904057; 668300, 2904060; 668399, 2904141; 668447, 2904224; 668509, 2904378; 668576, 2904474; 668639, 2904531; 668689, 2904553; 668762, 2904564; 668866, 2904548; 668877, 2904446; 668919, 2904398; 668984, 2904375; 669053, 2904399; 669222, 2904499; 669369, 2904615; 669635, 2904768; 669823, 2904899; 669987, 2905025; 670263, 2905290; 670218, 2905194; 670168, 2905140; 669884, 2904905; 669554, 2904689; 669440, 2904636; 669329, 2904551; 669275, 2904501; 669299, 2904491; Thence returning to 669205, 2904387.

671481, 2905309; 671507, 2905280; 671485, 2905258; 671443, 2905270; 671430, 2905246; 671439, 2905184; 671466, 2905128; 671527, 2905082; 671604, 2905126; 671607, 2905007; 671560, 2905024; 671534, 2905016; 671516, 2904986; 671531, 2904933; 671484, 2904905; 671486, 2904882; 671548, 2904798; 671508, 2904737; 671480, 2904740; 671464, 2904761; 671459, 2904880; 671471, 2904955; 671491, 2904981; 671489, 2905015; 671510, 2905047; 671396, 2905174; 671377, 2905266; 671387, 2905302; Thence returning to 671481, 2905309.

670387, 2905615; 670371, 2905624; 670381, 2905656; Thence returning to 670387, 2905615.

670606, 2905679; 670589, 2905687; 670597, 2905707; 670614, 2905698; Thence returning to 670606, 2905679.

670758, 2905763; 670743, 2905761; 670737, 2905788; 670763, 2905781; Thence returning to 670758, 2905763.

671311, 2905651; 671442, 2905679; 671421, 2905646; 671380, 2905631; 671211, 2905649; 671152, 2905683; 671141, 2905798; 671199, 2905828; 671198, 2905757; 671260, 2905675; Thence returning to 671311, 2905651.

670901, 2905833; 670887, 2905833; 670884, 2905849; 670906, 2905863; 670914, 2905843; Thence returning to 670901, 2905833.

671087, 2906124; 671163, 2906134; 671212, 2906180; 671227, 2906159; 671221, 2906126; 671236, 2906070; 671203, 2906033; 671197, 2905999; 671219, 2905982; 671253, 2905992; 671258, 2905954; 671250, 2905921; 671227, 2905909; 671226, 2905873; 671175, 2905850; 671117, 2905907; 671109, 2905954; 671141, 2905965; 671126, 2906014; 671020, 2906016; 671010, 2906069; 670965, 2906076; 670981, 2906279; 671046, 2906441; 671112, 2906480; 671123, 2906471; 671115, 2906425; 671130, 2906343; 671036, 2906287; 671067, 2906143; Thence returning to 671087, 2906124.

671081, 2906870; 671111, 2906837; 671113, 2906814; 671079, 2906699; 671048, 2906701; 671004, 2906664; 670950, 2906679; 670920, 2906644; 670877, 2906658; 670850, 2906643; 670862, 2906613; 670931, 2906607; 670965, 2906554; 671048, 2906551; 671064, 2906532; 671058, 2906500; 671019, 2906479; 670889, 2906515; 670834, 2906601; 670774, 2906643; 670746, 2906692; 670724, 2906799; 670741, 2906868; 670778, 2906893; 670974, 2906918; 671017, 2906955; 671081, 2906870; 670944, 2906857; 670862, 2906855; 670778, 2906806; 670784, 2906746; 670809, 2906697; 670867, 2906678; 670904, 2906728; 670980, 2906780; 671081, 2906789; 671067, 2906834; 671035, 2906826; Thence returning to 671034, 2906775.

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670613, 2907683; 670604, 2907563; 670660, 2907541; 670738, 2907564; 670752, 2907509; 670688, 2907516; 670637, 2907501; 670607, 2907466; 670623, 2907364; 670672, 2907331; 670723, 2907328; 670783, 2907349; 670806, 2907382; 670837, 2907298; 670839, 2907287; 670735, 2907277; 670705, 2907249; 670737, 2907185; 670696, 2907194; 670523, 2907479; 670498, 2907464; 670457, 2907290; 670398, 2907220; 670336, 2907248; 670197, 2907412; 670219, 2907445; 670244, 2907582; 670278, 2907620; 670339, 2907635; 670488, 2907616; 70522, 2907573; 670543, 2907572; 670578, 2907653; Thence returning to 670613, 2907683.

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670627, 2907882; 670607, 2907880; 670586, 2907931; 670601, 2907954; Thence returning to 670627, 2907882.

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662107, 2920711; 662135, 2920764; 662004, 2921434; 661886, 2921777; 661794, 2921943; 661741, 2922008; 661665, 2922088; 661570, 2922155; 661489, 2922137; 661402, 2922058; 661415, 2922011; 661456, 2921995; 661443, 2921932; 661412, 2921909; 661380, 2921950; 661350, 2921883; 661387, 2921815; 661444, 2921799; 661463, 2921704; 661412, 2921555; 661343, 2921493; 661205, 2921445; 660998, 2921508; 660852, 2921450; 660916, 2921517; 660976, 2921549; 661110, 2921737; 661146, 2921745; 661173, 2921770; 661085, 2921762; 660988, 2921650; 660961, 2921694; 660977, 2921723; 661111, 2921868; 661265, 2921943; 661324, 2922017; 661339, 2922057; 661332, 2922088; 661232, 2922066; 661216, 2922098; 661230, 2922124; 661303, 2922150; 661313, 2922167; 661245, 2922182; 661240, 2922213; 661212, 2922227; 661181, 2922221; 661079, 2922136; 661082, 2922102; 661157, 2922114; 661039, 2921996; 661024, 2921997; 661035, 2922064; 660926, 2922019; 660796, 2922005; 660781, 2921908; 660752, 2921871; 660764, 2921842; 660795, 2921850; 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662369, 2920177; 662575, 2919999; 662628, 2920076; 662625, 2920264; 662649, 2920360; 662639, 2920451; 662602, 2920485; 662321, 2920211; 662317, 2920235; 662299, 2920240; 662292, 2920187; 662308, 2920179; 662321, 2920211; 662393, 2920290; 662408, 2920338; 662400, 2920354; 662372, 2920311; 662375, 2920281; 662393, 2920290; 662334, 2920454; 662404, 2920538; 662398, 2920548; 662355, 2920536; 662346, 2920589; 662301, 2920625; 662291, 2920597; 662315, 2920498; 662303, 2920447; 662334, 2920454; 662160, 2920596; 662139, 2920580; 662148, 2920559; 662177, 2920574; 662160, 2920596; 662370, 2920579; 662404, 2920583; 662402, 2920625; 662370, 2920684; 662347, 2920693; 662331, 2920667; 662370, 2920579; 662496, 2920591; 662497, 2920574; 662511, 2920571; 662539, 2920618; 662598, 2920663; 662492, 2920829; 662477, 2920793; 662446, 2920770; 662461, 2920717; 662474, 2920718; 662499, 2920763; 662523, 2920736; 662526, 2920702; 662496, 2920591; 662644, 2920558; 662618, 2920540; 662647, 2920493; 662644, 2920558; 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662505, 2919131; 664549, 2918116; 664525, 2918096; 664473, 2918097; 664525, 2918049; 664567, 2918083; 664599, 2918079; 664581, 2918107; 664549, 2918116; 665397, 2917398; 665340, 2917380; 665321, 2917299; 665281, 2917394; 665254, 2917392; 665249, 2917354; 665347, 2917210; 665419, 2917181; 665439, 2917192; 665446, 2917242; 665397, 2917398; 665265, 2917489; 665231, 2917487; 665230, 2917449; 665255, 2917463; 665298, 2917448; 665326, 2917457; 665265, 2917489; 665915, 2918683; 665983, 2918661; 665934, 2918711; Thence returning to 665915, 2918683.

Excluding:

Unit TX–4, Cameron County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

664408, 2922301; 664597, 2922304; 664677, 2922202; 664648, 2922123; 664633, 2922115; 664506, 2922112; 664453, 2922131; 664412, 2922194; 664370, 2922225; 664372, 2922244;

664408, 2922268; Thence returning to 664408, 2922301.

662927, 2922279; 663007, 2922281; 663012, 2922281; 663067, 2922149; 663076, 2922069; 663044, 2922087; Thence returning to 662927, 2922279.

661307, 2921705; 661247, 2921635; 661235, 2921654; 661243, 2921703; 661262, 2921731; 661305, 2921740; Thence returning to 661307, 2921705.

661326, 2921658; 661260, 2921598; 661169, 2921573; 661140, 2921527; 661119, 2921540; 661123, 2921589; 661153, 2921621; 661206, 2921631; 661254, 2921620; 661304, 2921652; Thence returning to 661326, 2921658.

660994, 2921161; 660954, 2921153; 660838, 2921177; 660792, 2921213; 660795, 2921243; 660834, 2921283; 660969, 2921322; 661034, 2921319; 661086, 2921280; 661091, 2921241; 661074, 2921207; Thence returning to 660994, 2921161.

663381, 2920588; 663412, 2920210; 663429, 2920213; 663451, 2920270; 663486, 2920280; 663587, 2920201; 663653, 2920205; 663657, 2920172; 663542, 2920179; 663490, 2920245; 663464, 2920235; 663438, 2920172; 663418, 2920158; 663373, 2920210; 663359, 2920251; 663379, 2920307; 663359, 2920369; 663353, 2920524; 663333, 2920555; 663317, 2920654; 663251, 2920854; 663210, 2920900; 663151, 2920919; 663153, 2920949; 663201, 2920982; 663189, 2921063; 663213, 2921078; 663226, 2921119; 663323, 2920878; 663325, 2920737; 663357, 2920684; Thence returning to 663381, 2920588.

662492, 2920829; 662598, 2920663; 662539, 2920618; 662511, 2920571; 662497, 2920574; 662496, 2920591; 662526, 2920702; 662523, 2920736; 662499, 2920763; 662474, 2920718; 662461, 2920717; 662446, 2920770; 662477, 2920793; Thence returning to 662492, 2920829.

662404, 2920583; 662370, 2920579; 662331, 2920667; 662347, 2920693; 662370, 2920684; 662402, 2920625; Thence returning to 662404, 2920583.

662346, 2920589; 662355, 2920536; 662398, 2920548; 662404, 2920538; 662334, 2920454; 662303, 2920447; 662315, 2920498; 662291, 2920597; 662301, 2920625; Thence returning to 662346, 2920589.

662177, 2920574; 662148, 2920559; 662139, 2920580; 662160, 2920596; Thence returning to 662177, 2920574.

662644, 2920558; 662647, 2920493; 662618, 2920540; Thence returning to 662644, 2920558.

662639, 2920451; 662649, 2920360; 662625, 2920264; 662628, 2920076; 662575, 2919999; 662369, 2920177; 662359, 2920215; 662372, 2920223; 662463, 2920186; 662466, 2920251; 662452, 2920263; 662427, 2920240; 662425, 2920274; 662459, 2920292; 662500, 2920262; 662523, 2920264; 662525, 2920298; 662470, 2920316; 662470, 2920347; 662494, 2920361; 662571, 2920351; 662606, 2920395; 662553, 2920387; 662564, 2920416; 662600, 2920440; 662556, 2920460; 662554, 2920475; 662602, 2920485; Thence returning to 662639, 2920451.

662393, 2920290; 662375, 2920281; 662372, 2920311; 662400, 2920354; 662408, 2920338; Thence returning to 662393, 2920290.

662321, 2920211; 662308, 2920179; 662292, 2920187; 662299, 2920240; 662317, 2920235; Thence returning to 662321, 2920211.

664039, 2919463; 664057, 2919380; 664107, 2919419; 664179, 2919538; 664219, 2919542; 664088, 2919357; 664038, 2919319; 663998, 2919317; 663951, 2919269; 663957, 2919324; 664015, 2919412; 664001, 2919484; 664020, 2919520; 664001, 2919540; 664000, 2919582; 663946, 2919611; 663945, 2919626; 664009, 2919614; 664044, 2919580; 664055, 2919496; Thence returning to 664039, 2919463.

662172, 2919365; 662146, 2919344; 662122, 2919372; 662119, 2919415; 662143, 2919426; 662160, 2919416; Thence returning to 662172, 2919365.

664583, 2919257; 664644, 2919167; 664696, 2919159; 664726, 2919125; 664688, 2919128; 664680, 2919090; 664564, 2919211; 664526, 2919188; 664489, 2919192; 664420, 2919171; 664445, 2919207; 664519, 2919215; 664533, 2919232; Thence returning to 664583, 2919257.

662502, 2919106; 662474, 2919085; 662450, 2919169; 662485, 2919167; 662505, 2919131; Thence returning to 662502, 2919106.

665934, 2918711; 665983, 2918661; 665915, 2918683; Thence returning to 665934, 2918711.

664581, 2918107; 664599, 2918079; 664567, 2918083; 664525, 2918049; 664473, 2918097; 664525, 2918096; 664549, 2918116; Thence returning to 664581, 2918107.

665265, 2917489; 665326, 2917457; 665298, 2917448; 665255, 2917463; 665230, 2917449; 665231, 2917487; Thence returning to 665265, 2917489.

665397, 2917398; 665446, 2917242; 665439, 2917192; 665419, 2917181; 665347, 2917210; 665249, 2917354; 665254, 2917392; 665281, 2917394; 665321, 2917299; 665340, 2917380; Thence returning to 665397, 2917398.

666246, 2911721; 666188, 2911711; 666187, 2911735; 666207, 2911756; 666266, 2911767; Thence returning to 666246, 2911721.

668068, 2909714; 668039, 2909687; 667998, 2909697; 667978, 2909743; 667980, 2909801; 668045, 2909798; 668073, 2909758; Thence returning to 668068, 2909714

667646, 2909514; 667598, 2909500; 667544, 2909543; 667548, 2909589; 667621, 2909632; 667671, 2909623; 667688, 2909590; 667681, 2909551; Thence returning to 667646, 2909514.

668402, 2909449; 668275, 2909375; 668264, 2909394; 668295, 2909427; 668306, 2909507; 668336, 2909552; 668393, 2909574; 668435, 2909614; 668487, 2909601; 668491, 2909578; 668441, 2909538; Thence returning to 668402, 2909449.

667954, 2909292; 667935, 2909278; 667893, 2909280; 667858, 2909312; 667860, 2909349; 667876, 2909367; 667970, 2909426; 667988, 2909404; 667966, 2909350; Thence returning to 667954, 2909292.

670904, 2906728; 670867, 2906678; 670809, 2906697; 670784, 2906746; 670778, 2906806; 670862, 2906855; 670944, 2906857; 670979, 2906851; 670991, 2906834; 670980, 2906780; Thence returning to 670904, 2906728.

671081, 2906789; 671067, 2906772; 671034, 2906775; 671035, 2906826; 671067, 2906834; Thence returning to 671081, 2906789.

671663, 2904718; 671650, 2904715; 671646, 2904734; 671659, 2904740; Thence returning to 671663, 2904718.

669906, 2904097; 669799, 2904014; 669785, 2904014; 669757, 2904052; 669761, 2904065; 669798, 2904059; 669831, 2904091; 669864, 2904093; 669912, 2904166; 669946, 2904318; 669957, 2904250; 669939, 2904163; Thence returning to 669906, 2904097.

(2) Unit TX–4, Willacy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

660109, 2921783; 660047, 2921788; 660184, 2921853; 660326, 2921984; 660223, 2921833; Thence returning to 660109, 2921783.

660902, 2922245; 660869, 2922244; 660868, 2922295; 660809, 2922337; 660827, 2922379; 660878, 2922367; 660898, 2922339; 660934, 2922336; Thence returning to 660902, 2922245.

659618, 2922055; 659607, 2922052; 659587, 2922080; 659700, 2922142; 659793, 2922226; 659874, 2922318; 659943, 2922470; 659988, 2922525; 660047, 2922531; 660107, 2922495; 659980, 2922436; 659917, 2922292; 659813, 2922162; 659723, 2922096; Thence returning to 659618, 2922055.

659545, 2922549; 659639, 2922440; 659634, 2922376; 659610, 2922382; 659606, 2922428; 659545, 2922503; 659509, 2922515; 659441, 2922507; 659436, 2922531; Thence returning to 659545, 2922549.

660053, 2922601; 660027, 2922658; 659982, 2922707; 660000, 2922756; 660041, 2922798; 660070, 2922777; Thence returning to 660053, 2922601.

660105, 2922895; 660222, 2922862; 660155, 2922848; 660093, 2922876; 660073, 2922868; 660148, 2922737; 660181, 2922618; 660176, 2922565; 660035, 2922906; Thence returning to 660105, 2922895.

660632, 2922855; 660667, 2922859; 660693, 2922835; 660716, 2922750; 660717, 2922630; 660689, 2922501; 660578, 2922241; 660507, 2922240; 660613, 2922468; 660631, 2922552; 660630, 2922632; 660580, 2922813; 660478, 2922958; 660478, 2922976; 660510, 2922969; 660603, 2922868; Thence returning to 660632, 2922855.

658276, 2923967; 658249, 2923995; 658259, 2924006; Thence returning to 658276, 2923967.

658106, 2924202; 658107, 2924197; 658082, 2924234; Thence returning to 658106, 2924202.

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Excluding:

Unit TX–4, Willacy County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

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656848, 2933344; 656832, 2933320; 656791, 2933322; 656780, 2933357; 656819, 2933363; Thence returning to 656848, 2933344.

657102, 2932846; 657067, 2932838; 657059, 2932858; 657088, 2932886; 657052, 2932921; 657083, 2932984; 657106, 2932995; 657136, 2932964; 657141, 2932907; Thence returning to 657102, 2932846.

656667, 2932901; 656779, 2932861; 656843, 2932881; 656855, 2932827; 656789, 2932794; 656668, 2932793; 656596, 2932829; 656535, 2932892; Thence returning to 656667, 2932901.

657691, 2932678; 657537, 2932617; 657485, 2932645; 657481, 2932678; 657503, 2932707; 657632, 2932721; 657688, 2932749; 657724, 2932808; 657685, 2932836; 657731, 2932872; 657784, 2932913; 657757, 2932772; Thence returning to 657691, 2932678.

655919, 2932700; 655901, 2932690; 655886, 2932707; 655890, 2932728; 655911, 2932749; 655927, 2932740; Thence returning to 655919, 2932700.

657026, 2932642; 657080, 2932565; 657100, 2932499; 657146, 2932535; 657113, 2932563; 657105, 2932591; 657247, 2932540; 657281, 2932504; 657307, 2932441; 657307, 2932335; 657277, 2932297; 657153, 2932227; 657064, 2932265; 657055, 2932281; 657134, 2932298; 657146, 2932318; 657023, 2932339; 656919, 2932503; 656822, 2932607; 656827, 2932625; 656895, 2932628; 656909, 2932580; 656931, 2932587; 656970, 2932566; 656984, 2932586; 656962, 2932610; 656968, 2932631; Thence returning to 657026, 2932642.

655306, 2932610; 655301, 2932586; 655278, 2932593; Thence returning to 655306, 2932610.

656124, 2932573; 656123, 2932530; 656073, 2932531; 656072, 2932550; Thence returning to 656124, 2932573.

656866, 2932049; 656830, 2932001; 656816, 2932002; 656815, 2932057; 656840, 2932105; 656872, 2932123; Thence returning to 656866, 2932049.

657558, 2931510; 657461, 2931504; 657416, 2931533; 657400, 2931580; 657501, 2931633; 657633, 2931762; 657662, 2931701; 657634, 2931589; Thence returning to 657558, 2931510.

660565, 2927685; 660583, 2927614; 660490, 2927789; 660422, 2927852; 660390, 2927923; 660293, 2928014; 660257, 2928079; 660359, 2927989; 660504, 2927809; Thence returning to 660565, 2927685.

660389, 2927803; 660452, 2927674; 660252, 2927932; 660229, 2927997; 660248, 2928007; 660290, 2927913; Thence returning to 660389, 2927803.

659391, 2927650; 659374, 2927635; 659385, 2927764; 659466, 2927907; 659458, 2927841; 659415, 2927760; Thence returning to 659391, 2927650.

660456, 2927143; 660413, 2927140; 660269, 2927251; 660108, 2927474; 660006, 2927690; 660004, 2927701; 660079, 2927615; 660204, 2927376; 660242, 2927333; 660303, 2927286; 660518, 2927180; Thence returning to 660456, 2927143.

659363, 2927572; 659347, 2927462; 659320, 2927477; 659323, 2927527; 659334, 2927560; Thence returning to 659363, 2927572.

659931, 2926613; 659907, 2926591; 659882, 2926650; 659788, 2926675; 659780, 2926726; 659811, 2926843; 659836, 2926860; 659879, 2926844; 659918, 2926785; 659942, 2926709; Thence returning to 659931, 2926613.

663137, 2925678; 663232, 2925529; 663256, 2925457; 663255, 2925423; 663232, 2925410; 663152, 2925421; 663147, 2925402; 663224, 2925345; 663255, 2925352; 663290, 2925295; 663278, 2925269; 663200, 2925280; 663184, 2925243; 663164, 2925256; 663089, 2925417; 663091, 2925436; 663128, 2925443; 663106, 2925509; 663145, 2925587; 663111, 2925627; 663069, 2925626; 663006, 2925668; 662918, 2925771; 662922, 2925841; 662990, 2925853; 663023, 2925883; 663072, 2925877; 663099, 2925840; Thence returning to 663137, 2925678.

659644, 2925157; 659608, 2925068; 659534, 2925108; 659499, 2925086; 659485, 2925086; 659470, 2925115; 659427, 2925100; 659426, 2925189; 659440, 2925235; 659467, 2925265; 659517, 2925297; 659567, 2925307; 659624, 2925273; Thence returning to 659644, 2925157.

660331, 2924799; 660356, 2924699; 660319, 2924720; 660185, 2924772; 660144, 2924843; 660146, 2924871; 660203, 2924911; 660265, 2924903; Thence returning to 660331, 2924799.

660409, 2924322; 660445, 2924157; 660451, 2924086; 660437, 2923994; 660388, 2923918; 660300, 2923914; 659980, 2923980; 659942, 2924028; 659925, 2924093; 659927, 2924205; 659978, 2924242; 659971, 2924269; 659904, 2924258; 659865, 2924176; 659852, 2924170; 659830, 2924196; 659812, 2924274; 659822, 2924353; 659845, 2924405; 659912, 2924480; 660043, 2924522; 660181, 2924582; 660235, 2924680; 660282, 2924661; 660322, 2924600; Thence returning to 660409, 2924322.

659693, 2922901; 659503, 2922862; 659478, 2922891; 659471, 2922953; 659476, 2922992; 659502, 2923028; 659624, 2922996; 659705, 2922935; Thence returning to 659693, 2922901.

664597, 2922304; 664408, 2922301; 664417, 2922314; 664517, 2922329; 664508, 2922386; 664440, 2922407; 664417, 2922452; 664327, 2922439; 664309, 2922454; 664311, 2922473; 664361, 2922485; 664403, 2922549; 664291, 2922614; 664194, 2922608; 664194, 2922582; 664270, 2922542; 664286, 2922507; 664195, 2922492; 664131, 2922344; 664103, 2922359; 664113, 2922423; 664091, 2922446; 664056, 2922453; 664028, 2922419; 664004, 2922417; 663966, 2922447; 663916, 2922455; 663882, 2922491; 663811, 2922500; 663760, 2922540; 663764, 2922559; 663817, 2922579; 663913, 2922583; 663950, 2922620; 663955, 2922675; 663918, 2922746; 663907, 2922799; 663949, 2922921;

664058, 2922969; 664123, 2922977; 664194, 2922968; 664263, 2922932; 664355, 2922786; 664376, 2922613; 664491, 2922502; 664516, 2922423; Thence returning to 664597, 2922304.

663012, 2922281; 663007, 2922281; 662927, 2922279; 662906, 2922452; Thence returning to 663012, 2922281.

* * * * *

Unit TX–7: Newport Pass/Corpus Christi Pass Beach: 119 hectares (294 acres) in Nueces County, Texas.

(1) Unit TX–7, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

677207, 3055254; 677182, 3055210; 677018, 3055302; 677067, 3055333; 677061, 3055349; 677102, 3055503; 677133, 3055544; 677120, 3055593; 677144, 3055615; 677154, 3055683; 677210, 3055804; 677430, 3055747; 677374, 3055587; 677254, 3055369; Thence returning to 677207, 3055254.

680602, 3062200; 680491, 3062023; 679716, 3060547; 679702, 3060489; 679520, 3060176; 679472, 3060057; 679090, 3059313; 678531, 3058144; 678116, 3057316; 677547, 3056074; 677536, 3055942; 677545, 3055834; 677290, 3055886; 677335, 3055966; 677336, 3056010; 677367, 3056067; 677392, 3056069; 677493, 3056247; 677578, 3056461; 677615, 3056484; 677876, 3057083; 678012, 3057433; 678143, 3057683; 678089, 3057719; 678166, 3057767; 678199, 3057771; 678333, 3058072; 678668, 3058718; 678753, 3058928; 678773, 3058942; 678763, 3059001; 678802, 3059070; 678826, 3059082; 678819, 3059114; 678843, 3059158; 678858, 3059261; 678790, 3059405; 678855, 3059352; 678943, 3059361; 679081, 3059555; 679715, 3060823; 679718, 3060850; 679736, 3060860; 679864, 3061098; 679854, 3061115; 679888, 3061139; 680141, 3061634; 680186, 3061751; 680247, 3061869; 680271, 3061891; 680279, 3061920; 680221, 3062031; 680220, 3062080; 680307, 3062228; 680347, 3062218; 680356, 3062172; 680396, 3062187; 680420, 3062239; 680488, 3062286; 680603, 3062471; 680658, 3062520; 680766, 3062670; 680762, 3062706; 680811, 3062719; 680940, 3062645; 680801, 3062508; Thence returning to 680602, 3062200.

Unit TX–8: Mustang Island Beach: 252 hectares (623 acres) in Nueces County, Texas.

(1) Unit TX–8, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

690804, 3078378; 690197, 3077592; 689999, 3077310; 689859, 3077143; 688025, 3074662; 687168, 3073420; 686311, 3072104; 685582, 3070938; 684419, 3068995; 684336, 3068880; 684221, 3068660; 683219, 3066995; 682293, 3065385; 681460, 3063869; 681139, 3063237; 681011, 3062886; 681006, 3062781; 680847, 3062869; 680869, 3062881; 681097, 3063427; 681339, 3063896; 682082, 3065234; 682048, 3065228; 682093, 3065253; 682342, 3065680; 682353, 3065730; 682344, 3065764; 682353, 3065776; 682382, 3065767; 682524, 3065997; 682833, 3066556; 682984, 3066785; 683444, 3067582; 683481, 3067623; 683483, 3067650; 683570, 3067801; 683848, 3068267; 683859, 3068263; 684018, 3068550; 684713, 3069710; 685305, 3070659; 685324, 3070720; 685360, 3070747; 685365, 3070780; 685418, 3070831; 685425, 3070877; 685987, 3071784; 686727, 3072954; 687036, 3073411; 687030, 3073431; 687044, 3073431; 687079, 3073509; 687151, 3073582; 687664, 3074342; 687650, 3074370; 687674, 3074361; 687930, 3074757; 687982, 3074798; 688147, 3075013; 688140, 3075036; 688166, 3075075; 688443, 3075432; 688606, 3075681; 688601, 3075798; 688709, 3075797; 688725, 3075848; 688767, 3075889; 688793, 3075948; 688932, 3076136; 689047, 3076256; 689222, 3076502; 689288, 3076614; 689287, 3076641; 689332, 3076697; 689315, 3076737; 689337, 3076731; 689390, 3076783; 689375, 3076835; 689408, 3076810; 689416, 3076855; 689396, 3076875; 689406, 3076890; 689447, 3076881; 689471, 3076907; 689475, 3076925; 689454, 3076911; 689451, 3076923; 689470, 3076943; 689486, 3076937; 689560, 3077045; 689551, 3077080; 689572, 3077068; 689615, 3077117; 689774, 3077346; 690263, 3077958; 690279, 3077980; 690264, 3078021; 690314, 3078023; 690523, 3078286; 690526, 3078312; 690491, 3078353; 690563, 3078342; 690766, 3078604; 691144, 3079046; 691147, 3079069; 691182, 3079093; 691564, 3079539; 691680, 3079712; 691825, 3079589; 691740, 3079482; 691643, 3079410; 691639, 3079379; 691504, 3079230; 691470, 3079168; 691067, 3078711; Thence returning to 690804, 3078378.

Unit TX–9: Fish Pass Lagoons: 68 hectares (168 acres) in Nueces County, Texas.

(1) Unit TX–9, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

679030, 3064125; 678991, 3064130; 678976, 3064151; 679031, 3064149; Thence returning to 679030, 3064125.

678991, 3064218; 678971, 3064219; 678963, 3064236; 679000, 3064257; 679003, 3064227; Thence returning to 678991, 3064218.

679724, 3064620; 679747, 3064591; 679740, 3064540; 679763, 3064524; 679766, 3064497; 679791, 3064521; 679800, 3064572; 679818, 3064572; 679836, 3064524; 679853, 3064535; 679859, 3064596; 679889, 3064587; 679911, 3064556; 680010, 3064539; 680017, 3064525; 679997, 3064507; 679892, 3064535; 679871, 3064501; 679785, 3064482; 679765, 3064422; 679717, 3064437; 679702, 3064392; 679740, 3064303; 679745, 3064233; 679729, 3064220; 679700, 3064226; 679679, 3064251; 679621, 3064264; 679596, 3064309; 679553, 3064342; 679549, 3064375; 679585, 3064369; 679705, 3064285; 679663, 3064379; 679660, 3064482; 679694, 3064544; 679674, 3064617; Thence returning to 679724, 3064620.

679404, 3064220; 679392, 3064216; 679333, 3064322; 679219, 3064439; 679128, 3064602; 679090, 3064621; 679089, 3064662; 679137, 3064637; 679332, 3064391; 679383, 3064279; 679431, 3064232; Thence returning to 679404, 3064220.

679021, 3064641; 679026, 3064600; 679200, 3064365; 679306, 3064180; 679258, 3064160; 679262, 3064187; 679236, 3064232; 679202, 3064251; 679187, 3064308; 679144, 3064315; 679153, 3064346; 679110, 3064327; 679005, 3064350; 678969, 3064343; 678901, 3064288; 678892, 3064263; 678906, 3064221; 678875, 3064193; 678861, 3064126; 678838, 3064123; 678803, 3064153; 678698, 3064146; 678679, 3064056; 678656, 3064059; 678635, 3064105; 678586, 3064132; 678591, 3064162; 678650, 3064162; 678609, 3064205; 678577, 3064193; 678552, 3064206; 678564, 3064249; 678501, 3064297; 678425, 3064186; 678359, 3064133; 678377, 3064186; 678431, 3064238; 678454, 3064312; 678488, 3064323; 678504, 3064378; 678693, 3064626; 678786, 3064688; 679021, 3064641; 678551, 3064300; 678624, 3064250; 678636, 3064215; 678677, 3064194; 678701, 3064216; 678728, 3064200; 678748, 3064266; 678784, 3064243; 678807, 3064247; 678788, 3064289; 678794, 3064348; 678861, 3064399; 678895, 3064395; 678914, 3064411; 678885, 3064458; 678904, 3064476; 678902, 3064521; 678912, 3064537; 678947, 3064541; 678993, 3064619; 678896, 3064638; 678722, 3064549; 678531, 3064333; 678525, 3064321; Thence returning to 678551, 3064300.

679203, 3065044; 679360, 3065017; 679421, 3064961; 679476, 3064953; 679474, 3064869; 679611, 3064661; 679600, 3064627; 679570, 3064630; 679548, 3064610; 679467, 3064612;

679467, 3064568; 679538, 3064587; 679553, 3064568; 679547, 3064555; 679463, 3064523; 679438, 3064539; 679395, 3064610; 679307, 3064635; 679204, 3064694; 679180, 3064724; 679142, 3064799; 679122, 3064810; 679121, 3064838; 679155, 3064907; 679172, 3065007; 679162, 3065044; 679203, 3065044; 679400, 3064695; 679470, 3064705; 679498, 3064742; 679472, 3064789; 679421, 3064827; 679336, 3064743; 679346, 3064722; Thence returning to 679400, 3064695.

679957, 3065348; 679953, 3065316; 679938, 3065305; 679903, 3065335; 679828, 3065333; 679838, 3065282; 679897, 3065260; 679907, 3065205; 679928, 3065183; 679996, 3065191; 680187, 3065291; 680245, 3065306; 680261, 3065281; 680303, 3065290; 680320, 3065274; 680393, 3065298; 680415, 3065257; 680381, 3065193; 680457, 3065144; 680444, 3065118; 680373, 3065126; 680293, 3065093; 680150, 3065089; 680100, 3065059; 680018, 3065075; 679993, 3065020; 680000, 3064913; 679978, 3064899; 679954, 3064823; 679931, 3064622; 679914, 3064610; 679839, 3064679; 679842, 3064740; 679803, 3064745; 679814, 3064802; 679804, 3064858; 679830, 3064914; 679824, 3064940; 679726, 3065061; 679680, 3065085; 679750, 3065104; 679742, 3065148; 679590, 3065107; 679475, 3064996; 679426, 3065030; 679417, 3065054; 679442, 3065069; 679519, 3065059; 679514, 3065098; 679533, 3065134; 679552, 3065139; 679549, 3065185; 679600, 3065194; 679608, 3065227; 679670, 3065302; 679739, 3065464; 679753, 3065535; 679789, 3065583; 679879, 3065561; 679909, 3065518; 679974, 3065497; 679963, 3065453; 679979, 3065422; Thence returning to 679957, 3065348.

679279, 3065246; 679262, 3065177; 679297, 3065087; 679201, 3065090; 679154, 3065176; 679027, 3065064; 679170, 3065253; 679212, 3065238; 679248, 3065252; 679243, 3065326; 679286, 3065405; 679542, 3065741; 679556, 3065742; 679454, 3065602; 679450, 3065545; 679321, 3065373; Thence returning to 679279, 3065246.

Excluding:

Unit TX–9, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

679470, 3064705; 679400, 3064695; 679346, 3064722; 679336, 3064743; 679421, 3064827; 679472, 3064789; 679498, 3064742; Thence returning to 679470, 3064705.

678914, 3064411; 678895, 3064395; 678861, 3064399; 678794, 3064348; 678788, 3064289; 678807, 3064247; 678784, 3064243; 678748, 3064266; 678728, 3064200; 678701, 3064216; 678677, 3064194; 678636, 3064215; 678624, 3064250; 678551, 3064300; 678525, 3064321; 678531, 3064333; 678722, 3064549; 678896, 3064638; 678993, 3064619; 678947, 3064541; 678912, 3064537; 678902, 3064521; 678904, 3064476; 678885, 3064458; Thence returning to 678914, 3064411.

Unit TX–10: Shamrock Island and Adjacent Mustang Island Flats. This unit consists of three subunits:

(1) Subunit TX–10A: Shamrock Island: 5 hectares (12 acres) in Nueces County, Texas.

(i) Unit TX–10, Subunit A, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

680551, 3071356; 680539, 3071357; 680529, 3071447; 680507, 3071466; 680495, 3071520; 680517, 3071516; 680559, 3071458; 680564, 3071372; Thence returning to 680551, 3071356.

680287, 3071911; 680270, 3071903; 680264, 3071860; 680204, 3071901; 680234, 3071939; 680228, 3071961; 680241, 3071975; 680266, 3071968; Thence returning to 680287, 3071911.

679983, 3071174; 679961, 3071171; 679911, 3071208; 679893, 3071240; 679889, 3071297; 679896, 3071440; 679947, 3071564; 679952, 3071747; 679972, 3071892; 680020, 3071975; 680185, 3072099; 680221, 3072107; 680030, 3071955; 680000, 3071908; 679979, 3071837; 679982, 3071621; 679944, 3071508; 679943, 3071417; 679910, 3071343; 679922, 3071263; 679981, 3071216; Thence returning to 679983, 3071174.

680741, 3072445; 680771, 3072420; 680766, 3072399; 680681, 3072440; 680598, 3072432; 680661, 3072465; Thence returning to 680741, 3072445.

680868, 3072484; 680904, 3072444; 680879, 3072415; 680830, 3072450; 680786, 3072436; 680752, 3072474; 680770, 3072496; 680813, 3072481; 680846, 3072499; Thence returning to 680868, 3072484.

(2) Subunit TX–10B: Mustang Island: Unnamed sand flat: 1 hectare (2 acres) in Nueces County, Texas.

(i) Unit TX–10, Subunit B, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

681497, 3070434; 681460, 3070459; 681467, 3070612; 681524, 3070776; 681568, 3070799; 681492, 3070603; 681483, 3070489; Thence returning to 681497, 3070434.

(3) Subunit TX–10C: Mustang Island: Lagoon Complex: 134 hectares (331 acres) in Nueces County, Texas.

(i) Unit TX–10, Subunit C, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

680304, 3067245; 680367, 3067238; 680443, 3067190; 680444, 3067140; 680317, 3067166; 680277, 3067209; 680190, 3067174; 680145, 3067138; 680154, 3067187; 680170, 3067176; 680157, 3067190; 680208, 3067226; 680264, 3067302; 680304, 3067323; 680289, 3067264; Thence returning to 680304, 3067245.

681001, 3067433; 681008, 3067396; 680977, 3067417; 680893, 3067396; 680909, 3067354; 680869, 3067344; 680869, 3067298; 680845, 3067226; 680483, 3067147; 680481, 3067213; 680564, 3067206; 680511, 3067269; 680526, 3067301; 680547, 3067251; 680607, 3067224; 680651, 3067228; 680680, 3067251; 680690, 3067296; 680713, 3067310; 680715, 3067380; 680763, 3067453; 680746, 3067514; 680703, 3067532; 680679, 3067526; 680667, 3067471; 680575, 3067409; 680549, 3067357; 680537, 3067365; 680526, 3067423; 680609, 3067540; 680699, 3067556; 680789, 3067540; 680797, 3067468; 680737, 3067302; 680761, 3067312; 680821, 3067389; 680848, 3067363; 680871, 3067457; 680915, 3067522; 680924, 3067632; 680966, 3067590; Thence returning to 681001, 3067433.

681234, 3067399; 681378, 3067304; 681410, 3067245; 681269, 3067338; 681230, 3067323; 681263, 3067294; 681264, 3067264; 681210, 3067269; 681160, 3067309; 681158, 3067334; 681124, 3067330; 681081, 3067379; 681018, 3067394; 680985, 3067576; 680924, 3067649; 680949, 3067773; 681004, 3067783; 681060, 3067607; 681088, 3067576; 681144, 3067564; 681231, 3067444; Thence returning to 681234, 3067399.

680636, 3067764; 680654, 3067783; 680651, 3067894; 680717, 3067831; 680729, 3067765; 680784, 3067724; 680797, 3067640; 680755, 3067631; 680709, 3067729; 680674, 3067674; 680687, 3067606; 680660, 3067597; 680599, 3067648; 680587, 3067728; 680570, 3067740; 680557, 3067686; 680505, 3067606; 680523, 3067593; 680555, 3067641; 680575, 3067645; 680583, 3067598; 680546, 3067557; 680559, 3067516; 680496, 3067482; 680473, 3067423; 680421, 3067412; 680352, 3067355; 680366, 3067446; 680464, 3067574; 680477, 3067672; 680526, 3067774; 680544, 3067871; 680530, 3067887; 680547, 3067918; 680585, 3067878; 680617, 3067784; Thence returning to 680636, 3067764.

680746, 3067919; 680719, 3067844; 680654, 3067907; 680711, 3067924; 680684, 3067991; 680712, 3068055;

680731, 3068064; 680757, 3068054; 680762, 3068028; Thence returning to 680746, 3067919.

681564, 3068600; 681726, 3068541; 681872, 3068403; 681853, 3068518; 681864, 3068524; 681890, 3068478; 681921, 3068456; 681894, 3068530; 681908, 3068547; 681953, 3068497; 681968, 3068417; 682083, 3068335; 682164, 3068314; 682117, 3068272; 682103, 3068230; 682130, 3068092; 682094, 3068068; 682119, 3068008; 682105, 3067971; 682120, 3067891; 682097, 3067898; 682025, 3067844; 681993, 3067871; 681964, 3067956; 681894, 3068009; 681924, 3068047; 681919, 3068105; 681871, 3068274; 681830, 3068331; 681814, 3068407; 681721, 3068497; 681671, 3068517; 681648, 3068491; 681610, 3068495; 681606, 3068480; 681651, 3068366; 681685, 3068342; 681686, 3068287; 681732, 3068201; 681738, 3068128; 681672, 3068088; 681695, 3068047; 681719, 3068047; 681723, 3068023; 681666, 3068006; 681587, 3068042; 681565, 3068041; 681552, 3068021; 681575, 3067981; 681632, 3067938; 681650, 3067936; 681673, 3067961; 681701, 3067944; 681687, 3067913; 681649, 3067901; 681658, 3067886; 681713, 3067874; 681724, 3067848; 681714, 3067820; 681697, 3067812; 681631, 3067829; 681619, 3067809; 681631, 3067787; 681669, 3067770; 681672, 3067744; 681614, 3067762; 681582, 3067809; 681497, 3067809; 681473, 3067799; 681473, 3067779; 681527, 3067747; 681510, 3067725; 681475, 3067744; 681384, 3067741; 681379, 3067707; 681348, 3067671; 681302, 3067698; 681335, 3067757; 681300, 3067755; 681269, 3067740; 681267, 3067706; 681247, 3067710; 681229, 3067676; 681170, 3067699; 681147, 3067681; 681125, 3067616; 681103, 3067636; 681075, 3067625; 681045, 3067788; 681109, 3067967; 681138, 3068006; 681096, 3068023; 681070, 3068085; 681148, 3068247; 681154, 3068311; 681189, 3068403; 681274, 3068505; 681404, 3068584; 681564, 3068600; 681513, 3068562; 681435, 3068548; 681468, 3068524; 681538, 3068515; 681531, 3068564; 681513, 3068562; 681476, 3068261; 681498, 3068264; 681508, 3068292; 681486, 3068292; 681476, 3068261; 681523, 3068258; 681534, 3068216; 681601, 3068182; 681602, 3068211; 681565, 3068263; 681542, 3068277; 681523, 3068258; 681644, 3068189; 681649, 3068154; 681680, 3068138; 681703, 3068146; 681690, 3068190; 681653, 3068202; 681644, 3068189; 681374, 3067977; 681388, 3067936; 681453, 3067936; 681466, 3067871; 681523, 3067838; 681528, 3067858; 681446, 3067999; 681374, 3067977; 681350, 3067865; 681305, 3067881; 681279, 3067838; 681329, 3067821; 681350, 3067865; 681175, 3067855; 681131, 3067858; 681110, 3067812; 681110, 3067775; 681160, 3067811; 681175, 3067855; 681325, 3067970; 681306, 3067967; 681346, 3067939; 681347, 3067953; Thence returning to 681325, 3067970.

681154, 3068712; 681222, 3068703; 681237, 3068666; 681206, 3068660; 681118, 3068710; 681053, 3068639; 680914, 3068580; 680917, 3068628; 680875, 3068675; 680821, 3068502; 680809, 3068505; 680873, 3068714; 680901, 3068735; 680913, 3068704; 680974, 3068656; 680990, 3068667; 680989, 3068719; 681055, 3068743; Thence returning to 681154, 3068712.

682358, 3068803; 682457, 3068702; 682465, 3068712; 682444, 3068739; 682444, 3068769; 682494, 3068765; 682514, 3068790; 682613, 3068809; 682696, 3068767; 682698, 3068738; 682629, 3068775; 682552, 3068772; 682526, 3068740; 682521, 3068643; 682468, 3068636; 682436, 3068663; 682416, 3068711; 682360, 3068742; 682333, 3068747; 682289, 3068725; 682260, 3068677; 682277, 3068639; 682236, 3068580; 682242, 3068541; 682269, 3068529; 682265, 3068428; 682213, 3068392; 682268, 3068342; 682269, 3068288; 682229, 3068314; 682211, 3068346; 682099, 3068362; 682032, 3068411; 681995, 3068412; 681993, 3068512; 681961, 3068546; 681960, 3068572; 682006, 3068644; 682053, 3068609; 682076, 3068622; 682106, 3068579; 682135, 3068581; 682191, 3068694; 682210, 3068688; 682254, 3068727; 682238, 3068772; 682254, 3068796; 682285, 3068805; 682259, 3068845; 682327, 3068841; 682358, 3068803; 682114, 3068444; 682155, 3068469; 682162, 3068511; 682143, 3068519; 682110, 3068505; 682114, 3068444; 682166, 3068444; 682135, 3068384; 682181, 3068388; 682190, 3068442; Thence returning to 682166, 3068444.

681062, 3068954; 681097, 3068917; 681109, 3068836; 681152, 3068754; 681134, 3068748; 681136, 3068731; 681066, 3068749; 681094, 3068756; 681086, 3068799; 681033, 3068827; 681073, 3068852; 681069, 3068882; 680997, 3068871; 680978, 3068855; 680973, 3068895; 680945, 3068884; 680821, 3068735; 680812, 3068704; 680869, 3068716; 680802, 3068510; 680767, 3068525; 680681, 3068309; 680672, 3068365; 680731, 3068526; 680738, 3068628; 680787, 3068745; 680791, 3068812; 680837, 3068798; 680838, 3068870; 680925, 3068973; 680971, 3068973; 680996, 3068947; 681031, 3068985; Thence returning to 681062, 3068954.

682407, 3069004; 682433, 3068941; 682490, 3068955; 682488, 3068851; 682463, 3068808; 682403, 3068868; 682401, 3068930; 682380, 3068923; 682355, 3068957; 682335, 3068915; 682298, 3068892; 682269, 3068959; 682274, 3068984; 682297, 3068984; 682355, 3069063; 682382, 3069058; Thence returning to 682407, 3069004.

681296, 3069042; 681335, 3068911; 681295, 3068886; 681286, 3068895; 681302, 3068925; 681278, 3069011; 681218, 3069031; 681246, 3069074; Thence returning to 681296, 3069042.

681426, 3069038; 681451, 3069034; 681452, 3068948; 681375, 3068898; 681329, 3069009; 681341, 3069018; 681332, 3069085; 681381, 3069086; Thence returning to 681426, 3069038.

681117, 3069166; 681158, 3069115; 681158, 3069071; 681145, 3069055; 681056, 3069028; 681044, 3069101; 681007, 3069113; 681000, 3069159; 681050, 3069161; 681063, 3069198; Thence returning to 681117, 3069166.

682032, 3070113; 682262, 3069996; 682404, 3069955; 683002, 3069708; 682899, 3069670; 682924, 3069615; 682998, 3069607; 682988, 3069575; 682883, 3069581; 682822, 3069500; 682817, 3069409; 682852, 3069354; 682794, 3069310; 682799, 3069223; 682829, 3069222; 682823, 3069187; 682836, 3069170; 682780, 3069018; 682765, 3069078; 682746, 3069087; 682726, 3069091; 682699, 3069058; 682579, 3069106; 682630, 3069164; 682679, 3069176; 682691, 3069226; 682746, 3069306; 682745, 3069344; 682784, 3069408; 682820, 3069562; 682808, 3069668; 682765, 3069748; 682712, 3069783; 682600, 3069800; 682429, 3069873; 682368, 3069868; 682331, 3069949; 682292, 3069932; 682279, 3069959; 682235, 3069979; 682170, 3069962; 682134, 3069925; 682107, 3069927; 682059, 3070047; 682029, 3070003; 681999, 3069997; 681957, 3070077; 681783, 3070085; 681771, 3070100; 681782, 3070129; 681876, 3070110; 681913, 3070163; Thence returning to 682032, 3070113.

681378, 3070218; 681407, 3070221; 681426, 3070155; 681264, 3069907; 681274, 3069681; 681244, 3069604; 681202, 3069570; 681235, 3069475; 681225, 3069444; 681174, 3069435; 681168, 3069401; 681180, 3069373; 681229, 3069419; 681340, 3069409; 681375, 3069374; 681385, 3069326; 681359, 3069266; 681285, 3069252; 681277, 3069175; 681226, 3069132; 681138, 3069176; 681105, 3069293; 681131, 3069323; 681140, 3069370; 681091, 3069433; 681087, 3069471; 681135, 3069582; 681139, 3069687; 681186, 3069751; 681213, 3069938;

681316, 3070121; 681332, 3070216; 681378, 3070218; 681235, 3069244; 681267, 3069266; 681279, 3069296; 681283, 3069378; 681261, 3069400; 681213, 3069378; 681196, 3069340; 681208, 3069267; Thence returning to 681235, 3069244.

681629, 3070187; 681627, 3070165; 681544, 3070106; 681509, 3070110; 681489, 3070168; 681530, 3070197; 681565, 3070188; 681573, 3070238; 681598, 3070249; 681632, 3070235; Thence returning to 681629, 3070187.

Excluding:

Unit TX–10 Subunit C, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

681267, 3069266; 681235, 3069244; 681208, 3069267; 681196, 3069340; 681213, 3069378; 681261, 3069400; 681283, 3069378; 681279, 3069296; Thence returning to 681267, 3069266.

681531, 3068564; 681538, 3068515; 681468, 3068524; 681435, 3068548; 681513, 3068562; Thence returning to 681531, 3068564.

682155, 3068469; 682114, 3068444; 682110, 3068505; 682143, 3068519; 682162, 3068511; Thence returning to 682155, 3068469.

682181, 3068388; 682135, 3068384; 682166, 3068444; 682190, 3068442; Thence returning to 682181, 3068388.

681498, 3068264; 681476, 3068261; 681486, 3068292; 681508, 3068292; Thence returning to 681498, 3068264.

681602, 3068211; 681601, 3068182; 681534, 3068216; 681523, 3068258; 681542, 3068277; 681565, 3068263; Thence returning to 681602, 3068211.

681703, 3068146; 681680, 3068138; 681649, 3068154; 681644, 3068189; 681653, 3068202; 681690, 3068190; Thence returning to 681703, 3068146.

681528, 3067858; 681523, 3067838; 681466, 3067871; 681453, 3067936; 681388, 3067936; 681374, 3067977; 681446, 3067999; Thence returning to 681528, 3067858.

681347, 3067953; 681346, 3067939; 681306, 3067967; 681325, 3067970; Thence returning to 681347, 3067953.

681350, 3067865; 681329, 3067821; 681279, 3067838; 681305, 3067881; Thence returning to 681350, 3067865.

681160, 3067811; 681110, 3067775; 681110, 3067812; 681131, 3067858; 681175, 3067855; Thence returning to 681160, 3067811.

* * * * *

Unit TX–14: East Flats: 239 hectares (591 acres) in Nueces County, Texas.

(1) Unit TX–14, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

686175, 3079064; 686157, 3079068; 686243, 3079125; 686225, 3079089; Thence returning to 686175, 3079064.

686589, 3079231; 686569, 3079233; 686592, 3079252; Thence returning to 686589, 3079231.

686675, 3079267; 686725, 3079074; 686685, 3079078; 686684, 3079039; 686590, 3079021; 686582, 3079000; 686597, 3078973; 686740, 3079012; 686757, 3078944; 686729, 3078927; 686722, 3078889; 686796, 3078541; 686766, 3078556; 686735, 3078609; 686708, 3078624; 686717, 3078703; 686663, 3078719; 686657, 3078767; 686702, 3078802; 686696, 3078821; 686656, 3078833; 686602, 3078816; 686589, 3078948; 686562, 3078975; 686506, 3078981; 686475, 3078941; 686385, 3078886; 686340, 3078889; 686327, 3078924; 686273, 3078951; 686315, 3079024; 686299, 3079130; 686360, 3079108; 686438, 3079143; 686429, 3079118; 686380, 3079102; 686387, 3079077; 686483, 3079127; 686516, 3079116; 686538, 3079155; 686593, 3079169; 686626, 3079230; 686650, 3079224; 686675, 3079267; 686610, 3079086; 686616, 3079054; 686633, 3079057; 686661, 3079084; 686660, 3079110; Thence returning to 686610, 3079086.

687864, 3080065; 687957, 3080071; 687971, 3080040; 688029, 3080048; 688062, 3080070; 688049, 3080019; 687955, 3079954; 688036, 3079955; 688071, 3079986; 688100, 3079936; 688160, 3080009; 688164, 3080036; 688217, 3080049; 688258, 3080025; 688269, 3079998; 688221, 3079925; 688219, 3079897; 688233, 3079893; 688341, 3080023; 688419, 3080013; 688457, 3079986; 688539, 3079796; 688523, 3079756; 688468, 3079792; 688444, 3079789; 688437, 3079771; 688484, 3079632; 688434, 3079548; 688437, 3079420; 688426, 3079388; 688350, 3079376; 688321, 3079428; 688302, 3079427; 688121, 3079281; 688085, 3079304; 688034, 3079246; 687954, 3079229; 687956, 3079211; 687989, 3079188; 688031, 3079124; 688080, 3079126; 688083, 3079080; 688103, 3079050; 688157, 3079039; 688126, 3078959; 688130, 3078892; 688149, 3078880; 688192, 3078921; 688219, 3078907; 688310, 3079019; 688350, 3078897; 688346, 3078847; 688329, 3078823; 688285, 3078829; 688292, 3078782; 688280, 3078761; 688201, 3078729; 688151, 3078732; 688144, 3078680; 688129, 3078667; 688104, 3078666; 688090, 3078700; 688077, 3078696; 688046, 3078519; 688044, 3078410; 688024, 3078347; 688000, 3078333; 687964, 3078339; 687946, 3078399; 687875, 3078422; 687838, 3078407; 687825, 3078419; 687827, 3078448; 687809, 3078461; 687763, 3078464; 687723, 3078434; 687737, 3078487; 687774, 3078520; 687795, 3078609; 687753, 3078573; 687749, 3078593; 687708, 3078584; 687697, 3078626; 687657, 3078606; 687636, 3078558; 687628, 3078671; 687574, 3078674; 687607, 3078598; 687613, 3078543; 687559, 3078556; 687527, 3078518; 687501, 3078427; 687481, 3078404; 687504, 3078347; 687489, 3078316; 687488, 3078253; 687401, 3078207; 687409, 3078190; 687482, 3078197; 687480, 3078179; 687421, 3078136; 687386, 3078133; 687279, 3078186; 687224, 3078242; 687333, 3078235; 687370, 3078262; 687409, 3078266; 687415, 3078290; 687443, 3078294; 687436, 3078344; 687459, 3078385; 687368, 3078403; 687302, 3078393; 687293, 3078409; 687302, 3078449; 687240, 3078446; 687234, 3078437; 687263, 3078412; 687262, 3078360; 687117, 3078308; 687127, 3078280; 687185, 3078248; 687193, 3078226; 687088, 3078305; 687064, 3078355; 687074, 3078410; 687238, 3078518; 687236, 3078542; 687220, 3078547; 687221, 3078591; 687171, 3078613; 687103, 3078528; 687051, 3078505; 686958, 3078509; 686902, 3078551; 686802, 3078995; 686823, 3078999; 686817, 3079070; 686799, 3079084; 686785, 3079063; 686736, 3079288; 686773, 3079287; 686783, 3079326; 686726, 3079495; 686708, 3079617; 686738, 3079689; 686774, 3079974; 686785, 3080002; 686905, 3080026; 686933, 3079982; 686986, 3079990; 687019, 3080049; 687102, 3080066; 687149, 3079993; 687264, 3079953; 687305, 3079920; 687382, 3079942; 687411, 3079965; 687527, 3079986; 687574, 3079927; 687634, 3079913; 687703, 3079869; 687720, 3079890; 687695, 3079936; 687722, 3079944; 687746, 3079924; 687758, 3079936; 687721, 3079983; 687719, 3080023; 687679, 3080050; 687679, 3080066; 687806, 3080092; 687864, 3080065; 687208, 3079502; 687237, 3079509; 687261, 3079541; 687270, 3079593; 687260, 3079646; 687232, 3079568; 687189, 3079538; 687208, 3079502; 686905, 3078605; 686931, 3078604; 686853, 3078923; 686833, 3078907; Thence returning to 686905, 3078605.

Excluding:

Unit TX–14, Nueces County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

687237, 3079509; 687208, 3079502; 687189, 3079538; 687232, 3079568; 687260, 3079646; 687270, 3079593; 687261, 3079541; Thence returning to 687237, 3079509.

686633, 3079057; 686616, 3079054; 686610, 3079086; 686660, 3079110; 686661, 3079084; Thence returning to 686633, 3079057.

686853, 3078923; 686931, 3078604; 686905, 3078605; 686833, 3078907; Thence returning to 686853, 3078923.

Unit TX–15: North Pass: 326 hectares (805 acres) in Aransas County, Texas.

(1) Unit TX–15, Aransas County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

694159, 3086654; 694117, 3086676; 694105, 3086736; 694156, 3086725; Thence returning to 694159, 3086654.

694094, 3086822; 694103, 3086805; 694071, 3086813; 694058, 3086779; 694012, 3086846; 694046, 3086870; Thence returning to 694094, 3086822.

693527, 3087373; 693541, 3087343; 693580, 3087316; 693776, 3087289; 693828, 3087231; 693836, 3087139; 693957, 3087101; 694016, 3087049; 694130, 3087035; 694141, 3087055; 694123, 3087103; 694149, 3087123; 694156, 3087091; 694200, 3087061; 694170, 3087040; 694267, 3086979; 694314, 3086869; 694271, 3086858; 694239, 3086872; 694219, 3086968; 694117, 3087015; 694097, 3087012; 694095, 3086994; 694147, 3086970; 694152, 3086924; 694199, 3086899; 694198, 3086883; 694125, 3086868; 694081, 3086886; 693920, 3086900; 693892, 3086935; 693871, 3086937; 693862, 3086964; 693812, 3086987; 693756, 3086955; 693734, 3086982; 693728, 3087058; 693668, 3087111; 693578, 3087104; 693569, 3087052; 693540, 3087045; 693497, 3087142; 693445, 3087194; 693428, 3087335; 693434, 3087369; 693512, 3087383; Thence returning to 693527, 3087373.

693737, 3087760; 693876, 3087776; 693917, 3087761; 693867, 3087736; 693861, 3087716; 693792, 3087736; 693769, 3087728; 693769, 3087707; 693830, 3087606; 693823, 3087580; 693779, 3087609; 693751, 3087654; 693708, 3087635; 693708, 3087721; 693630, 3087762; 693638, 3087836; 693607, 3087858; 693600, 3087890; 693615, 3087893; Thence returning to 693737, 3087760.

694729, 3088064; 694795, 3088051; 694837, 3088064; 694891, 3088051; 694906, 3088029; 694897, 3088016; 694770, 3088001; 694727, 3088019; 694715, 3088065; Thence returning to 694729, 3088064.

695080, 3087975; 695060, 3087976; 695052, 3087996; 695050, 3088053; 695119, 3088085; 695131, 3088107; 695118, 3088169; 695070, 3088189; 695157, 3088235; 695176, 3088168; 695168, 3088080; 695121, 3088001; Thence returning to 695080, 3087975.

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695198, 3088150; 695226, 3088210; 695322, 3088186; 695347, 3088201; 695321, 3088272; 695361, 3088269; 695381, 3088295; 695440, 3088308; 695554, 3088319; 694545, 3086654; 694579, 3086660; 694590, 3086684; 694529, 3086722; 694514, 3086698; 694545, 3086654; 694624, 3086654; 694591, 3086643; 694512, 3086572; 694481, 3086530; 694485, 3086505; 694547, 3086482; 694625, 3086480; 694631, 3086533; 694596, 3086559; 694641, 3086592; 694641, 3086643; 694624, 3086654; 694472, 3086461; 694475, 3086492; 694458, 3086497; 694420, 3086472; 694416, 3086444; 694441, 3086436; 694472, 3086461; 694254, 3086440; 694195, 3086425; 694083, 3086432; 694058, 3086523; 693983, 3086569; 693922, 3086644; 693888, 3086631; 693867, 3086657; 693796, 3086661; 693738, 3086642; 693706, 3086613; 693715, 3086593; 693755, 3086573; 693755, 3086557; 693719, 3086528; 693739, 3086474; 693826, 3086411; 693898, 3086457; 693898, 3086518; 693955, 3086500; 693981, 3086448; 693959, 3086426; 693962, 3086407; 693984, 3086401; 693985, 3086369; 693964, 3086348; 694044, 3086275; 694073, 3086308; 694081, 3086348; 694050, 3086411; 694186, 3086379; 694171, 3086360; 694101, 3086338; 694115, 3086320; 694194, 3086311; 694230, 3086345; 694254, 3086440; 694512, 3086391; 694539, 3086428; 694543, 3086458; 694525, 3086471; 694501, 3086448; Thence returning to 694512, 3086391.

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694993, 3088931; 694961, 3088919; 694972, 3088834; 694961, 3088825; 694856, 3089014; 694853, 3089052; 694818, 3089098; 694805, 3089156; 694838, 3089173; 694981, 3089003; Thence returning to 694993, 3088931.

694650, 3089180; 694659, 3089149; 694680, 3089141; 694692, 3089184; 694681, 3089228; 694706, 3089233; 694761, 3089187; 694778, 3089086; 694805, 3089051; 694765, 3088983; 694771, 3088954; 694805, 3088919; 694798, 3088899; 694730, 3088888; 694726, 3088912; 694698, 3088914; 694671, 3088945; 694646, 3088929; 694651, 3088889; 694677, 3088880; 694683, 3088840; 694728, 3088763; 694733, 3088720; 694815, 3088641; 694884, 3088610; 694933, 3088624; 694983, 3088678; 694990, 3088653; 694975, 3088622; 694994, 3088553; 695007, 3088545; 695024, 3088576; 695075, 3088519; 695116, 3088338; 695207, 3088323; 695214, 3088297; 695094, 3088327; 694720, 3088469; 694578, 3088578; 694511, 3088598; 694335, 3088745; 694204, 3088759; 693967, 3088953; 693903, 3089040; 693907, 3089074; 693926, 3089096; 694096, 3089159; 694106, 3089142; 694082, 3089124; 694077, 3089081; 694092, 3089013; 694112, 3088990; 694118, 3089135; 694149, 3089124; 694196, 3089136; 694215, 3089046; 694214, 3088946; 694231, 3088919; 694247, 3088960; 694230, 3089128; 694284, 3089155; 694321, 3089146; 694327, 3089178; 694315, 3089219; 694242, 3089255; 694249, 3089266; 694410, 3089284; 694498, 3089144; 694534, 3089143; 694564, 3089101; 694590, 3089145; 694583, 3089167; 694559, 3089165; 694568, 3089196; 694553, 3089256; 694590, 3089294; 694642, 3089258; 694635, 3089227; 694650, 3089180; 694009, 3089086; 693990, 3089083; 693988, 3089043; 693999, 3089005; 694018, 3088996; 694023, 3089039; Thence returning to 694009, 3089086.

Excluding:

Unit TX–15, Aransas County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

694023, 3089039; 694018, 3088996; 693999, 3089005; 693988, 3089043; 693990, 3089083; 694009, 3089086; Thence returning to 694023, 3089039.

693224, 3087723; 693211, 3087696; 693179, 3087696; 693144, 3087715; 693129, 3087751; 693123, 3087779; 693136, 3087810; 693159, 3087803; Thence returning to 693224, 3087723.

694579, 3086660; 694545, 3086654; 694514, 3086698; 694529, 3086722; 694590, 3086684; Thence returning to 694579, 3086660.

693867, 3086657; 693888, 3086631; 693922, 3086644; 693983, 3086569; 694058, 3086523; 694083, 3086432; 694195, 3086425; 694254, 3086440; 694230, 3086345; 694194, 3086311; 694115, 3086320; 694101, 3086338; 694171, 3086360; 694186, 3086379; 694050, 3086411; 694081, 3086348; 694073, 3086308; 694044, 3086275; 693964, 3086348; 693985, 3086369; 693984, 3086401; 693962, 3086407; 693959, 3086426; 693981, 3086448; 693955, 3086500; 693898, 3086518; 693898, 3086457; 693826, 3086411; 693739, 3086474; 693719, 3086528; 693755, 3086557; 693755, 3086573; 693715, 3086593; 693706, 3086613; 693738, 3086642; 693796, 3086661; Thence returning to 693867, 3086657.

694631, 3086533; 694625, 3086480; 694547, 3086482; 694485, 3086505; 694481, 3086530; 694512, 3086572; 694591, 3086643; 694624, 3086654; 694641, 3086643; 694641, 3086592; 694596, 3086559; Thence returning to 694631, 3086533.

694472, 3086461; 694441, 3086436; 694416, 3086444; 694420, 3086472; 694458, 3086497; 694475, 3086492; Thence returning to 694472, 3086461.

694539, 3086428; 694512, 3086391; 694501, 3086448; 694525, 3086471; 694543, 3086458; Thence returning to 694539, 3086428.

Unit TX–16: San Jose Beach: 558 hectares (1,378 acres) in Aransas and Calhoun Counties, Texas.

(1) Unit TX–16, Aransas County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

705653, 3099957; 704409, 3098570; 703190, 3097168; 700934, 3094423; 700844, 3094304; 700813, 3094222; 700747, 3094134; 700050, 3093252; 699238, 3092180; 699088, 3092014; 698235, 3090890; 697335, 3089664; 696512, 3088500; 695772, 3087410; 695295, 3086677; 694761, 3085797; 694692, 3085644; 694159, 3084774; 694057, 3084548; 693647, 3083839; 693411, 3083347; 693251, 3083050; 692808, 3081995; 692783, 3081831; 692665, 3081506; 692626, 3081356; 692571, 3080884; 692478, 3080931; 692402, 3080995; 692443, 3080988; 692462, 3081012; 692516, 3081429; 692599, 3081766; 692597, 3081790; 692521, 3081781; 692540, 3081893; 692631, 3081918; 692700, 3082062; 692835, 3082419; 692857, 3082577; 692924, 3082729; 692929, 3082779; 692953, 3082786; 692973, 3082873; 693021, 3082954; 693060, 3083083; 693085, 3083104; 693121, 3083275; 693232, 3083518; 693242, 3083550; 693214, 3083559; 693204, 3083580; 693247, 3083603; 693262, 3083631; 693288, 3083751; 693319, 3083753; 693400, 3083985; 693386, 3084022; 693431, 3084049; 693450, 3084107; 693471, 3084122; 693475, 3084174; 693453, 3084254; 693499, 3084221; 693534, 3084217; 693538, 3084272; 693566, 3084323; 693560, 3084356; 693573, 3084385; 693593, 3084389; 693607, 3084426; 693753, 3084604; 693761, 3084687; 693793, 3084702; 693862, 3084804; 693906, 3084800; 693915, 3084824; 693876, 3084862; 693891, 3084899; 693961, 3084982; 693993, 3084998; 694011, 3085076; 694033, 3085115; 694050, 3085118; 694155, 3085307; 694196, 3085346; 694230, 3085440; 694296, 3085546; 694326, 3085640; 694359, 3085608; 694373, 3085608; 694392, 3085640; 694479, 3085857; 694594, 3086048; 694617, 3086138; 694642, 3086181; 695834, 3087982; 695841, 3088035; 695912, 3088140; 695987, 3088162; 696028, 3088218; 696037, 3088245; 696025, 3088286; 696051, 3088316; 696048, 3088341; 696361, 3088664; 696389, 3088715; 696459, 3088781; 696495, 3088851; 696566, 3088897; 696727, 3089136; 696872, 3089288; 696939, 3089406; 696971, 3089421; 696970, 3089454; 697053, 3089539; 697054, 3089578; 697089, 3089590; 697273, 3089833; 697529, 3090208; 698016, 3090861; 698045, 3090878; 698085, 3090953; 698218, 3091118; 698264, 3091152; 698258, 3091175; 698365, 3091290; 698482, 3091468; 698710, 3091760; 698723, 3091795; 698817, 3091876; 698923, 3092020; 698944, 3092021; 698974, 3092084; 699096, 3092257; 700080, 3093545; 700201, 3093735; 700557, 3094156; 700788, 3094465; 701388, 3095191; 702101, 3096086; 703101, 3097281; 704989, 3099451; 705010, 3099450; 705015, 3099470; 705051, 3099494; 705062, 3099523; 705398, 3099897; 705408, 3099893; 705475, 3099988; 705498, 3099990; 705516, 3100036; 705556, 3100059; 705571, 3100091; 705928, 3100481; 705962, 3100501; 705993, 3100561; 706027, 3100576; 706051, 3100623; 706076, 3100636; 706197, 3100795; 706272, 3100860; 706427, 3101042; 706453, 3101052; 706474, 3101092; 706634, 3101253; 706673, 3101310; 706755, 3101371; 706762, 3101405; 706803, 3101457; 706821, 3101458; 706981, 3101648; 707231, 3101903; 707267, 3101964; 707405, 3102089; 707869, 3102613; 708606, 3103397; 708609, 3103418; 708767, 3103571; 708766, 3103588; 708840, 3103649; 709300, 3104142; 709310, 3104172; 709355, 3104200; 709465, 3104319; 709465, 3104335; 709578, 3104440; 709830, 3104740; 709848, 3104744; 709959, 3104863; 710005, 3104891; 710004, 3104929; 710026, 3104953; 710126, 3105018; 710123, 3105047; 710250, 3105152; 710955, 3105868; 711033, 3105767; 710426, 3105119; 709763, 3104453; 709034, 3103648; 707637, 3102155; 707258, 3101720; Thence returning to 705653, 3099957.

(2) Unit TX–16, Calhoun County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

711166, 3105913; 711033, 3105767; 710955, 3105868; 711336, 3106255; 711423, 3106031; 711291, 3105930; Thence returning to 711166, 3105913.

Unit TX–18: Cedar Bayou/Vinson Slough: 998 hectares (2,465 acres) in Aransas and Calhoun Counties, Texas.

(1) Unit TX–18, Aransas County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

701739, 3102551; 701702, 3102550; 701707, 3102620; 701765, 3102668; 701815, 3102675; 701823, 3102663; Thence returning to 701739, 3102551.

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Excluding:

Unit TX–18, Aransas County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

711096, 3107435; 711053, 3107324; 711014, 3107307; 710987, 3107222; 710906, 3107207; 710896, 3107245; 710924, 3107288; 710990, 3107367; 711028, 3107360; 711032, 3107382; 711055, 3107437; Thence returning to 711096, 3107435.

710928, 3107149; 710901, 3107123; 710895, 3107173; 710924, 3107176; Thence returning to 710928, 3107149.

708814, 3107134; 708922, 3107101; 708995, 3107119; 709090, 3107031; 709259, 3106943; 709299, 3106938; 709271, 3106980; 709271, 3107012; 709234, 3107077; 709233, 3107108; 709294, 3107073; 709301, 3107105; 709324, 3107113; 709334, 3107056; 709389, 3107055; 709449, 3107001; 709432, 3106972; 709400, 3106958; 709353, 3106954; 709335, 3106975; 709324, 3106945; 709345, 3106906; 709344, 3106869; 709334, 3106857; 709315, 3106880; 709271, 3106866; 709247, 3106834; 709263, 3106796; 709332, 3106731; 709406, 3106607; 709440, 3106575; 709470, 3106466; 709518, 3106365; 709629, 3106204; 709594, 3106217; 709538, 3106274; 709481, 3106356; 709413, 3106420; 709364, 3106502; 709302, 3106556; 709268, 3106622; 709204, 3106666; 709139, 3106769; 709067, 3106819; 709012, 3106880; 708924, 3106928; 708894, 3106989; 708797, 3107035; 708779, 3107128; Thence returning to 708814, 3107134.

708374, 3107071; 708390, 3107037; 708579, 3107058; 708718, 3106980; 708772, 3106982; 708824, 3106938; 708831, 3106902; 708799, 3106885; 708558, 3106827; 708535, 3106846; 708491, 3106821; 708466, 3106817; 708410, 3106845; 708346, 3106925; 708302, 3106949; 708299, 3106969; 708154, 3106925; 707962, 3106925; 707937, 3106942; 707935, 3106962; 707961, 3106998; 707996, 3107016; 708185, 3107068; 708231, 3107065; 708277, 3107039; 708251, 3107090; Thence returning to 708374, 3107071.

704556, 3105290; 704479, 3105263; 704464, 3105300; 704480, 3105318; 704576, 3105318; Thence returning to 704556, 3105290.

705156, 3104715; 705081, 3104699; 705118, 3104738; 705187, 3104761; Thence returning to 705156, 3104715.

705037, 3104714; 704990, 3104682; 704970, 3104687; 704982, 3104716; 705033, 3104736; Thence returning to 705037, 3104714.

(2) Unit TX–18, Calhoun County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

711794, 3106966; 711892, 3106965; 711902, 3106952; 711944, 3106959; 712011, 3106940; 711378, 3106297; 711336, 3106255; 710955, 3105868; 710913, 3105957; 710912, 3106118; 711140, 3106300; 711288, 3106456; 711456, 3106666; 711581, 3106849; 711602, 3106898; 711567, 3107161; 711568, 3107281; 711610, 3107390; 711706, 3107423; 711738, 3107416; 711720, 3107238; 711670, 3107160; 711663, 3107106; 711692, 3107004; Thence returning to 711794, 3106966.

Unit TX–19: Matagorda Island Beach: 976 hectares (2,413 acres) in Calhoun County, Texas.

(1) Unit TX–19, Calhoun County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

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753505, 3137700; 753499, 3137746; 753596, 3137826; 753678, 3137871; 753664, 3137930; 753752, 3137961; 753769, 3138029; 753799, 3138030; 753808, 3138112; 753876, 3138172; 753919, 3138176; 753909, 3138204; 753936, 3138216; 753915, 3138237; 753910, 3138267; 753941, 3138316; 753974, 3138330; 753983, 3138385; 754065, 3138469; 754107, 3138478; 754139, 3138447; 754168, 3138485; 754109, 3138494; 754094, 3138526; 754130, 3138574; 754204, 3138599; 754217, 3138618; 754200, 3138679; 754216, 3138729; 754249, 3138774; 754350, 3138787; 754365, 3138862; 754421, 3138931; 754438, 3138996; 754494, 3139028; 754507, 3139107; 754551, 3139179; 754591, 3139167; 754627, 3139197; 754661, 3139193; 754649, 3139217; 754660, 3139218; 754672, 3139297; 754720, 3139435; 754699, 3139444; 754735, 3139458; 754725, 3139546; 754756, 3139541; 754791, 3139601; 754814, 3139595; 754831, 3139636; 754832, 3139687; 754791, 3139715; 754801, 3139747; 754836, 3139746; 754893, 3139958; 754929, 3139964; 754958, 3139944; 754986, 3139946; 754979, 3139968; 755028, 3140006; 755042, 3140054; 755066, 3140070; 755116, 3140060; 755133, 3140081; 755140, 3140118; 755116, 3140133; 755111, 3140161; 755144, 3140185; 755157, 3140220; 755169, 3140207; 755179, 3140218; 755167, 3140251; 755182, 3140267; 755178, 3140292; 755257, 3140346; 755285, 3140477; 755376, 3140560; 755388, 3140542; 755404, 3140553; 755390, 3140579; 755401, 3140628; 755441, 3140623; 755435, 3140652; 755455, 3140654; 755436, 3140681; 755455, 3140699; 755451, 3140763; 755500, 3140762; 755497, 3140789; 755553, 3140845; 755548, 3140892; 755564, 3140894; 755572, 3140947; 755595, 3140962; 755720, 3141221; 755731, 3141301; 755721, 3141355; 755702, 3141368; 755681, 3141375; 755690, 3141332; 755655, 3141332; 755679, 3141312; 755649, 3141281; 755636, 3141230; 755608, 3141210; 755599, 3141153; 755574, 3141146; 755588, 3141088; 755571, 3141058; 755506, 3141108; 755477, 3141099; 755437, 3141030; 755485, 3140982; 755440, 3140948; 755366, 3140934; 755339, 3140975; 755354, 3141017; 755388, 3141014; 755428, 3141132; 755459, 3141165; 755516, 3141183; 755564, 3141290; 755617, 3141351; 755692, 3141550; 755721, 3141583; 755727, 3141627; 755669, 3141833; 755690, 3141849; 755680, 3142053; 755644, 3142039; 755630, 3142048; 755613, 3142154; 755618, 3142205; 755604, 3142242; 755537, 3142290; 755528, 3142348; 755507, 3142350; 755476, 3142414; 755316, 3142474; 755251, 3142512; 755213, 3142562; 755191, 3142557; 755153, 3142582; 755045, 3142715; 755035, 3142748; 755005, 3142770; 755006, 3142792; 754973, 3142802; 755077, 3142486; 755075, 3142452; 755045, 3142432; 755069, 3142424; 755102, 3142297; 755176, 3142156; 755177, 3142024; 755209, 3141946; 755208, 3141868; 755243, 3141784; 755267, 3141617; 755224, 3141505; 755176, 3141476; 755102, 3141376; 755099, 3141423; 755085, 3141447; 755065, 3141446; 755055, 3141358; 755029, 3141294; 755029, 3141207; 754932, 3140925; 754850, 3140937; 754886, 3141234; 754858, 3141337; 754843, 3141531; 754820, 3141638; 754845, 3141840; 754805, 3142123; 754810, 3142204; 754789, 3142236; 754786, 3142292; 754808, 3142363; 754928, 3142528; 754948, 3142575; 754945, 3142702; 754903, 3142779; 754836, 3142810; 754807, 3142860; 754756, 3142887; 754729, 3142938; 754721, 3143047; 754744, 3143071; 754791, 3143083; 754867, 3143060; Thence returning to 755093, 3142812.

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Unit TX–22: Decros Point: 220 hectares (544 acres) in Calhoun and Matagorda Counties, Texas.

(1) Unit TX–22, Calhoun County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

756144, 3143397; 756096, 3143341; 756061, 3143349; 756063, 3143379; 756090, 3143392; 756063, 3143400; 756063, 3143415; 756112, 3143433; 756144, 3143416; Thence returning to 756144, 3143397.

756218, 3143719; 756223, 3143746; 756220, 3143744; 756218, 3143719; 756218, 3143719; 756098, 3143555; 755963, 3143488; 755903, 3143434; 755893, 3143398; 755857, 3143395; 755749, 3143289; 755734, 3143250; 755759, 3143177; 755799, 3143132; 755824, 3143113; 755867, 3143160; 756051, 3143105; 756106, 3143107; 756233, 3143175; 756271, 3143163; 756231, 3143139; 756368, 3143109; 756544, 3143103; 756677, 3143164; 756680, 3143200; 756644, 3143243; 756654, 3143262; 756890, 3143331; 756798, 3142798; 756525, 3142689; 756404, 3142687; 756212, 3142713; 755731, 3143030; 755666, 3143119; 755641, 3143206; 755922, 3143520; 756078, 3143609; 756111, 3143651; 756149, 3143763; 756225, 3143844; 756255, 3143899; 756274, 3143918; 756295, 3143916; 756361, 3143977; 756420, 3144079; 756600, 3144172; 756687, 3144174; 756777, 3144202; 756716, 3144161; 756603, 3144151; 756574, 3144128; 756593, 3144089; 756578, 3144068; 756597, 3144062; 756599, 3144045; 756464, 3143994; 756354, 3143899; 756356, 3143884; 756239, 3143766; 756235, 3143753; 756291, 3143702; 756376, 3143685; 756386, 3143670; 756401, 3143696; 756393, 3143736; 756374, 3143721; 756304, 3143770; 756346, 3143774; 756386, 3143753; 756403, 3143770; 756431, 3143706; 756475, 3143700; 756467, 3143683; 756439, 3143685; 756431, 3143666; 756460, 3143653; 756515, 3143681; 756537, 3143653; 756562, 3143683; 756579, 3143679; 756604, 3143628; 756607, 3143573; 756549, 3143560; 756522, 3143530; 756535, 3143492; 756509, 3143459; 756518, 3143444; 756565, 3143434; 756471, 3143393; 756460, 3143342; 756405, 3143278; 756281, 3143274; 756190, 3143298; 756160, 3143318; 756135, 3143366; 756148, 3143387; 756243, 3143391; 756250, 3143402; 756224, 3143431; 756303, 3143550; 756281, 3143579; 756222, 3143584; 756203, 3143630; 756218, 3143626; Thence returning to 756218, 3143719.

757069, 3144373; 757064, 3144336; 757029, 3144350; 756939, 3144286; 756881, 3144280; 756883, 3144225; 756824, 3144201; 756761, 3144210; 756674, 3144197; 756729, 3144231; 756807, 3144231; 756807, 3144244; 756771, 3144254; 756784, 3144274; 756947, 3144326; 757036, 3144377; Thence returning to 757069, 3144373.

757080, 3144446; 757073, 3144395; 756956, 3144409; 757025, 3144441; 757036, 3144424; 757061, 3144428; 757034, 3144445; 757051, 3144453; Thence returning to 757080, 3144446.

Excluding:

Unit TX–22, Calhoun County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

756223, 3143746; 756218, 3143719; 756220, 3143744; Thence returning to 756223, 3143746.

(2) Unit TX–22, Matagorda County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

757114, 3144349; 757132, 3144326; 757064, 3144336; 757069, 3144373; Thence returning to 757114, 3144349.

757106, 3144443; 757178, 3144436; 757188, 3144392; 757170, 3144352; 757152, 3144388; 757129, 3144401; 757073, 3144395; 757080, 3144446; Thence returning to 757106, 3144443.

757712, 3145133; 757725, 3145118; 757725, 3145080; 757710, 3145093; 757685, 3145085; 757569, 3145004; 757376, 3144796; 757336, 3144712; 757285, 3144661; 757296, 3144644;

757283, 3144617; 757274, 3144625; 757253, 3144587; 757270, 3144530; 757236, 3144549; 757209, 3144513; 757182, 3144513; 757169, 3144532; 757188, 3144595; 757158, 3144574; 757241, 3144731; 757281, 3144777; 757412, 3144866; 757482, 3144947; 757467, 3144953; 757484, 3144972; 757600, 3145074; Thence returning to 757712, 3145133.

757899, 3145276; 757919, 3145287; 757914, 3145264; 757871, 3145243; Thence returning to 757899, 3145276.

757899, 3145276; 757795, 3145160; 757867, 3145238; 757873, 3145222; 757916, 3145226; 757891, 3145208; 757891, 3145179; 757836, 3145115; 757810, 3145146; 757778, 3145133; 757806, 3145110; 757772, 3145101; 757771, 3145082; 757734, 3145066; 757732, 3145114; 757716, 3145140; 757753, 3145134; 757814, 3145209; 757820, 3145264; 757759, 3145192; 757742, 3145194; 757797, 3145321; 757846, 3145389; 758053, 3145601; 758155, 3145675; 758322, 3145834; 758379, 3145867; 758466, 3145978; 758684, 3146161; 758963, 3146301; 759004, 3146289; 759009, 3146271; 758928, 3146282; 758798, 3146176; 758702, 3146129; 758613, 3146051; 758597, 3146018; 758580, 3146020; 758506, 3145950; 758474, 3145893; 758347, 3145764; 758331, 3145770; 758338, 3145760; 758263, 3145696; 758231, 3145645; 758022, 3145469; 757918, 3145330; 757899, 3145276; 757880, 3145381; 757952, 3145406; 758010, 3145502; 757954, 3145465; 757918, 3145412; 757844, 3145366; 757880, 3145381; 758136, 3145622; 758187, 3145637; 758235, 3145721; 758096, 3145616; 758117, 3145607; Thence returning to 758136, 3145622.

759358, 3146497; 759372, 3146483; 759328, 3146494; Thence returning to 759358, 3146497.

759209, 3146541; 759188, 3146483; 759099, 3146432; 759105, 3146403; 759095, 3146405; 759093, 3146384; 759076, 3146430; 759084, 3146445; 759135, 3146466; 759183, 3146522; 759156, 3146532; Thence returning to 759209, 3146541.

759272, 3146526; 759294, 3146508; 759213, 3146541; Thence returning to 759272, 3146526

759065, 3146657; 758980, 3146572; 758972, 3146538; 758970, 3146574; 759042, 3146649; 759057, 3146693; 759177, 3146778; 759141, 3146737; 759122, 3146682; Thence returning to 759065, 3146657.

761407, 3147140; 761515, 3147154; 761599, 3147079; 761374, 3146911; 760678, 3146503; 760464, 3146360; 760075, 3146044; 759657, 3145736; 759445, 3145549; 758541, 3144679; 758386, 3144510; 758278, 3144339; 758092, 3144126; 757659, 3143435; 757468, 3143250; 757272, 3143019; 757086, 3142914; 756798, 3142798; 756890, 3143331; 756936, 3143357; 756961, 3143408; 757105, 3143467; 757171, 3143520; 757238, 3143590; 757306, 3143730; 757340, 3143770; 757437, 3143789; 757526, 3143867; 757660, 3144022; 757744, 3144151; 758077, 3144443; 758214, 3144612; 758297, 3144686; 758415, 3144760; 758648, 3144968; 759230, 3145525; 759967, 3146162; 759994, 3146208; 760115, 3146280; 760142, 3146323; 760219, 3146361; 760259, 3146409; 760301, 3146422; 760339, 3146477; 760413, 3146500; 761307, 3147038; 761328, 3147057; 761345, 3147110; 761336, 3147180; 761346, 3147218; 761384, 3147224; 761386, 3147154; Thence returning to 761407, 3147140.

759820, 3147183; 759811, 3147187; 759840, 3147218; Thence returning to 759820, 3147183.

759882, 3147275; 759875, 3147268; 759893, 3147309; Thence returning to 759882, 3147275.

759718, 3147493; 759724, 3147476; 759699, 3147449; 759686, 3147480; Thence returning to 759718, 3147493.

760083, 3147612; 760079, 3147593; 760062, 3147595; 760068, 3147567; 760037, 3147607; 759978, 3147581; 760007, 3147607; 760103, 3147644; Thence returning to 760083, 3147612.

760153, 3147620; 760159, 3147601; 760115, 3147624; 760148, 3147658; 760140, 3147641; Thence returning to 760153, 3147620.

760707, 3147904; 760679, 3147885; 760500, 3147853; 760219, 3147764; 760098, 3147690; 760026, 3147618; 759971, 3147605; 759859, 3147538; 759802, 3147485; 759791, 3147453; 759795, 3147431; 759800, 3147449; 759823, 3147444; 759831, 3147408; 759791, 3147328; 759622, 3147182; 759469, 3147002; 759416, 3146911; 759425, 3146905; 759450, 3146932; 759461, 3146911; 759452, 3146862; 759427, 3146839; 759417, 3146856; 759378, 3146852; 759372, 3146831; 759406, 3146799; 759366, 3146801; 759355, 3146822; 759368, 3146883; 759412, 3146919; 759427, 3146970; 759550, 3147123; 759770, 3147330; 759778, 3147366; 759764, 3147417; 759751, 3147432; 759753, 3147413; 759734, 3147408; 759717, 3147449; 759759, 3147499; 760206, 3147777; 760498, 3147861; Thence returning to 760707, 3147904.

760707, 3147904; 760815, 3147946; 760842, 3147982; 760851, 3148007; 760836, 3148045; 760800, 3148054; 760829, 3148059; 760861, 3148041; 760853, 3148012; 760863, 3147990; 760825, 3147942; 760772, 3147910; Thence returning to 760707, 3147904.

Excluding:

Unit TX–22, Matagorda County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

758136, 3145622; 758117, 3145607; 758096, 3145616; 758235, 3145721; 758187, 3145637; Thence returning to 758136, 3145622.

757880, 3145381; 757844, 3145366; 757918, 3145412; 757954, 3145465; 758010, 3145502; 757952, 3145406; Thence returning to 757880, 3145381.

Unit TX–23: West Matagorda Peninsula Beach: 732 hectares (1,808 acres) in Matagorda County, Texas.

(1) Unit TX–23, Matagorda County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

794998, 3166954; 795058, 3166920; 795090, 3166937; 795134, 3166804; 795016, 3166417; 794989, 3166385; 794944, 3166385; 794915, 3166413; 794926, 3166514; 794843, 3166543; 794768, 3166544; 794548, 3166469; 794150, 3166265; 793944, 3166178; 793663, 3166021; 793518, 3165958; 793395, 3165925; 793172, 3165799; 792681, 3165580; 792613, 3165566; 792476, 3165501; 792386, 3165491; 792237, 3165445; 792084, 3165355; 791974, 3165315; 791729, 3165186; 791684, 3165181; 791602, 3165145; 791384, 3165026; 791034, 3164868; 790882, 3164791; 790777, 3164715; 790379, 3164514; 790143, 3164405; 790049, 3164393; 789926, 3164312; 789730, 3164213; 789515, 3164138; 789342, 3164036; 789061, 3163915; 789006, 3163870; 788591, 3163656; 787268, 3163020; 786928, 3162831; 785690, 3162217; 783809, 3161232; 783766, 3161194; 783561, 3161093; 783080, 3160816; 783021, 3160797; 782112, 3160298; 781945, 3160187; 779312, 3158763; 779021, 3158591; 778735, 3158450; 778435, 3158283; 778356, 3158222; 778041, 3158059; 777655, 3157835; 777552, 3157791; 777151, 3157543; 776616, 3157251; 774162, 3155789; 773866, 3155590; 771809, 3154316; 770189, 3153238; 769386, 3152669; 768586, 3152130; 768014, 3151702; 767939, 3151663; 767463, 3151320; 765711, 3150005; 765107, 3149512; 764382, 3148892; 763644, 3148208; 763289, 3147857; 762933, 3147441; 762617, 3146969; 762265, 3147300; 762270, 3147310; 762363, 3147244; 762438, 3147245; 762454, 3147203; 762535, 3147242; 762557, 3147226; 762612, 3147276; 762726, 3147506; 762744, 3147492; 762772, 3147536; 762760, 3147551; 762788, 3147556; 762803, 3147613; 762841, 3147619; 762873, 3147677; 762861, 3147687; 762892, 3147711;

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Unit TX–27: East Matagorda Bay/Matagorda Peninsula Beach West: 366 hectares (905 acres) in Matagorda County, Texas.

(1) Unit TX–27, Matagorda County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

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Unit TX–28: East Matagorda Bay/Matagorda Peninsula Beach East: 194 hectares (481 acres) in Matagorda County, Texas.

(1) Unit TX–28, Matagorda County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

826255, 3184413; 826144, 3184255; 826082, 3184209; 825729, 3184026; 825639, 3183994; 824822, 3183472; 824219, 3183064; 823959, 3182871; 823794, 3182779; 823448, 3182551; 823260, 3182448; 822578, 3181993; 821871, 3181551; 821687, 3181407; 821599, 3181564; 821804, 3181677; 821805, 3181730; 821845, 3181733; 821868, 3181713; 821881, 3181737; 821874, 3181761; 821887, 3181769; 821923, 3181749; 821931, 3181789; 821995, 3181805; 821994, 3181835; 821952, 3181919; 822021, 3181956; 822017, 3181906; 821993, 3181883; 822034, 3181865; 822073, 3181905; 822110, 3181893; 822144, 3181948; 822145, 3181985; 822181, 3181986; 822189, 3182046; 822296, 3182105; 822362, 3182082; 822398, 3182112; 822398, 3182145; 822422, 3182151; 822406, 3182179; 822693, 3182372; 822814, 3182421; 822845, 3182474; 822893, 3182506; 822951, 3182513; 822967, 3182545; 822989, 3182545; 823000, 3182511; 823030, 3182494; 823060, 3182504; 823077, 3182533; 823045, 3182559; 823077, 3182605; 823164, 3182633; 823163, 3182666; 823386, 3182716; 823413, 3182751; 823377, 3182799; 823426, 3182812; 823438, 3182780; 823509, 3182846; 823591, 3182896; 823645, 3182873; 823793, 3183006; 824179, 3183243; 824191, 3183260; 824169, 3183278; 824074, 3183300; 824095, 3183334; 824155, 3183341; 824209, 3183378; 824368, 3183417; 824371, 3183454; 824415, 3183476; 824443, 3183482; 824479, 3183461; 824539, 3183482; 824635, 3183568; 824790, 3183647; 824792, 3183670; 824813, 3183684; 824777, 3183731; 824756, 3183799; 824759, 3183881; 824891, 3183871; 824909, 3183819; 824958, 3183806; 825029, 3183822; 825125, 3183886; 825180, 3183904; 825196, 3183917; 825179, 3183973; 825251, 3184071; 825179, 3184141; 825163, 3184192; 825309, 3184221; 825350, 3184198; 825363, 3184205; 825375, 3184184; 825364, 3184135; 825381, 3184105; 825537, 3184169; 825445, 3184230; 825465, 3184261; 825526, 3184253; 825539, 3184330; 825530, 3184355; 825567, 3184383; 825649, 3184398; 825705, 3184380; 825848, 3184381; 825929, 3184354; 826013, 3184373; 826009, 3184399; 826190, 3184525; 826276, 3184554; 826411, 3184646; 826400, 3184577; 826353, 3184503; Thence returning to 826255, 3184413.

830205, 3186883; 830049, 3186765; 830013, 3186765; 829946, 3186699; 829382, 3186350; 828066, 3185574; 827164, 3185085; 826836, 3184954; 826943, 3185048; 826987, 3185216; 827003, 3185207; 827072, 3185230; 827085, 3185260; 827084, 3185327; 827110, 3185354; 827210, 3185365; 827252, 3185392; 827287, 3185385; 827377, 3185461; 827440, 3185465; 827512, 3185500; 827551, 3185497; 827572, 3185471; 827594, 3185480; 827621, 3185551; 827733, 3185595; 827745, 3185647; 827847, 3185743; 827904, 3185777; 827968, 3185772; 828020, 3185747; 828075, 3185764; 828145, 3185803; 828158, 3185843; 828244, 3185846; 828245, 3185880; 828414, 3185951; 828418, 3186022; 828501, 3186031; 828502, 3186064; 828550, 3186076; 828558, 3186101;

828612, 3186117; 828679, 3186113; 828774, 3186175; 828762, 3186197; 828790, 3186228; 828855, 3186206; 828863, 3186226; 828966, 3186248; 829054, 3186316; 829078, 3186310; 829148, 3186353; 829189, 3186400; 829268, 3186437; 829288, 3186490; 829362, 3186541; 830412, 3187170; 830529, 3187068; Thence returning to 830205, 3186883.

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Unit TX–31: San Bernard NWR Beach: 162 hectares (401 acres) in Brazoria and Matagorda Counties, Texas.

(1) Unit TX–31, Brazoria County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

845107, 3196259; 845109, 3196228; 845094, 3196220; 845074, 3196229; 845012, 3196214; 844789, 3196124; 844698, 3196051; 844637, 3195948; 844638, 3195822; 844631, 3195763; 844611, 3195738; 844645, 3195687; 844580, 3195695; 844354, 3195499; 843993, 3195392; 843666, 3195222; 843102, 3194895; 843008, 3194826; 842964, 3194814; 842745, 3194673; 842540, 3194566; 841475, 3193902; 840906, 3193575; 840873, 3193674; 840883, 3193749; 840904, 3193744; 840926, 3193790; 840903, 3193797; 840916, 3193814; 840902, 3193812; 840968, 3193922; 840984, 3193875; 841026, 3193872; 841030, 3193889; 841039, 3193879; 841065, 3193891; 841064, 3193916; 841078, 3193900; 841117, 3193903; 841178, 3193918; 841239, 3193971; 841278, 3193963; 841318, 3193988; 841306, 3194010; 841342, 3194027; 841361, 3194013; 841396, 3194050; 841440, 3194059; 841450, 3194079; 841484, 3194086; 841494, 3194118; 841552, 3194133; 841695, 3194218; 841704, 3194241; 842261, 3194573; 842322, 3194596; 842529, 3194742; 842704, 3194832; 842808, 3194909; 843042, 3195025; 843088, 3195056; 843084, 3195074; 843115, 3195072; 843158, 3195097; 843158, 3195112; 843238, 3195149; 843242, 3195171; 843341, 3195194; 843402, 3195234; 843423, 3195266; 843433, 3195256; 843468, 3195289; 843554, 3195319; 843555, 3195334; 843673, 3195389; 843741, 3195447; 843830, 3195469; 843849, 3195480; 843851, 3195502; 843897, 3195527; 843934, 3195528; 843937, 3195547; 843967, 3195554; 843955, 3195571; 844007, 3195571; 844013, 3195590; 844041, 3195594; 844096, 3195648; 844198, 3195670; 844280, 3195735; 844334, 3195759; 844369, 3195753; 844459, 3195808; 844503, 3195860; 844554, 3195872; 844560, 3195908; 844591, 3195936; 844582, 3195969; 844593, 3196000; 844661, 3196087; 844707, 3196123; 844992, 3196283; 845121, 3196321; Thence returning to 845107, 3196259.

(2) Unit TX–31, Matagorda County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

839649, 3192913; 839630, 3192824; 839613, 3192799; 839508, 3192750; 839098, 3192452; 839023, 3192428; 838813, 3192271; 838270, 3191930; 838203, 3191872; 837748, 3191599; 836314, 3190660; 836078, 3190523; 836034, 3190623; 836053, 3190665; 836283, 3190768; 836312, 3190807; 836350, 3190813; 836386, 3190875; 836466, 3190881; 836542, 3190928; 836529, 3190954; 836538, 3190961; 836646, 3190987; 836715, 3191029; 836768, 3191083; 836849, 3191129; 836878, 3191168; 836956, 3191189; 837036, 3191257; 837089, 3191281; 837100, 3191313; 837181, 3191370; 837272, 3191391; 837302, 3191427; 837333, 3191427; 837373, 3191456; 837374, 3191474; 838050, 3191909; 838100, 3191939; 838145, 3191939; 838147, 3191973; 838190, 3191977; 838224, 3192019; 838276, 3192051; 838274, 3192081; 838329, 3192083; 838392, 3192135; 838413, 3192124; 838409, 3192153; 838423, 3192173; 838447, 3192174; 838457, 3192200; 838474, 3192200; 838505, 3192239; 838553, 3192245; 838545, 3192261; 838618, 3192303; 838667, 3192291; 838662, 3192320; 838746, 3192330; 838736, 3192356; 838769, 3192356; 838779, 3192413; 838813, 3192455; 838897, 3192493; 838931, 3192481; 838955, 3192618; 839013, 3192626; 839073, 3192608; 839076, 3192633; 839122, 3192615; 839123, 3192653; 839153, 3192647; 839154, 3192684; 839214, 3192718; 839221, 3192767; 839298, 3192758; 839334, 3192814; 839379, 3192806; 839419, 3192820; 839441, 3192858; 839464, 3192865; 839445, 3192936; 839489, 3192935; 839515, 3192910; 839525, 3192920; 839427, 3192977; 839402, 3193017; 839435, 3193128; 839423, 3193182; 839474, 3193188; 839505, 3193171; 839618, 3193009; Thence returning to 839649, 3192913.

840883, 3193749; 840873, 3193674; 840906, 3193575; 840754, 3193476; 840604, 3193400; 840474, 3193299; 840195, 3193155; 839950, 3193003; 839807, 3192959; 839722, 3192960; 839670, 3193003; 839509, 3193215; 839394, 3193303; 839377, 3193380; 839399, 3193507; 839447, 3193568; 839491, 3193580; 839564, 3193495; 839547, 3193432; 839610, 3193325; 839726, 3193312; 839720, 3193333; 839775, 3193352; 839861, 3193324; 839880, 3193234; 839874, 3193181; 839888, 3193152; 839908, 3193151; 839985, 3193200; 840032, 3193201; 840081, 3193224; 840092, 3193256; 840110, 3193246; 840266, 3193337; 840375, 3193419; 840369, 3193438; 840345, 3193447; 840383, 3193489; 840424, 3193501; 840470, 3193478; 840528, 3193489; 840535, 3193508; 840569, 3193518; 840639, 3193586; 840774, 3193676; 840794, 3193688; 840811, 3193673; 840826, 3193692; 840821, 3193714; 840846, 3193694; 840854, 3193734; Thence returning to 840883, 3193749.

840943, 3193941; 840968, 3193922; 840902, 3193812; 840887, 3193825; 840911, 3193871; 840879, 3193929; Thence returning to 840943, 3193941.

Unit TX–32: Gulf Beach Between Brazos and San Bernard Rivers: 225 hectares (556 acres) in Brazoria County, Texas.

(1) Unit TX–32, Brazoria County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

853029, 3199397; 852994, 3199291; 852973, 3199145; 852864, 3198840; 852815, 3198760; 852748, 3198714; 852344, 3198593; 852136, 3198490; 851941, 3198432; 851707, 3198337; 851659, 3198350; 851373, 3198256; 850903, 3198055; 850790, 3198014; 850728, 3198011; 850320, 3197848; 850211, 3197825; 849540, 3197571; 849448, 3197524; 849268, 3197475; 849135, 3197410; 848611, 3197221; 848398, 3197161; 847953, 3196990; 847336, 3196798; 846786, 3196588; 846675, 3196569; 846342, 3196448; 845229, 3195980; 844645, 3195687; 844611, 3195738; 844631, 3195763; 844638, 3195822; 844637, 3195948; 844698, 3196051; 844789, 3196124; 845012, 3196214; 845074, 3196229; 845094, 3196220; 845109, 3196228; 845107, 3196259; 845142, 3196272; 845167, 3196301; 845215, 3196303; 845237, 3196334; 845262, 3196325; 845273, 3196348; 845424, 3196419; 845606, 3196444; 845641, 3196469; 845640, 3196503; 845653, 3196509; 845677, 3196510; 845683, 3196466; 845734, 3196476; 845744, 3196505; 845791, 3196516; 845823, 3196548; 845890, 3196579; 845911, 3196608; 845964, 3196626; 846022, 3196620; 846056, 3196663; 846085, 3196675; 846100, 3196665; 846118, 3196693; 846191, 3196698; 846209, 3196721; 846192, 3196726; 846198, 3196746; 846218, 3196761; 846299, 3196762; 846313, 3196881; 846346, 3196895; 846501, 3196810; 846707, 3196822; 846761, 3196860; 846683, 3196872; 846669, 3196898; 846639, 3196912; 846520, 3196897; 846501, 3196914; 846514, 3196943; 846552, 3196954;

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Unit TX–33: Bryan Beach and Adjacent Beach: 85 hectares (211 acres) in Brazoria County, Texas.

(1) Unit TX–33, Brazoria County, Texas. Coordinates are in UTM Zone 14N, North American Datum 1983 (meters E, meters N):

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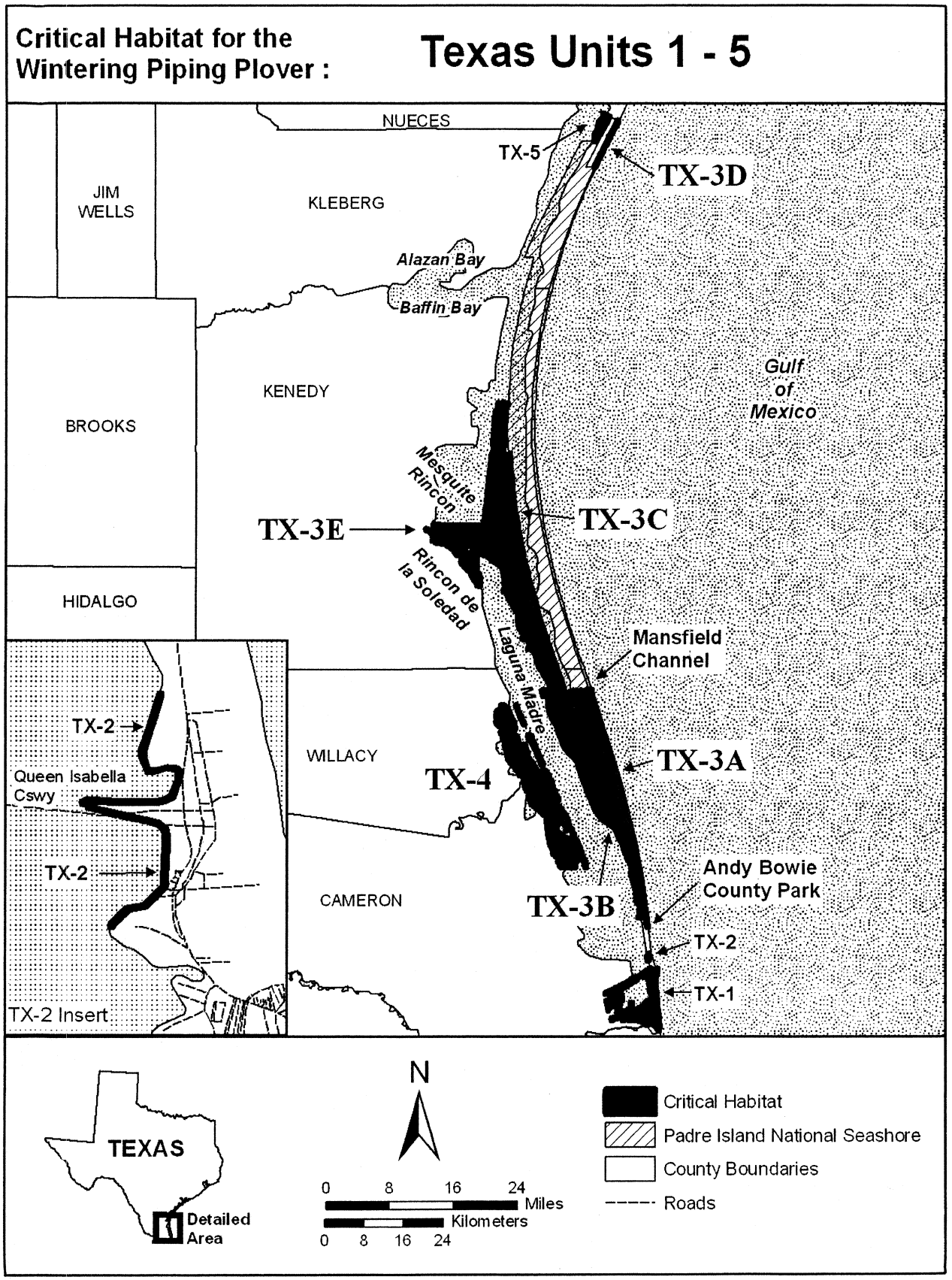
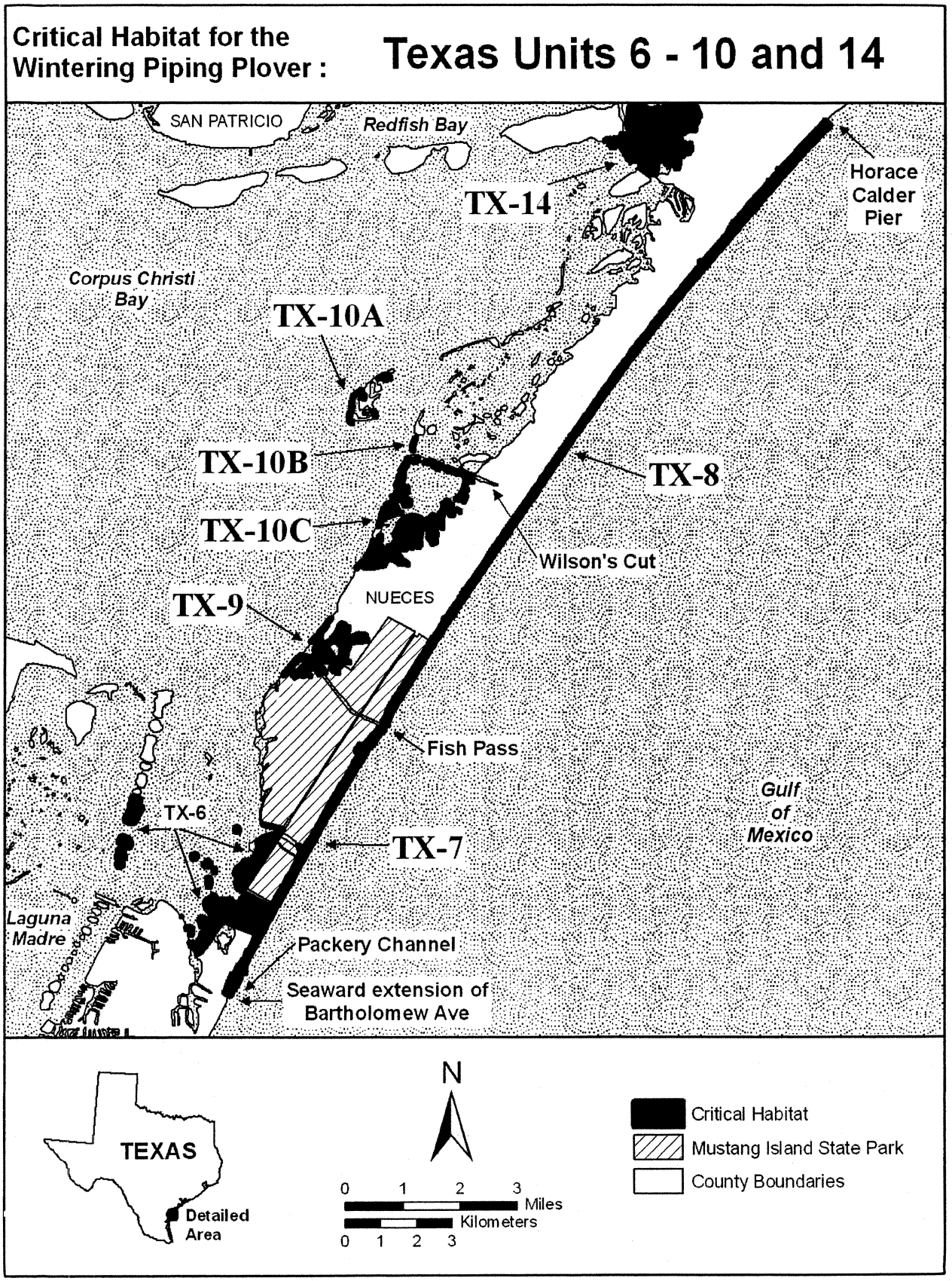
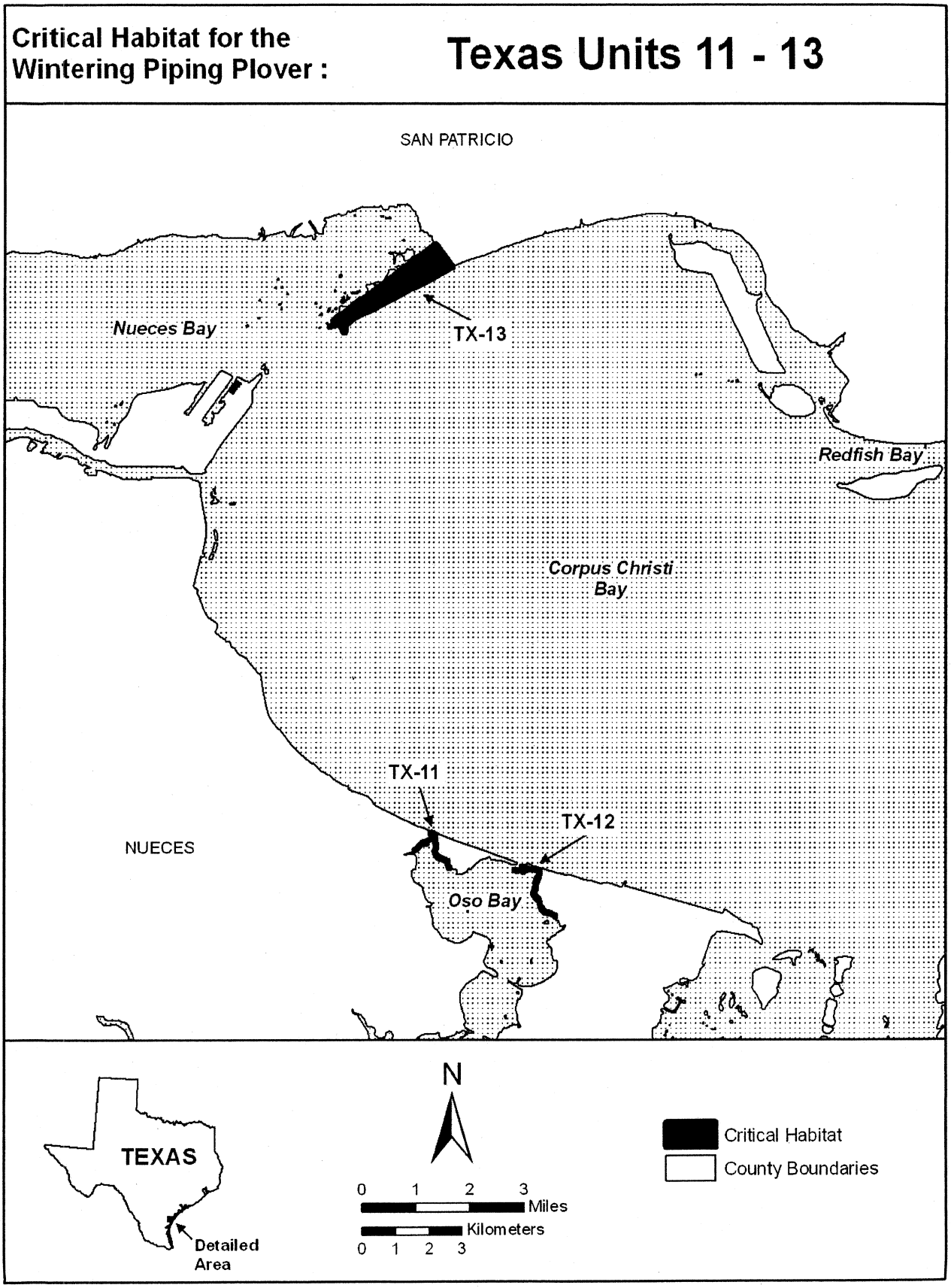
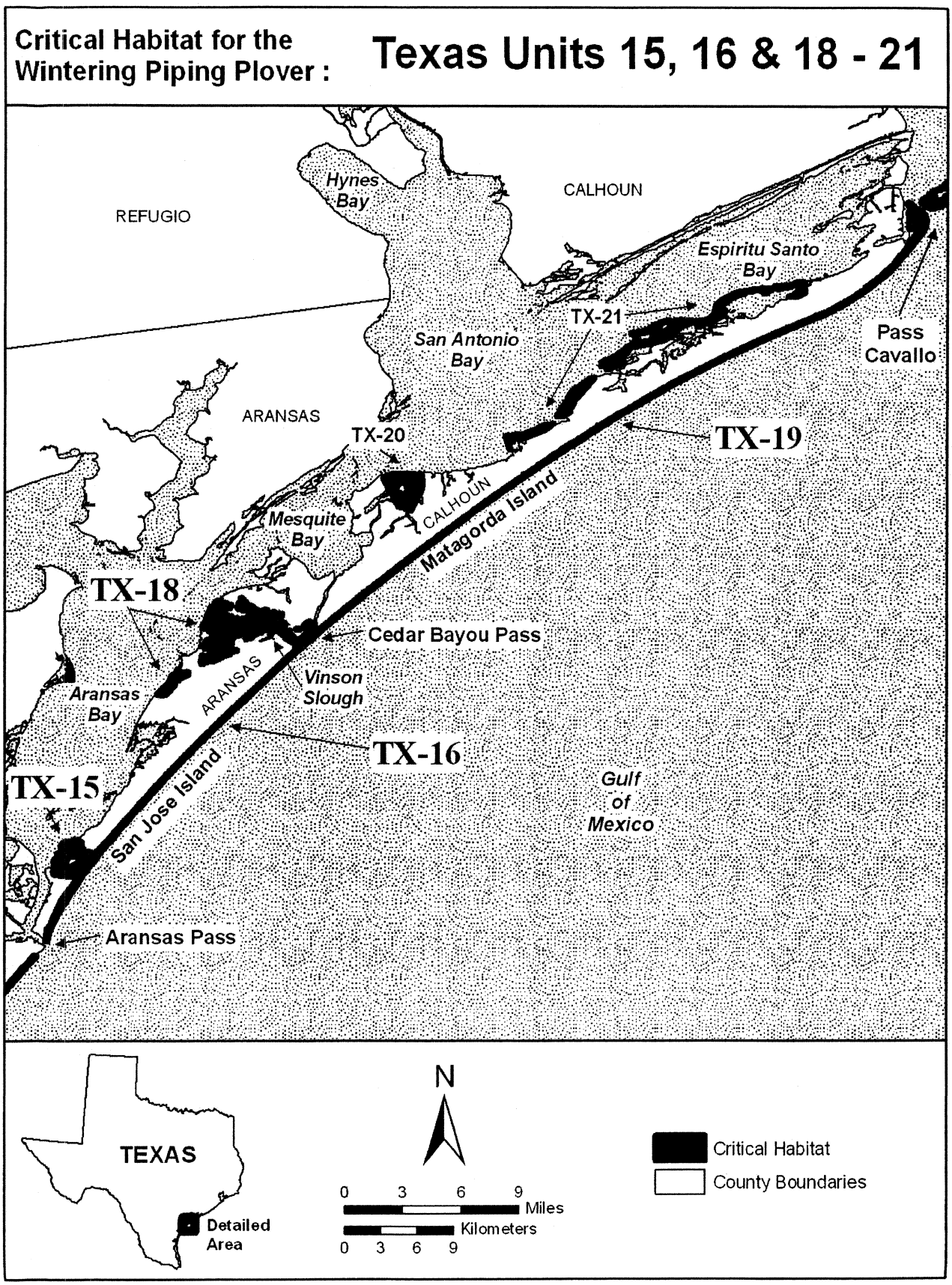
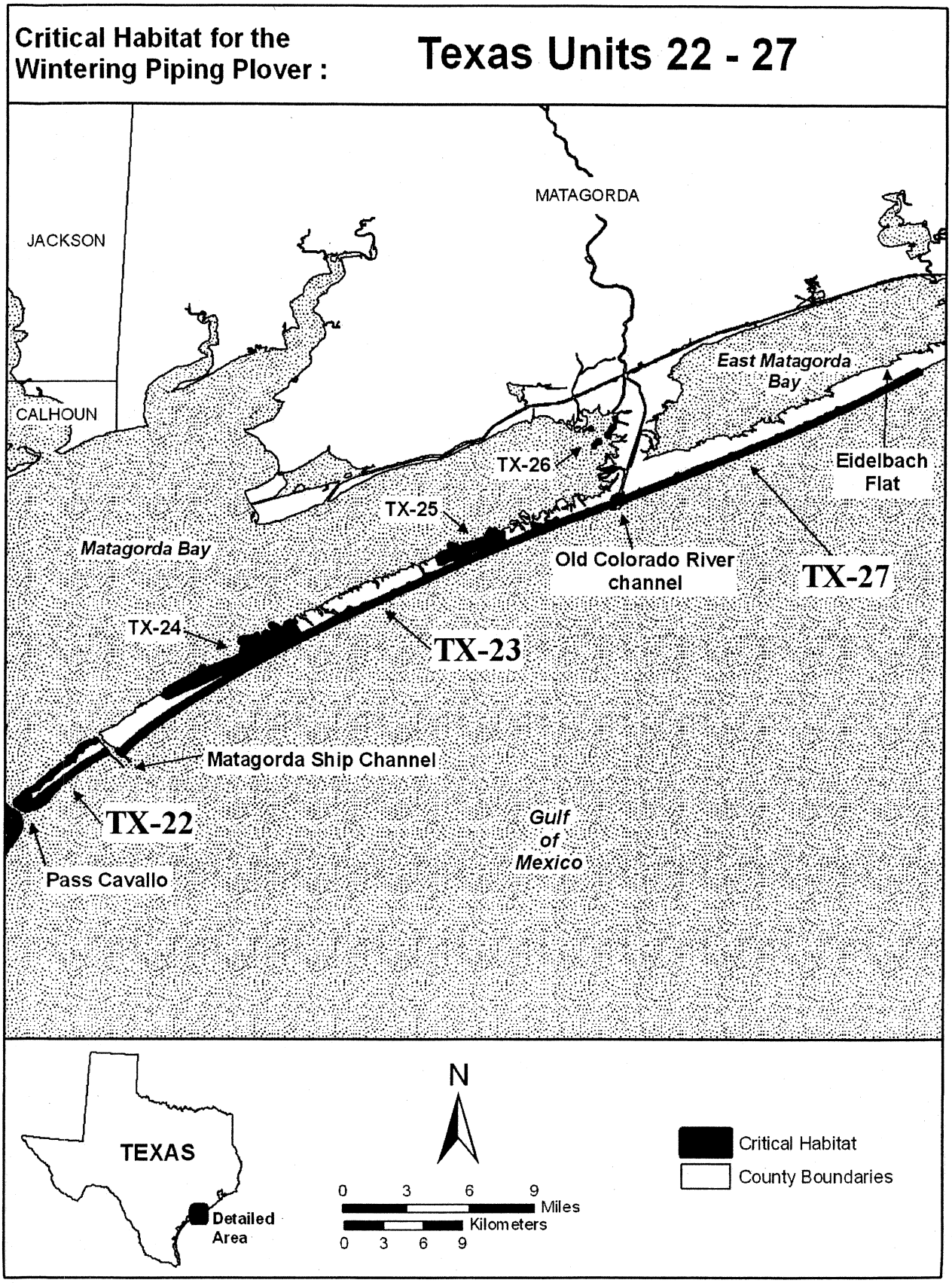
BILLING CODE 4310–55–S

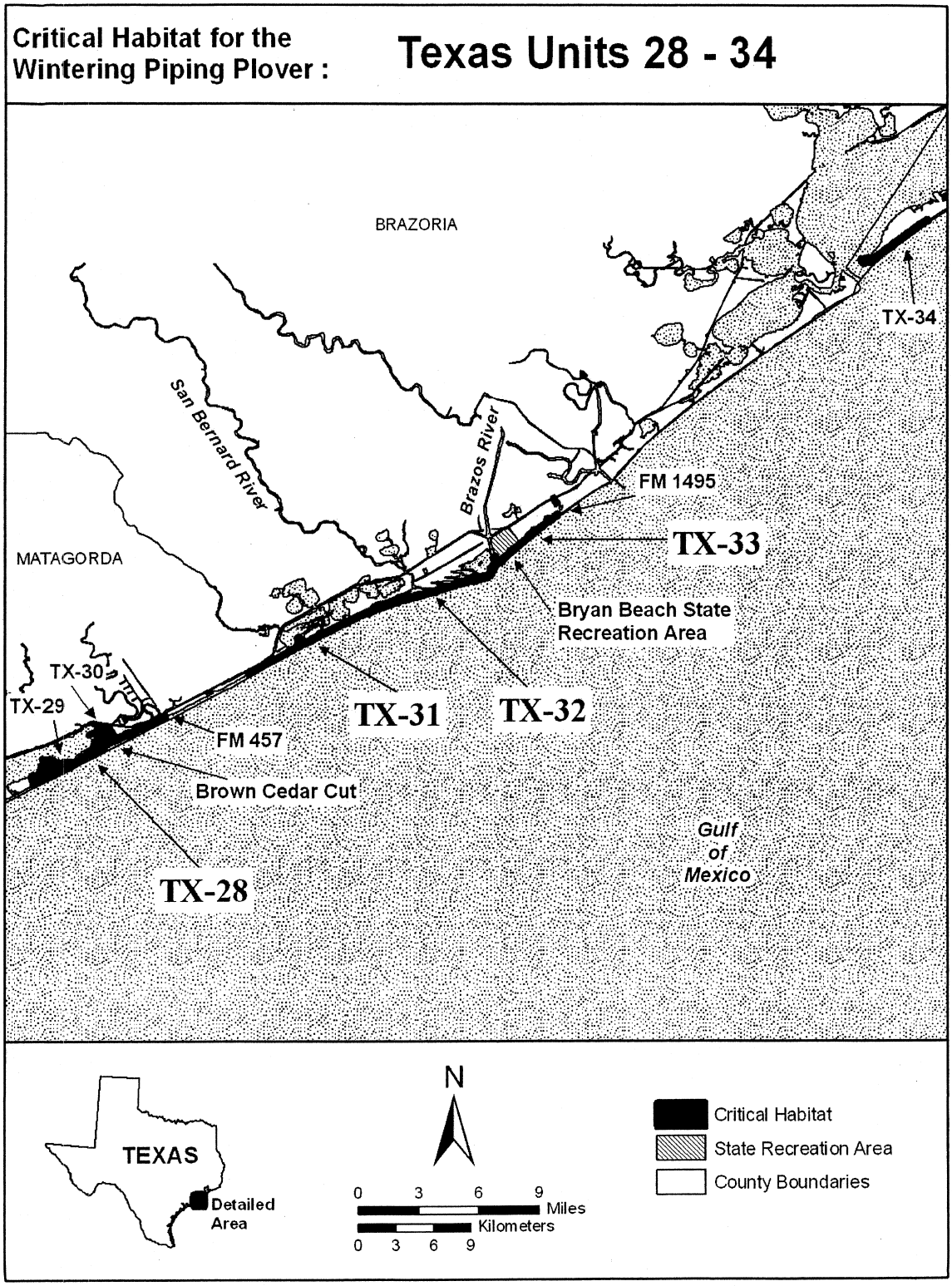

Critical Habitat for the Wintering Piping Plover :
Texas Units 1 - 5
NUECES
JIM WELLS
KLEBERG
KENEDY
BROOKS
HIDALGO
WILLACY
CAMERON
TX-5
TX-3D
Alazan Bay
Baffin Bay
Gulf of Mexico
Mesquite Rincon
TX-3E
TX-3C
Rincon de la Soledad
Laguna Madre
Mansfield Channel
TX-3A
TX-4
TX-3B
Andy Bowie County Park
TX-2
TX-1
TX-2
Queen Isabella Cswy
TX-2
TX-2 Insert
TEXAS
Detailed Area
N
0 8 16 24
Miles
Kilometers
0 8 16 24
Critical Habitat
Padre Island National Seashore
County Boundaries
Roads


Critical Habitat for the Wintering Piping Plover :
Texas Units 6 - 10 and 14
SAN PATRICIO
Redfish Bay
TX-14
Horace Calder Pier
Corpus Christi Bay
TX-10A
TX-10B
TX-8
TX-10C
Wilson's Cut
NUECES
TX-9
Fish Pass
Gulf of Mexico
TX-6
TX-7
Laguna Madre
Packery Channel
Seaward extension of Bartholomew Ave
TEXAS
Detailed Area
N
0 1 2 3
Miles
Kilometers
0 1 2 3
Critical Habitat
Mustang Island State Park
County Boundaries


Critical Habitat for the Wintering Piping Plover :
Texas Units 11 - 13
SAN PATRICIO
Nueces Bay
TX-13
Redfish Bay
Corpus Christi Bay
TX-11
TX-12
NUECES
Oso Bay
TEXAS
Detailed Area
N
0 1 2 3
Miles
0 1 2 3
Kilometers
Critical Habitat
County Boundaries


Critical Habitat for the Wintering Piping Plover :
Texas Units 15, 16 & 18 - 21
REFUGIO
Hynes Bay
CALHOUN
Espiritu Santo Bay
TX-21
Pass Cavallo
San Antonio Bay
ARANSAS
TX-20
TX-19
CALHOUN
Matagorda Island
Mesquite Bay
TX-18
Cedar Bayou Pass
Vinson Slough
Aransas Bay
ARANSAS
TX-16
TX-15
San Jose Island
Gulf of Mexico
Aransas Pass
TEXAS
Detailed Area
N
0 3 6 9
Miles
Kilometers
0 3 6 9
Critical Habitat
County Boundaries


Critical Habitat for the Wintering Piping Plover :
Texas Units 22 - 27
MATAGORDA
JACKSON
CALHOUN
East Matagorda Bay
Eidelbach Flat
TX-26
TX-25
Matagorda Bay
Old Colorado River channel
TX-27
TX-24
TX-23
Matagorda Ship Channel
TX-22
Gulf of Mexico
Pass Cavallo
TEXAS
Detailed Area
N
0 3 6 9
Miles
0 3 6 9
Kilometers
Critical Habitat
County Boundaries



* * * * *

Dated: May 8, 2009.

Stephen Guertin,

Acting Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. E9–11245 Filed 5–18– 09; 8:45 am]

BILLING CODE 4310–55–C

Federal Register

Tuesday,
May 19, 2009

Part III

The President

Proclamation 8380—Armed Forces Day, 2009

Federal Register
Vol. 74, No. 95
Tuesday, May 19, 2009

Presidential Documents

Title 3—

The President

Proclamation 8380 of May 14, 2009

Armed Forces Day, 2009

By the President of the United States of America

A Proclamation

On Armed Forces Day, 1961, President Kennedy connected civic engagement and our Nation's security. He stated, ''the strength of our armed forces rests not alone upon their active and reserve members, our industrial productivity, and our human resources, but also upon the understanding and support of an informed American people.'' Based on this perspective, I call upon all Americans to learn more about, and express gratitude for, the heroic efforts of our men and women in uniform.

Today, the United States military serves across the world to keep us safe. They are working here at home to protect America from threats foreign and domestic; they are risking their lives in the deserts of Iraq and the mountains of Afghanistan; and they are also serving bravely in many other parts of the world to ensure our security and provide humanitarian assistance. Members of the Armed Forces are forging a better future for our Nation and the world.

As they carry out their missions, military families endure the sacrifice of their absence. Worrying about their safety, moving to new duty stations, and managing a home without a loved one, these families shoulder great burdens as they help sustain our men and women in uniform. I thank military families for their vital contributions.

The Soldiers, Sailors, Airmen, Marines, and Coastguardsmen who have answered the call to service deserve recognition and gratitude. They have endured the most difficult of conditions to protect America and her highest ideals. Today, I ask all Americans to know their sacrifice and join me in humble thanks.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, and Commander in Chief of the Armed Forces of the United States, continuing the precedent of my predecessors in office, do hereby proclaim the third Saturday of each May as Armed Forces Day.

I direct the Secretary of Defense on behalf of the Army, Navy, Air Force, Marine Corps, and the Secretary of Homeland Security on behalf of the Coast Guard, to plan for appropriate observances each year, with the Secretary of Defense responsible for soliciting the participation and cooperation of civil authorities and private citizens.

I invite the Governors of the States, the Commonwealth of Puerto Rico, and other areas subject to the jurisdiction of the United States, to provide for the observance of Armed Forces Day within their jurisdiction each year in an appropriate manner designed to increase public understanding and appreciation of the Armed Forces of the United States.

I also invite national and local veterans, civic and other organizations to join in the observance of Armed Forces Day each year.

Finally, I call upon all Americans to display the flag of the United States at their homes on Armed Forces Day and urge citizens to learn more about military service by attending and participating in the local observances

of the day. I also encourage Americans to volunteer at organizations that provide support to our troops.

Proclamation 7562 of May 16, 2002, is hereby superseded.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of May, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

[FR Doc. E9–11834
Filed 5–18–09; 11:15 am]
Billing code 3195–W9–P

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Tuesday, May 19, 2009

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Protecting Incentives for the Adoption of Children with Special Needs Act of 2009 (May 15, 2009; 123 Stat. 1616)
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