Federal Register

6–19–09 Friday
Vol. 74 No. 117 June 19, 2009

Pages 29111–29392

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.federalregister.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge as one of the databases on GPO Access, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** *www.gpoaccess.gov/nara,* available through GPO Access, is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward.

For more information about GPO Access, contact the GPO Access User Support Team, call toll free 1-888-293-6498; DC area 202-512-1530; fax at 202-512-1262; or via e-mail at *gpoaccess@gpo.gov.* The Support Team is available between 7:00 a.m. and 9:00 p.m. Eastern Time, Monday–Friday, except official holidays.

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 74 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

FEDERAL REGISTER WORKSHOP

THE FEDERAL REGISTER: WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: Sponsored by the Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

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, July 14, 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

Printed on recycled paper.

Contents

Federal Register

Vol. 74, No. 117

Friday, June 19, 2009

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 29164

Alcohol, Tobacco, Firearms, and Explosives Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29238–29239

Animal and Plant Health Inspection Service
NOTICES
Meetings:
National Animal Identification System, 29164–29165

Army Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29195–29196

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Bonneville Power Administration
NOTICES
Environmental Impact Statement; Intent, etc.:
Central Ferry – Lower Monumental Transmission Line Project, 29205–29206

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29166–29167
Request for Nominations:
Census Advisory Committee on the African American Population, 29185

Centers for Disease Control and Prevention
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29215–29216

Children and Families Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29214–29216
Matching Requirements, 29217–29218

Civil Rights Commission
NOTICES
Meetings:
Missouri Advisory Committee, 29166

Coast Guard
RULES
Safety Zones:
Annual Events Requiring Safety Zones in the Captain of the Port Buffalo Zone, 29131
Sigma Gamma Fireworks, Lake St. Clair, Grosse Pointe Farms, MI, 29134–29136
Southside Summer Fireworks, St. Clair River, Port Huron, MI, 29131–29134
Thunder on Niagara, Niagara River, North Tonawanda, NY, 29129–29131
PROPOSED RULES
Safety Zones:
Annual Events Requiring Safety Zones in the Captain of the Port Buffalo Zone, 29151–29153

Commerce Department
See Census Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Additions to and Deletions from Procurement List, 29186–29187
Procurement List Proposed Additions, 29187–29189

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 29189

Corporation for National and Community Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29189–29190

Defense Department
See Army Department
See Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29190–29195, 29213

Energy Department
See Bonneville Power Administration
See Federal Energy Regulatory Commission
NOTICES
Applications to Amend Presidential Permit:
Bangor Hydro-Electric Co., 29197
Applications to Export Electric Energy:
Hunt Electric Power Marketing, LLC, 29197–29198
Filings of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act
Florida Municipal Power Agency, 29198

Environmental Protection Agency
RULES
Oil Pollution Prevention:
Non-Transportation Related Onshore and Offshore Facilities, 29136–29142
NOTICES
Coppers Amendment to the Reregistration Eligibility Decision, 29207
Environmental Impact Statements; Availability, etc.:, 29208–29209

Executive Office of the President
See Presidential Documents

Farm Credit Administration
PROPOSED RULES
Borrower Rights; Effective Interest Rates, 29143–29144

Federal Aviation Administration
RULES
Airworthiness Directives:
Airbus Model A300 Airplanes; Model A300 B4–601, B4–603, et al., 29112–29116
Airbus Model A330–201, –202 Series Airplanes, et al., 29121–29123
BAE Systems (Operations) Limited Model BAe 146 and Avro 146 RJ Airplanes, 29123–29126
DORNIER LUFTFAHRT GmbH Models Dornier 228 100, Airplanes, et al., 29116–29118
Piper Aircraft, Inc. PA 23, PA 31, and PA 42 Series Airplanes, 29118–29121
SOCATA Model TBM 700 Airplanes, 29126–29128
PROPOSED RULES
Airworthiness Directives:
Fokker Model F28 Mark 0070 and 0100 Airplanes, 29144–29148
Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters, 29148–29149

Federal Communications Commission
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29209–29210
Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities, 29210–29211

Federal Emergency Management Agency
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29221–29223

Federal Energy Regulatory Commission
NOTICES
Applications:
Domtar Maine Corp., 29198–29200
Riverbank USA Holdings Corp., 29200–29201
Combined Filings, 29201–29203
Complaints:
Connecticut Municipal Electric Energy et al., 29203–29204
Environmental Assessment; Availability, etc.:
Southern Natural Gas Co., et al., 29204–29205
Filings:
North American Electric Reliability Corp., 29206–29207

Federal Highway Administration
NOTICES
Final Federal Agency Actions on Proposed Highway in California, 29263–29264

Federal Maritime Commission
NOTICES
Meetings; Sunshine Act, 29211

Federal Motor Carrier Safety Administration
NOTICES
Hours of Service of Drivers:
Granting of Exemption; American Pyrotechnics Association, 29266–29267
Renewal of American Pyrotechnics Association Exemption from the 14-Hour Rule during Independence Day Celebrations, 29264–29266

Federal Railroad Administration
NOTICES
Working Group Activity Update:
Railroad Safety Advisory Committee (RSAC), 29268–29272

Federal Retirement Thrift Investment Board
RULES
Employee Contribution Elections and Contribution Allocations, 29111–29112

Federal Trade Commission
PROPOSED RULES
Business Opportunity Rule, 29149–29150

Fish and Wildlife Service
RULES
Endangered and Threatened Species:
Determination of Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon, 29344–29387

Food and Drug Administration
NOTICES
Clinical Trials Transformation Initiative (U19), 29216–29217

Foreign Assets Control Office
NOTICES
Additional Designations of Entities and Individuals (Pursuant to Executive Order 12978), 29272–29275

Forest Service
NOTICES
Meetings:
Eastern Washington Cascades Provincial Advisory Committee, et al., 29165
National Urban and Community Forestry Advisory Council, 29165

General Services Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29211–29213

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Resources and Services Administration
PROPOSED RULES
Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction:
Buprenorphine and Buprenorphine Combination; Approved Opioid Treatment Medications Use, 29153–29158
NOTICES
Amendment; Pandemic Influenza Antivirals, 29213–29214
Meetings:
Scientific Advisory Committee on Alternative Toxicological Methods, 29214

Health Resources and Services Administration
NOTICES
Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Eligibility Guidelines, 29218–29220

Homeland Security Department
See Coast Guard
See Federal Emergency Management Agency
NOTICES
Meetings:
Project 25 Compliance Assessment Program Governing Board, 29220–29221

Housing and Urban Development Department
NOTICES
Federal Property Suitable as Facilities to Assist the Homeless, 29223
Housing and Economic Recovery Act, 2008:
Allocations, Application Procedures, Regulatory Waivers, etc., 29223–29229

Indian Affairs Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29229–29230

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau

International Trade Administration
NOTICES
Antidumping:
Certain Tissue Paper Products from the People's Republic of China, 29172–29174
Fresh Garlic from the People's Republic of China, 29174–29178
Hand Trucks and Parts Thereof from the People's Republic of China, 29178–29179
Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China, 29167–29172
Countervailing Duties:
Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China, 29180–29183
Meetings:
Manufacturing Council, 29183

Justice Department
See Alcohol, Tobacco, Firearms, and Explosives Bureau
See Justice Programs Office
See Prisons Bureau
RULES
Organization; Office of Information Policy, 29128–29129

Justice Programs Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29237–29240

Land Management Bureau
NOTICES
Alaska Native Claims Selection, 29230–29236
Meetings:
Adequacy of the Environmental Assessment and Fair Market Value; Dry Canyon Coal Tract, Carbon County, UT, 29236–29237

National Aeronautics and Space Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29213

National Institute of Standards and Technology
NOTICES
Meetings:
Protocol for Lightweight Authentication of Identity; Workshop, 29183–29184

National Intelligence, Office of the National Director
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals; Correction, 29241

National Oceanic and Atmospheric Administration
RULES
Endangered and Threatened Species:
Designation of Critical Habitat for Atlantic Salmon (Salmo salar) Gulf of Maine Distinct Population Segment, 29300–29341
Determination of Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon, 29344–29387
PROPOSED RULES
International Fisheries Regulations:
Fisheries in the Western Pacific; Pelagic Fisheries; Hawaii-based Shallow-set Longline Fishery, 29158–29163
NOTICES
Applications for Amendment:
Marine Mammals (File No.10321917), 29179–29180
Procedural Changes:
2009 European Union Export Certification for Fishery Products, 29184–29185
Stock Status Determination:
Atlantic Highly Migratory Species, Shortfin Mako Shark, 29185–29186

Navy Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 29196–29197

Nuclear Regulatory Commission
NOTICES
Consideration Issuance of Amendment to Facility Operating License and Opportunity for a Hearing:
Carolina Power & Light Co., 29241–29243
Establishment of Atomic Safety and Licensing Board, 29243
Final Regulatory Guide:
Issuance, Availability, 29243–29244
Issuance of Regulatory Guide 4.1, Revision 2.; Availability, 29244
Order Modifying Facility Operating License No. R–74:
University of Wisconsin Nuclear Reactor, 29244–29247
Withdrawal of Application for Amendment to Facility Operating License:
Entergy Operations Inc., 29247–29248

Office of the Director of National Intelligence
See National Intelligence, Office of the National Director

Presidential Documents
ADMINISTRATIVE ORDERS
Russian Federation; Blocking Government Property Relating to the Disposition of Highly Enriched Uranium from Nuclear Weapons (Notice of June 18, 2009), 29389–29392

Prisons Bureau
NOTICES
Environmental Impact Statements; Intent, etc.:
Lake City, Florida and/or Baldwin, Michigan, 29240–29241

Securities and Exchange Commission
NOTICES
Meetings; Sunshine Act, 29249
Self-Regulatory Organizations; Proposed Rule Changes:
Financial Industry Regulatory Authority, Inc., 29255–29261
NASDAQ OMX PHLX, Inc., 29252–29254
NYSE Arca, Inc., 29249–29252, 29254–29255

Small Business Administration
NOTICES
Disaster Declarations:
Alaska, 29248
West Virginia, 29248–29249

Social Security Administration
NOTICES
Meetings:
Occupational Information Development Advisory Panel, 29261–29262

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition Determinations:
Joaquin Torres-Garcia: Constructing Abstraction with Wood, 29262
Vermeer's Masterpiece, The Milkmaid, 29262
Renewals:
U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission, 29262–29263

Surface Transportation Board
NOTICES
Quarterly Rail Cost Adjustment Factor, 29267

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration
See Surface Transportation Board
NOTICES
Applications:
Air Excursions, LLC, 29263

Treasury Department
See Foreign Assets Control Office

Veterans Affairs Department
NOTICES
Privacy Act; Systems of Records, 29275–29297

Separate Parts In This Issue

Part II
Commerce Department, National Oceanic and Atmospheric Administration, 29300–29341

Part III
Commerce Department, National Oceanic and Atmospheric Administration, 29344–29387
Interior Department, Fish and Wildlife Service, 29344–29387

Part IV
Presidential Documents, 29389–29392

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

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

3 CFR

Administrative Orders:

Notices:

Notice of June 18, 2009 29391

5 CFR

1600.....29111

12 CFR

Proposed Rules:

617.....29143

14 CFR

39 (6 documents) 29112, 29116, 29118, 29121, 29123, 29126

Proposed Rules:

39 (2 documents) 29144, 29148

16 CFR

Proposed Rules:

437.....29149

28 CFR

0.....29128

33 CFR

165 (4 documents) 29129, 29131, 29134

Proposed Rules:

165.....29151

40 CFR

112.....29136

42 CFR

Proposed Rules:

8.....29153

50 CFR

17.....29344

224.....29344

226.....29300

Proposed Rules:

300.....29158

665.....29158

Rules and Regulations

Federal Register
Vol. 74, No. 117
Friday, June 19, 2009

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.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1600

Employee Contribution Elections and Contribution Allocations

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim final rule with request for comments.

SUMMARY: The Federal Retirement Thrift Investment Board (FRTIB) is amending its regulation pertaining to the timing of agency contributions to reflect changes the FRTIB anticipates will be made by the Thrift Savings Plan Enhancement Act of 2009 (Act). The Act provides that Agency Automatic (1%) Contributions and Agency Matching Contributions shall commence immediately. The regulatory amendment is necessary because FRTIB regulations follow current law, which provides that Agency Automatic (1%) Contributions and Agency Matching Contributions shall not commence until the equivalent of the second open season that begins after the employee commenced employment. The FRTIB is setting a August 1, 2009 effective date for this regulation to allow employing agencies sufficient time to make the necessary computer programming changes to implement it.

DATES: *Effective Date:* This interim final rule takes effect either June 19, 2009 or later, if the President has not signed the Act into law on that date. If you want to know the effective date of this rule, call or write the FRTIB's contact person. The FRTIB will publish a document announcing the effective date in the **Federal Register**.

Comment Date: Comments on this interim final rule must be received on or before July 20, 2009.

ADDRESSES: You may submit comments using one of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Office of General Counsel, Attn: Laurissa Stokes, Federal Retirement Thrift Investment Board, 1250 H Street, NW., Washington, DC 20005.
- *Hand Delivery/Courier:* The address for sending comments by hand delivery or courier is the same as that for submitting comments by mail.
- *Facsimile:* Comments may be submitted by facsimile at (202) 942–1676.

This is an interim final rule with a request for public comment. The most helpful comments explain the reason for any recommended change and include data, information, and the authority that supports the recommended change. We will post all substantive comments (including any personal information provided) without change (with the exception of redaction of SSNs, profanities, *et cetera*) on *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Laurissa Stokes at (202) 942–1645.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99–335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401–79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

Employee Contribution Elections and Contribution Allocations

The FRTIB is amending its regulations pertaining to the timing of agency contributions. H.R. 1256, which includes the Thrift Savings Plan Enhancement Act of 2009 (Act), passed the United States Senate on June 11, 2009, and passed the United States House of Representatives on June 12, 2009. The White House has indicated that the President will sign the Act into law.

Among other things, the Act would provide for immediate Agency Automatic (1%) and Matching Contributions.

Under the law in force prior to the Thrift Savings Plan Open Elections Act of 2004, newly hired Federal employees and members of the uniformed services had a 60-day period in which they could begin making TSP contributions. If they failed to do so, they were required to wait until an open season period to begin making contributions. Open seasons ran each year from April 15 to June 30 and from October 15 to December 31. In addition, TSP participants could only change their contributions during an open season. Agency Automatic (1%) Contributions and Agency Matching Contributions would begin for newly eligible employees during the second open season after which an employee was first eligible to participate in the TSP.

The Thrift Savings Plan Open Elections Act (bill) eliminated the statutory provisions relating to open seasons. It thereby allowed Federal employees and members of the uniformed services to begin or alter their contributions at any time. The bill did not, however, change when agency contributions would begin for newly eligible employees. As a consequence, agency contributions would still not start until the second open season that began after the employee commenced employment.

However, since the bill eliminated the statutory provisions relating to open seasons, it was necessary for the FRTIB to promulgate a regulation explaining when Agency Automatic (1%) and Matching Contributions would commence. Its regulation is codified at 5 CFR 1600.13. Since the Act provides for immediate Agency Automatic (1%) and Matching Contributions, it is necessary that the Agency immediately promulgate an interim final rule that is consistent with the Act.

Pursuant to his authority to prescribe such regulations as may be necessary for the administration of the Thrift Savings Plan, (5 U.S.C. 8474(b)(5)), to include section 8432 (*id.*) and as may be necessary to carry out his responsibilities as Executive Director (5 U.S.C. 8474(b)(5)), the Executive Director has given employing agencies until the first full pay period in August 2009 to implement this regulation. He selected the first full pay period in August 2009 implementation date after

consulting with employing agencies and determining that this would give agencies sufficient time to modify their personnel and payroll systems to provide for immediate agency contributions. That is, in order to efficiently administer the Thrift Savings Plan and to carry out his responsibilities as Executive Director, he determined it necessary to give employing agencies sufficient time to modify their computer systems to carry out the requirements of this regulation and the law that was passed by the House less than eighteen hours after it was passed by the Senate. This flexibility will also benefit those participants whose employing agencies are capable of implementing sooner. That is, their employing agencies may begin making contributions on behalf of these employees as soon as practicable.

Providing implementing flexibility is consistent with the grant of authority given to the Executive Director by the Thrift Savings Plan Enhancement Act of 2009. Section 102 of the Act provides for ''Automatic Enrollments and Immediate Employing Agency Contributions.'' Immediate Employing Agency Contributions was meant as an enhancement to automatic enrollment. For example, it envisions a 3 percent default contribution rate in order to provide participants with a dollar for dollar match on their contributions. It specifies that the default contribution rate may not exceed 5 percent, which would provide participants with the greatest matching contributions allowed by law. Section 102 gives the Executive Director the authority to promulgate regulations pertaining to automatic enrollment. The Executive Director relies on this authority as well as the authorities specified above in promulgating this regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities. They will affect only employees of the Federal government and members of the uniformed services.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 602, 632, 653, 1501–1571, the effects of this regulation on State, local, and Tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of $100 million or more by State, local, and Tribal governments, in the aggregate, or by the private sector. Therefore, a statement under section 1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted 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 before publication of this rule in the **Federal Register**. This rule is not a major rule as defined at 5 U.S.C. 814(2).

List of Subjects in 5 CFR Part 1600

Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board.

■ For the reasons stated in the preamble, the Federal Retirement Thrift Investment Board amends part 1600 of title 5 of the Code of Federal Regulations as follows:

PART 1600—EMPLOYEE CONTRIBUTION ELECTIONS AND CONTRIBUTION ALLOCATIONS

■ 1. The authority citation for part 1600 is revised to read as follows:

Authority: 5 U.S.C. 8351, 8432(a), 8432(b), 8432(c), 8432(j), 8474(b)(5) and (c)(1), Thrift Savings Plan Enhancement Act of 2009, section 102.

■ 2. Revise § 1600.13 to read as follows:

§ 1600.13 Timing of agency contributions.

An employee appointed or reappointed to a position covered by FERS is immediately eligible to receive agency contributions. In order to enable agencies to modify their personnel and payroll systems, agencies must implement this regulation as soon as practicable, but in no case later than the first full pay period in August 2009. Effective with the first full pay period of August 2009, all eligible employees must receive immediate agency contributions.

[FR Doc. E9–14478 Filed 6–18–09; 8:45 am]

BILLING CODE 6760–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1082; Directorate Identifier 2007–NM–337–AD; Amendment 39–15925; AD 2009–12–02]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 Airplanes; Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F Airplanes (Collectively Called A300–600 Series Airplanes); and Model A310 Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to the airplanes identified above. That AD currently requires revising the FAA-approved maintenance program to include a new airplane maintenance manual task that specifies a detailed inspection after each ram air turbine (RAT) retraction. That existing AD also currently requires, for certain airplanes, a one-time inspection to detect breaks in the bottom flange fitting of the RAT and corrective actions, if necessary; for certain airplanes, an adjustment of the ejection jack; and, for certain other airplanes, replacement of the aluminum part with an improved steel part. This AD also continues to require certain actions for additional airplanes and revising the FAA-approved maintenance program to include procedures for replacing the RAT swivel coupling fork fitting with a new steel part only. This AD results from a report that an additional swivel coupling of the RAT yoke fitting was found cracked during the accomplishment of the requirements of the existing AD. We are issuing this AD to prevent misrigging of the ejection jack of the RAT and to ensure removal of any RAT yoke fitting made from aluminum material. Such conditions could result in a broken or cracked swivel coupling and consequent failure of the RAT yoke fitting, which could result in the loss of RAT function and possible loss of critical flight control systems in the event of certain emergency situations.

DATES: This AD becomes effective July 24, 2009.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of July 24, 2009.

ADDRESSES: For service information identified in this AD, contact: Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2007–03–09, amendment 39–14920 (72 FR 5157, February 5, 2007). The existing AD applies to all Model A300 airplanes; Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310 airplanes. That NPRM was published in the **Federal Register** on October 10, 2008 (73 FR 60203). That NPRM proposed to continue to require revising the FAA-approved maintenance program to include a new airplane maintenance manual task that specifies a detailed inspection after each ram air turbine (RAT) retraction and, for certain airplanes, to continue to require replacing the aluminum yoke fitting of the swivel coupling of the RAT with a new steel yoke fitting. That NPRM also proposed to require replacing the RAT swivel coupling fork fitting for additional airplanes and revising the FAA-approved maintenance program to include procedures for replacing the RAT swivel coupling fork fitting with a new steel part only.

Actions Since NPRM Was Issued

The NPRM cited Airbus Mandatory Service Bulletin A300–57–0244, dated March 4, 2005, as the appropriate source of service information for procedures to replace the RAT swivel coupling fork fitting with a new steel fitting. Airbus has since revised that service bulletin. Revision 01, dated September 3, 2007, of that service bulletin includes revised installation procedures. The procedures in Revision 02, dated November 19, 2007, of that service bulletin are essentially the same as those in Revision 01, dated September 3, 2007.

We have revised paragraphs (f) and (h) of this AD to refer to Revision 02 of Airbus Mandatory Service Bulletin A300–57–0244. We have also added a new paragraph (k) to this AD to give credit for actions done in accordance with Revision 01 of Airbus Mandatory Service Bulletin A300–57–0244.

We have also revised paragraph (f) to refer to Airbus Mandatory Service Bulletins A310–57–2086, Revision 01, dated September 3, 2007; and A300–57–6099, Revision 01, dated September 3, 2007. We referred to the original issue of Airbus Mandatory Service Bulletin A310–57–2086, dated March 1, 2005; and Airbus Mandatory Service Bulletin A300–57–6099, dated February 23, 2005; for the replacement in paragraph (f) of the NPRM. The replacement procedures specified in Revision 01 of these service bulletins are identical to those in the original issue of these service bulletins.

Comments

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

Request To Revise the Applicability

Airbus requests that modification 19578 be removed from Table 1 in the NPRM because this modification applies to the A300F4–608ST model only. This model is not included on any U.S.-type certificate and is not referenced in paragraph (c) of the NPRM.

We agree. Airbus Model A300F4–608ST is not included on any U.S.-type certificate; therefore, we have removed the reference to the modification for this model from Table 1 of this AD.

Request for Revising Requirements

The Air Transport Association (ATA), on behalf of its member American Airlines (AA), requests that paragraph (g) of the NPRM be revised to coincide with the requirements of paragraph (k) of the NPRM. AA finds that paragraphs (g) and (k) of the NPRM require similar actions.

AA states that paragraph (g) of the NPRM would require changes to the FAA-approved maintenance program; specifically, changes to select AMM chapters are required, with a mandate to replace broken yoke fittings with new steel or aluminum parts. AA states that these AMM chapters are cited by both page block and date. AA states that paragraph (k) of the NPRM would similarly require changes to the maintenance program, and also would mandate changes to AMM sections; however, in paragraph (k) of the NPRM, specific revision dates of the AMM sections in question are not discussed. AA states that furthermore, paragraph (k) of the NPRM would require that a broken yoke be replaced with only a new steel part; paragraph (g) of the NPRM would authorize the use of an aluminum part. AA states that the requirements of paragraph (k) of the NPRM include the updated requirement to use only the steel yoke as a replacement. AA also states that paragraph (k) of the NPRM, unlike paragraph (g) of the NPRM, does not cite specific revision dates, allowing operators necessary latitude for incorporating future AMM revisions.

We find that clarification is necessary. Paragraph (g) of this final rule restates the requirements from superseded AD 2007–03–09, and paragraph (l) of this final rule (referred to as paragraph (k) in the NPRM) provides the new requirements. Performing the actions in paragraph (l) of this AD terminates the requirements of paragraph (g) of this AD. However, the requirements of paragraph (g) of this AD must be retained to ensure that applicable requirements of this AD are done. Paragraph (g) of this final rule states that the actions must be accomplished in accordance with the service information; therefore that service information contains specific revision numbers and dates. Paragraph (k) provides additional information; therefore, that information does not contain specific dates.

We have clarified paragraphs (g) and (l) of this AD to specify the actions are to be done in accordance with a method approved by the FAA or Direction Générale de l'Aviation Civile (DGAC) or European Aviation Safety Agency (EASA). Also, we have added Notes 2 and 4 of this final rule to specify where the information pertaining to the replacement and inspection procedures can be found.

Request for Alternative Replacement Procedures

The ATA, on behalf of its member AA, requests that the yoke replacement not be limited to the accomplishment procedures contained in Airbus Mandatory Service Bulletin A300–57–6099. AA requests that alternative replacement procedures be incorporated into the final rule.

We disagree. We find that the procedures included Airbus Mandatory Service Bulletin A300–57–6099 provide an adequate level of safety. However, we have no evidence that any alternative procedures not included in that service bulletin would provide an adequate level of safety. An operator may apply for approval of an alternative method of compliance (AMOC) in accordance with the procedures outlined in paragraph (m) of this AD. We have not changed the final rule regarding this issue.

Explanation of Changes to Paragraphs (g) and (l) of This AD and Additions of Note 2 and Note 4 in This AD

We have revised paragraphs (g) and (l) of this AD and have added Note 2 and Note 4 to this AD to clarify the requirements of those paragraphs. The revised paragraphs (g) and (l) specify the actions are to be done in accordance with a method approved by the FAA. However, we have added Notes 2 and 4 to specify where information pertaining to the replacement and inspection procedures can be found. We have also moved Note 1 to the applicability section.

Conclusion

We have carefully reviewed the available data, including the comments that have been 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

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Replacement	14	$80	$470	$1,590	205	$325,950
Revision of FAA-approved maintenance program.	1	80	None	80	205	16,400

In consideration of the compliance time and effective date for accomplishing the replacement and revision of the FAA-approved maintenance program required by AD 2007–03–09 (retained in paragraphs (f) and (g) of this AD), we assume that operators of the affected airplanes have already initiated the required actions. The AD adds no new costs associated with those airplanes.

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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14920 (72 FR 5157, February 5, 2007) and by adding the following new airworthiness directive (AD):

2009–12–02 Airbus: Amendment 39–15925. Docket No. FAA–2008–1082; Directorate Identifier 2007–NM–337–AD.

Effective Date

(a) This AD becomes effective July 24, 2009.

Affected ADs

(b) This AD supersedes AD 2007–03–09.

Applicability

(c) This AD applies to all Model A300 airplanes; Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, B4–622R, F4–605R, F4–622R, and C4–605R Variant F airplanes; and Model A310 airplanes, certificated in any category.

Note 1: This AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by these inspections, the operator may not be able to accomplish the

inspections described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance according to paragraph (m) of this AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure. The FAA has provided guidance for this determination in Advisory Circular (AC) 25–1529–1.

Unsafe Condition

(d) This AD results from a report that an additional swivel coupling of the ram air turbine (RAT) yoke fitting was found cracked while accomplishing the requirements of the existing AD. We are issuing this AD to prevent misrigging of the ejection jack of the RAT and to ensure removal of any RAT yoke fitting made from aluminum material. Such conditions could result in a broken or cracked swivel coupling and consequent failure of the RAT yoke fitting, which could result in the loss of RAT function and possible loss of critical flight control systems in the event of certain emergency situations.

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.

Certain Requirements of AD 2007–03–09

Replacement

(f) For Model A300 airplanes, Model A300–600 series airplanes, and Model A310 airplanes equipped with Dowty Rotol RATs, except airplanes on which Airbus Modification 12986 has been done: Within 12 months after March 12, 2007 (the effective date of AD 2007–03–09), replace the RAT swivel coupling fork fitting with a new steel fitting, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–0244, dated March 4, 2005, or Airbus Mandatory Service Bulletin A300–57–0244, Revision 02, dated November 19, 2007 (for Model A300 airplanes); Airbus Service Bulletin A300–57–6099, dated February 23, 2005, or Airbus Mandatory Service Bulletin A300–57–6099, Revision 01, dated September 3, 2007 (for Model A300–600 series airplanes); or Airbus Service Bulletin A310–57–2086, dated March 1, 2005, or Airbus Mandatory Service Bulletin A310–57–2086, Revision 01, dated September 3, 2007 (for Model A310 airplanes); except as provided by paragraph (h) of this AD.

Revisions of FAA-Approved Maintenance Program

(g) For all airplanes: Within 3 months after March 12, 2007, incorporate information into the FAA-approved maintenance program to specify an inspection for breaks of the bottom flange of the RAT swivel coupling yoke fitting after each RAT retraction; and replacement of the RAT swivel coupling yoke fitting with a new aluminum or steel part as applicable; in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Générale de l'Aviation Civile (or its delegated agent); or the European Aviation Safety Agency (or its delegated agent). Thereafter, except as provided by paragraphs (l) and (m) of this AD, no alternative inspection intervals may be approved for the bottom flange of the RAT swivel coupling yoke fitting.

Note 2: Guidance on the inspection and replacement procedures specified in paragraph (g) of this AD can be found in these documents as applicable:

- Airbus A300–600 Aircraft Maintenance Manual (AMM), Chapter 29–25–00, Page Block 301, dated June 1, 2005.
- Airbus A310 AMM, Chapter 29–25–00, Page Block 301, dated June 1, 2005.
- Airbus A300 AMM Chapter 29–25–00, Page Block 301, dated March 1, 2006.

Note 3: After revising the maintenance program to include the required periodic inspections according to paragraph (g) or (l) of this AD, operators do not need to make a maintenance log entry to show compliance with this AD every time those inspections are accomplished thereafter.

New Requirements of This AD

Revised Service Bulletins

(h) As of the effective date of this AD, use only the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2086, Revision 01, dated September 3, 2007 (for Model A310 series airplanes); Airbus Mandatory Service Bulletin A300–57–6099, Revision 01, dated September 3, 2007 (for Model A300–600 series airplanes); or Airbus Mandatory Service Bulletin A300–57–0244, Revision 02, dated November 19, 2007 (for Model A300 airplanes), to do the replacement required by paragraph (f) of this AD.

Replacement

(i) For airplanes identified in Table 1 of this AD: Before 102 months since first flight, or within 12 months after the effective date of this AD, whichever occurs later, replace the aluminum yoke fitting of the swivel coupling of the RAT with a new steel yoke fitting, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A310–57–2086, Revision 01, dated September 3, 2007 (for Model A310 series airplanes); or Airbus Mandatory Service Bulletin A300–57–6099, Revision 01, dated September 3, 2007 (for Model A300–600 series airplanes).

TABLE 1—AIRPLANES AFFECTED BY THE REQUIREMENTS OF PARAGRAPH (I) OF THIS AD

Model—	Except for those airplanes on which—	Or on which—
(1) A310 series airplanes equipped with Hamilton Sundstrand RAT.	Airbus Modification 12986 has been done in production.	Airbus Service Bulletin A310-57-2086, dated March 1, 2005; or Airbus Mandatory Service Bulletin A310-57-2086, Revision 01, dated September 3, 2007; has been done in service.
(2) A300–600 series airplanes equipped with Hamilton Sundstrand RAT.	Airbus Modification 12986 has been done in production.	Airbus Service Bulletin A300-57-6099, dated February 23, 2005; or Airbus Mandatory Service Bulletin A300-57-6099, Revision 01, dated September 3, 2007; has been done in service.

Credit for Actions Performed According to Previous Service Bulletins

(j) Replacements done before the effective date of this AD in accordance with Airbus Service Bulletin A310–57–2086, dated March 1, 2005 (for Model A310 series airplanes); or Airbus Service Bulletin A300–57–6099, dated February 23, 2005 (for Model A300–600 series airplanes); are acceptable for compliance with the requirements of paragraph (i) of this AD.

(k) Replacements done before the effective date of this AD in accordance with Airbus Service Bulletin A300–57–0244, Revision 01, dated September 3, 2007 (for Model A300 airplanes), are acceptable for compliance with the requirements of paragraph (f) of this AD for the affected airplanes.

Revision of FAA-Approved Maintenance Program

(l) For all airplanes: Within 3 months after the effective date of this AD, incorporate information into the FAA-approved maintenance program to specify an inspection for breaks of the bottom flange of the RAT swivel coupling yoke fitting after each RAT retraction; and replacement of the RAT swivel coupling yoke fitting with a new steel part; in accordance with a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or European Aviation Safety Agency (or its delegated agent). Thereafter, except as provided by paragraph (m) of this AD, no alternative inspection intervals may be approved for the bottom flange of the RAT swivel coupling yoke fitting. Accomplishing this incorporation

terminates the requirements of paragraph (g) of this AD.

Note 4: Guidance on the inspection and replacement procedures specified in paragraph (l) of this AD can be found in these documents as applicable:

- Airbus A300–600 AMM, Chapter 29–25–00, Page Block 301.
- Airbus A310 AMM, Chapter 29–25–00, Page Block 301.
- Airbus A300 AMM Chapter 29–25–00, Page Block 301.

Alternative Methods of Compliance (AMOCs)

(m) The Manager, International Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Related Information

(n) European Aviation Safety Agency (EASA) airworthiness directive 2007–0273, dated October 23, 2007, and French airworthiness directive F–2005–089, dated June 8, 2005, also address the subject of this AD.

Material Incorporated by Reference

(o) You must use the service information contained in Table 2 of this AD to do the actions required by this AD, as applicable, unless the AD specifies otherwise.

TABLE 2—MATERIAL INCORPORATED BY REFERENCE

Document	Revision	Date
Airbus Mandatory Service Bulletin A300–57–0244	02	November 19, 2007.
Airbus Mandatory Service Bulletin A300–57–6099	01	September 3, 2007.
Airbus Mandatory Service Bulletin A310–57–2086	01	September 3, 2007.

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

(2) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; e-mail *account.airworth-eas@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on May 20, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13146 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0261 Directorate Identifier 2009–CE–017–AD; Amendment 39–15943; AD 2009–13–04]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH Models Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 Airplanes

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

ACTION: Final rule.

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

Excessive wear on a guide pin of a power lever has been detected during inspections. The total loss of the pin could cause loss of the flight idle stop and lead to inadvertent activation of the beta mode in flight. The inadvertent activation of beta mode in flight can result in loss of control of the airplane.

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

DATES: This AD becomes effective July 24, 2009.

On July 24, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

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

FOR FURTHER INFORMATION CONTACT: Greg Davison, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4130; fax: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a supplemental notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on April 23, 2009 (74 FR 18477). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

Excessive wear on a guide pin of a power lever has been detected during inspections. The total loss of the pin could cause loss of the flight idle stop and lead to inadvertent activation of the beta mode in flight. The inadvertent activation of beta mode in flight can result in loss of control of the airplane.

For the reasons described above, this new EASA Airworthiness Directive (AD) introduces a repetitive detailed inspection of the guide pins of the power and condition levers and requires the replacement of the pins that exceed the allowable wear-limits.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this AD will affect 17 products of U.S. registry. We also estimate that it will take about 20 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Required parts will cost about $10 per product.

Based on these figures, we estimate the cost of this AD to the U.S. operators to be $27,370 or $1,610 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

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

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

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

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–13–04 Dornier Luftfahrt GmbH: Amendment 39–15943; Docket No. FAA–2009–0261; Directorate Identifier 2009–CE–017–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 24, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes, all serial numbers, certificated in any category.

Subject

(d) Air Transport Association of America (ATA) Code 76: Engine Controls.

Reason

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

Excessive wear on a guide pin of a power lever has been detected during inspections. The total loss of the pin could cause loss of the flight idle stop and lead to inadvertent activation of the beta mode in flight. The inadvertent activation of beta mode in flight can result in loss of control of the airplane.

For the reasons described above, this new EASA Airworthiness Directive (AD) introduces a repetitive detailed inspection of the guide pins of the power and condition levers and requires the replacement of the pins that exceed the allowable wear-limits.

Actions and Compliance

(f) Do the following actions per the instructions in RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin ASB–228–279, dated December 19, 2008:

(1) *Initial Inspection:* Unless already done within the last 1,200 hours time-in-service (TIS) as of July 24, 2009 (the effective date of this AD), inspect upon accumulating 9,600 hours on the guide pins of the power and condition levers or within the next 100 hours TIS after July 24, 2009 (the effective date of this AD), whichever occurs later.

(2) *Repetitive Inspections:* Inspect within 1,200 hours since the last inspection required by paragraph (f)(1) of this AD and thereafter at intervals not to exceed 1,200 hours TIS.

(3) *Replacement:* Replace the guide pins as follows:

(i) Before further flight, after any inspection required in paragraphs (f)(1) or (f)(2) of this AD, where any guide pin exceeds the acceptable wear-limits as defined in the service bulletin; and

(ii) Prior to any required inspection, you may install new power and condition levers guide pins instead of doing the inspections required in this AD. You must then inspect or install new pins upon accumulating 9,600 hours TIS and follow the repetitive inspection intervals of this AD if replacement is not made.

Note 1: If the hours TIS of the throttle box assembly is unknown, you may use the hours TIS of the airplane to determine the compliance time for the inspection.

FAA AD Differences

Note 2: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

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

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

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

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

Related Information

(h) Refer to MCAI EASA AD No.: 2009–0031, dated February 18, 2009; and RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin ASB–228–279, dated December 19, 2008, for related information.

Material Incorporated by Reference

(i) You must use RUAG Aerospace Defence Technology Dornier 228 Alert Service Bulletin ASB–228–279, dated December 19, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact RUAG Aerospace Services GmbH, Dornier 228 Customer Support, P.O. Box 1253, 82231 Wessling, Federal Republic of Germany, telephone: +49 (0) 8153–30–2280; fax: +49 (0) 8153–30–3030; E-mail: *custsupport.dorner228@ruag.com;* Internet: *http://www.ruag.com/.*

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

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on June 10, 2009.

Scott A. Horn,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–14083 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0218; Directorate Identifier 2009–CE–006–AD; Amendment 39–15944; AD 2009–13–06]

RIN 2120–AA64

Airworthiness Directives; Piper Aircraft, Inc. PA–23, PA–31, and PA–42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Piper Aircraft, Inc. (Piper) PA–23 series airplanes and all PA–31 and PA–42 series airplanes. This AD establishes life limits for safety-critical nose baggage door components. This AD also requires you to replace those safety-critical nose baggage door components and repetitively inspect and lubricate the nose baggage door latching mechanism and lock assembly. This AD results from several incidents and accidents, including fatal accidents, where the nose baggage door opening in flight was listed as a causal factor. We are issuing this AD to detect and correct damaged, worn, corroded, or non-conforming nose baggage door components, which could result in the nose baggage door opening in flight. The door opening in flight could significantly affect the handling and performance of the aircraft. It could also allow baggage to be ejected from the nose baggage compartment and strike the propeller. This failure could lead to loss of control.

DATES: This AD becomes effective on July 24, 2009.

On July 24, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

ADDRESSES: To get the service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.*

To view the AD docket, go to U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, or on the Internet at *http://www.regulations.gov.* The docket number is FAA–2009–0218; Directorate Identifier 2009–CE–006–AD.

FOR FURTHER INFORMATION CONTACT: Gregory K. Noles, Aerospace Engineer, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6085; fax: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Discussion

On March 3, 2009, we issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Piper PA–23 series airplanes and all PA–31 and PA–42 series airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 10, 2009 (74 FR 10195). The NPRM proposed to establish life limits for safety-critical nose baggage door components. The NPRM also proposed to require replacement of those safety-critical nose baggage door components and repetitively inspect and lubricate the nose baggage door latching mechanism and lock assembly.

Comments

We provided the public the opportunity to participate in developing this AD. The following presents the comments received on the proposal and FAA's response to each comment:

Comment Issue No. 1: Require the Installation of a Secondary Forward Baggage Door Latch

Iliamna Air Taxi, Inc. and others request the AD incorporate a secondary forward baggage door latch per supplemental type certificate (STC) number SA02331AK as part of the solution. The recommendations range from making the STC latch an additional action to this AD to having the STC latch as a terminating action for this AD. The commenters suggest the STC latch provides a cost-effective option that provides additional or improved safety to the AD action. One commenter questioned the validity of the AD action by referencing incidents/accidents that occurred after the FAA

addressed National Transportation Safety Board (NTSB) safety recommendation A–78–004 from a related accident. The commenter also states that Piper has released two previous service bulletins that have not been effective in preventing incidents/accidents and believes this AD will also be ineffective.

The FAA disagrees. A properly inspected, maintained, and latched nose baggage door latch does not have an unsafe condition. The intent of this AD is to assure the nose baggage door latches properly and to alert the pilot to check that the door is properly latched. The STC latch, and other similar latches, do not directly infringe on the actions or intent of the AD and could, therefore, be installed at owner/operator discretion. The STC latch could potentially add another level of safety to the operation of the nose baggage door. However, no formal evidence exists that it could be considered a replacement or fail-safe system to the existing type design. Even if the STC latch were validated for a backup or fail-safe purpose, it is only approved for a limited number of the aircraft models affected by this AD and would not provide a comprehensive solution. For these reasons, the STC will remain an optional installation.

The FAA is not aware of any incidents or accidents that have been attributed to a latch when it is installed per the type design, maintained per the Instructions for Continued Airworthiness, and operated per required procedures. The NPRM and Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008, are a valid solution. They highlight the importance of these measures, provide a detailed inspection program, and add life-limits to critical latch components. These steps are beyond any previous actions taken to provide the required level of safety.

We will not change the final rule AD action based on this comment.

Comment Issue No. 2: Allow a Smaller Nose Baggage Door Placard

An anonymous commenter requests that we allow use of a smaller nose baggage door placard because the placard supplied in the piper part number 88451–002 kit is unnecessarily large for the application and ''unsightly.''

The FAA agrees. A smaller placard can be considered for the application. We will change the AD to allow the use of a smaller placard provided the size of the letters is a minimum of ⅛-inch.

Comment Issue No. 3: Revise the Emergency Procedures in the Pilot Operating Handbook (POH) To Add Procedures for the Nose Baggage Door Opening In-Flight

The NTSB commented that they support the AD and encourage dissemination to flight-related publications likely to be read by operators. However, they also commented that the AD should add emergency procedures to the POH for affected airplanes, indicating how pilots should respond to a nose baggage door inadvertently opening in-flight.

The FAA disagrees. Operation with the baggage door open is not permitted and evaluation of handling qualities with the baggage door open is not a regulatory requirement. Therefore, data for emergency procedures is not available because a configuration with the baggage door open has never been tested. Without test data, specific emergency procedures can not be recommended.

We will not change the final rule AD action based on this comment.

Conclusion

We have carefully reviewed the available data and determined that air safety and the public interest require adopting the AD as proposed except for the changes previously discussed and minor editorial corrections. We have determined that these minor corrections:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

Costs of Compliance

We estimate that this AD affects 8,000 airplanes in the U.S. registry.

We estimate the following costs to do the inspection and parts replacement:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
4 work-hours × $80 per hour = $320	$190	$510	$4,080,000

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 AD.

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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and

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

We prepared a summary of the costs to comply with this AD (and other information as included in the Regulatory Evaluation) and placed it in the AD Docket. You may get a copy of this summary by sending a request to us at the address listed under **ADDRESSES**. Include ''Docket No. FAA–2009–0218; Directorate Identifier 2009–CE–006–AD'' in your request.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator,

the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (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. FAA amends § 39.13 by adding a new AD to read as follows:

2009–13–06 Piper Aircraft, Inc.: Amendment 39–15944; Docket No. FAA–2009–0218; Directorate Identifier 2009–CE–006–AD.

Effective Date

(a) This AD becomes effective on July 24, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Models PA–23, PA–23–160, PA–23–235, PA–23–250, PA–23–250 (Navy UO–1), PA–E23–250, PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31P–350, PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, and PA–42–1000 airplanes, all serial numbers, that are:

(1) Certificated in any category; and

(2) Equipped with a baggage door in the fuselage nose section (a nose baggage door).

Unsafe Condition

(d) This AD results from several incidents and accidents, including some fatal accidents, where the nose baggage door opening in flight was listed as a causal factor. We are issuing this AD to detect and correct damaged, worn, corroded, or non-conforming nose baggage door components, which could result in the nose baggage door opening in flight. The door opening in flight could significantly affect the handling and performance of the aircraft. It could also allow baggage to be ejected from the nose baggage compartment and strike the propeller. This failure could lead to loss of control.

Compliance

(e) To address this problem, you must do the following, unless already done:

Actions	Compliance	Procedures
(1) For all aircraft: (i) inspect the nose baggage door assembly for damaged, worn, corroded, or non-conforming components; (ii) replace life-limited components specified in the service information; and (iii) install or inspect, as applicable, the nose baggage placard following the service information.	(A) *Initially:* within 1,000 hours time-in-service (TIS) since all life-limited components were installed new following Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008, or within the next 100 hours TIS after July 24, 2009 (the effective date of this AD), whichever occurs later; and (B) *Repetitively thereafter:* at intervals not to exceed 1,000 hours TIS.	Follow INSTRUCTIONS: PART I of Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008. As an alternative to using part number 100700-079 placard, you may fabricate a placard (using at least ⅛-inch letters) with the words in figure 1 of this AD and install the placard directly above the nose baggage door handle.
(2) For all aircraft: (i) lubricate and inspect all nose baggage door latching and locking components for damaged, worn, corroded, or non-conforming components; and (ii) verify the key can only be removed from the lock assembly in the locked position in accordance with the service instructions.	(A) *Initially:* within 100 hours TIS after July 24, 2009 (the effective date of this AD); and (B) *Repetitively thereafter:* at intervals not to exceed 100 hours TIS.	Follow INSTRUCTIONS: PART II of Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008.
(3) For all aircraft with damaged, worn, corroded, or non-conforming components: repair/replace any damaged, worn, corroded, or non-conforming components.	Before further flight after any inspection required in paragraphs (e)(1) and (e)(2) of this AD where any evidence of damaged, worn, or corroded components was found.	Follow Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008.

CLOSE AND LOCK
NOSE BAGGAGE DOOR
BEFORE FLIGHT

1. CLOSE DOOR FULLY AGAINST DOOR FRAME
2. PRESS DOOR HANDLE FLUSH WITH SKIN, AND ROTATE KEY INTO LOCKED POSITION
3. REMOVE KEY
4. PUSH ON FORWARD END OF DOOR HANDLE, TO CONFIRM THAT HANDLE IS LOCKED AND SECURE

Figure 1. – Nose Baggage Door Placard.

Alternative Methods of Compliance (AMOCs)

(f) The Manager, Atlanta Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Gregory K. Noles, Aerospace Engineer, One Crown Center, 1895 Phoenix Blvd., Suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6085; fax: (770) 703–6097. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

Material Incorporated by Reference

(g) You must use Piper Aircraft, Inc. Service Bulletin No. 1194A, dated November 10, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Piper Aircraft, Inc., 2926 Piper Drive, Vero Beach, Florida 32960; telephone: (772) 567–4361; fax: (772) 978–6573; Internet: *http://www.newpiper.com/company/publications.asp.*

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

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri, on June 12, 2009.

Scott A. Horn,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–14307 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0262; Directorate Identifier 2008–NM–208–AD; Amendment 39–15946; AD 2009–13–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 Series Airplanes

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

ACTION: Final rule.

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

During receipt of spare parts at the final assembly line, it was discovered that lugs of the assembly nut * * * had been inverted (wrong orientation of the braking pin) during manufacturing process at the supplier.

* * * This lug inversion could give the illusion of correct torque whereas the affected parts are not properly connected.

Loose connection could lead to loss of the fire extinguishing system integrity and therefore inability to ensure the adequate agent concentration. In combination with an engine fire event, it could result in a temporary uncontrolled engine fire, which constitutes an unsafe condition.

* * * * *

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

DATES: This AD becomes effective July 24, 2009.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of July 24, 2009.

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

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer,

International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to the specified products. That NPRM was published in the **Federal Register** on March 26, 2009 (74 FR 13144). That NPRM proposed to correct an unsafe condition for the specified products. The MCAI states:

> During receipt of spare parts at the final assembly line, it was discovered that lugs of the assembly nut, part number (P/N) A2621005000200, had been inverted (wrong orientation of the braking pin) during manufacturing process at the supplier.
>
> The assembly nut P/N A2621005000200 is part of the engine fire-extinguishing piping assembly. It connects the extinguisher discharge head with the piping. The lugs function is to prevent the connection untwisting once it has been hand-tightened with the correct torque. This lug inversion could give the illusion of correct torque whereas the affected parts are not properly connected.
>
> Loose connection could lead to loss of the fire extinguishing system integrity and therefore inability to ensure the adequate agent concentration. In combination with an engine fire event, it could result in a temporary uncontrolled engine fire, which constitutes an unsafe condition.
>
> To restore connection integrity, this Airworthiness Directive (AD) requires a one-time general visual inspection of the affected nut assembly to detect and correct any wrong orientation of lugs.

The corrective actions include a temporary repair (restoration) and replacing the fire extinguisher bottle nut assembly with the braking pin in the inverted position, if necessary. You may obtain further information by examining the MCAI in the AD docket.

Comments

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

Conclusion

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

We estimate that this AD will affect 4 products of U.S. registry. We also estimate that it will take about 9 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this AD to the U.S. operators to be $2,880, or $720 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this AD:

1. Is not a ''significant regulatory action'' under Executive Order 12866;
2. Is not a ''significant rule'' under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

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

Examining the AD Docket

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–13–07 Airbus: Amendment 39–15946. Docket No. FAA–2009–0262; Directorate Identifier 2008–NM–208–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 24, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Airbus Model A330–201, –202, –203, –223, –243, –301, –302, –303, –321, –322, –323, –341, –342, and –343 series airplanes, certificated in any category; having serial numbers 0845, 0850, 0851, 0852, 0853, 0854, 0855, 0857, 0858, 0859, 0860, 0861, 0862, 0863, 0865, 0866, 0867, 0868, 0869, 0871, 0873, 0875, 0876, 0877, 0879, 0881, 0882, 0883, 0884, 0885, 0887, 0888, 0889, 0890, 0892, 0893, 0895, 0896, 0898, 0899, 0900, 0901, 0903, 0904, 0905, 0906, 0907, 0908, 0909, 0911, 0913, 0914, 0915, 0916, 0918, 0919, 0920, 0922, 0923, and 0951.

Subject

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

Reason

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

During receipt of spare parts at the final assembly line, it was discovered that lugs of the assembly nut, part number (P/N) A2621005000200, had been inverted (wrong orientation of the braking pin) during manufacturing process at the supplier.

The assembly nut P/N A2621005000200 is part of the engine fire-extinguishing piping assembly. It connects the extinguisher discharge head with the piping. The lugs function is to prevent the connection untwisting once it has been hand-tightened with the correct torque. This lug inversion could give the illusion of correct torque whereas the affected parts are not properly connected.

Loose connection could lead to loss of the fire extinguishing system integrity and therefore inability to ensure the adequate agent concentration. In combination with an engine fire event, it could result in a temporary uncontrolled engine fire, which constitutes an unsafe condition.

To restore connection integrity, this Airworthiness Directive (AD) requires a one-time general visual inspection of the affected nut assembly to detect and correct any wrong orientation of lugs.

The corrective actions include a temporary repair (restoration) and replacing the fire extinguisher bottle nut assembly with the braking pin in the inverted position, if necessary.

Actions and Compliance

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

(1) Within 900 flight hours after the effective date of this AD, perform a general visual inspection to detect any wrong orientation of the lugs of the fire extinguisher bottle nut assembly of both engines, and do all applicable corrective actions specified in paragraphs (f)(1)(i) and (f)(1)(ii) of this AD, in accordance with the Accomplishment Instructions of Airbus Mandatory Service Bulletin A330–26–3043, dated October 7, 2008.

(i) Before further flight, if the correct nut assembly is available, replace the fire extinguisher bottle nut assembly.

(ii) Before further flight, if the correct nut assembly is not available, do the temporary repair; and within 900 flight hours after doing the repair, replace the fire extinguisher bottle nut assembly with the correct one.

(2) Submit a report of the findings of the inspection required by paragraph (f)(1) of this AD using Appendix 01 of Airbus Mandatory Service Bulletin A330–26–3043, dated October 7, 2008, at the applicable time specified in paragraph (f)(2)(i) or (f)(2)(ii) of this AD. Send the report to Airbus Department SEEE6, Airbus Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex France, Attn: SDC32 Technical Data and Documentation Services; fax 33 5 61 93 28 06; e-mail *sb.reporting@airbus.com*.

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

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

FAA AD Differences

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

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to *Attn:* Vladimir Ulyanov, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1138; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0196, dated October 27, 2008; and Airbus Mandatory Service Bulletin A330–26–3043, including Appendices 01, 2, and 3, dated October 7, 2008; for related information.

Material Incorporated by Reference

(i) You must use Airbus Mandatory Service Bulletin A330–26–3043, including Appendices 01, 2, and 3, dated October 7, 2008, to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact Airbus SAS—Airworthiness Office—EAL, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 45 80, e-mail *airworthiness.A330–A340@airbus.com*; Internet *http://www.airbus.com*.

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–14308 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0133; Directorate Identifier 2008–NM–107–AD; Amendment 39–15933; AD 2009–12–10]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding an existing airworthiness directive (AD), which applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That AD currently requires repetitive inspections for corrosion of frames 15, 18, 41, and 43 and applicable related investigative and corrective actions. The existing AD also provides an optional action that would extend the repetitive inspection interval. This new AD also requires a high frequency eddy current inspection for corrosion of the outer frame flanges and door hinge bosses of frames 15, 18, 41, and 43. This AD results from a report indicating that corrosion has been detected in the outer frame flanges and door hinge bosses during scheduled maintenance. We are issuing this AD to prevent reduced structural integrity of the airplane.

DATES: This AD becomes effective July 24, 2009.

The Director of the Federal Register approved the incorporation by reference

of a certain publication listed in the AD as of July 24, 2009.

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov*; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (telephone 800–647–5527) is the Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

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

SUPPLEMENTARY INFORMATION:

Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that supersedes AD 2006–12–09, amendment 39–14634 (71 FR 33602, June 12, 2006). The existing AD applies to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ airplanes. That NPRM was published in the **Federal Register** on February 18, 2009 (74 FR 7565). That NPRM proposed to continue to require repetitive inspections for corrosion of frames 15, 18, 41, and 43 and applicable related investigative and corrective actions. The NPRM also proposed to continue to provide an optional action that would extend the repetitive inspection interval. In addition, the NPRM proposed to require a high frequency eddy current (HFEC) inspection for corrosion of the outer frame flanges and door hinge bosses of frames 15, 18, 41, and 43.

Comments

We provided the public the opportunity to participate in the development of this AD. No comments have been received on the NPRM or on the determination of the cost to the public.

Conclusion

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

Costs of Compliance

The following table provides the estimated costs for U.S. operators to comply with this AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
HFEC inspection, per inspection cycle (required by AD 2006–12–09)	5	$80	$400	1	$400
Detailed Inspection, per inspection cycle (required by AD 2006–12–09)	3	80	240	1	240
HFEC inspection, per inspection cycle (new action)	5	80	400	1	400

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 regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket. See the **ADDRESSES** section for a location to examine the regulatory evaluation.

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The Federal Aviation Administration (FAA) amends § 39.13 by removing amendment 39–14634 (71 FR 33602, June 12, 2006) and by adding the following new airworthiness directive (AD):

2009–12–10 BAE Systems (Operations) Limited (Formerly British Aerospace

Regional Aircraft): Amendment 39–15933. Docket No. FAA–2009–0133; Directorate Identifier 2008–NM–107–AD.

Effective Date

(a) This AD becomes effective July 24, 2009.

Affected ADs

(b) This AD supersedes AD 2006–12–09.

Applicability

(c) This AD applies to all BAE Systems (Operations) Limited Model BAe 146–100A, –200A, and –300A series airplanes; and Model Avro 146–RJ70A, 146–RJ85A, and 146–RJ100A airplanes; certificated in any category.

Subject

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

Unsafe Condition

(e) This AD results from a report indicating that corrosion has been detected in the outer frame flanges and door hinge bosses during scheduled maintenance. We are issuing this AD to prevent reduced structural integrity of the airplane.

Compliance

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

Restatement of Requirements of AD 2006–12–09

Repetitive Inspections

(g) Use high-frequency eddy current (HFEC) and detailed methods to inspect for signs of corrosion (including cracks, blistering, or flaking paint) of frames 15, 18, 41, and 43, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005, except as required by paragraph (k) of this AD. Inspect at the applicable time specified in 1.D. ''Compliance'' of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005. Application of corrosion-preventive treatment, in accordance with BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005; or Revision 1, dated August 6, 2007; extends the repetitive inspection interval, as specified in Table 2 in 1.D. ''Compliance'' of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005.

Note 1: For the purposes of this AD, a detailed inspection is: ''An intensive examination of a specific item, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate. Inspection aids such as mirror, magnifying lenses, etc., may be necessary. Surface cleaning and elaborate procedures may be required.''

Corrective Action

(h) If any discrepancy is found during any inspection required by paragraph (g) of this AD: Before further flight, perform applicable related investigative/corrective actions in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005, except as required by paragraphs (i) and (k) of this AD.

Exceptions to Service Bulletin Specifications

(i) If BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005, specifies to contact the manufacturer for appropriate action, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Civil Aviation Authority (or its delegated agent); or European Aviation Safety Agency (EASA) (or its delegated agent).

(j) Where BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005, specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after July 17, 2006 (the effective date of AD 2006–12–09). Where BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005, specifies a compliance time ''since date of construction'' of the airplane, this AD requires compliance since the date of issuance of the original standard airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

New Requirements of This AD

New Service Bulletin

(k) As of the effective date of this AD: Do the actions required by paragraphs (g) and (h) of this AD in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, Revision 1, dated August 6, 2007, except as required by paragraph (n) of this AD.

Additional Inspection Areas

(l) At the applicable compliance time specified in paragraph (g) of this AD, except as provided by paragraph (o) of this AD; or within six months after the effective date of this AD; whichever occurs later: Do an HFEC inspection for corrosion of the outer frame flanges and door hinge bosses of frames 15, 18, 41, and 43, in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, Revision 1, dated August 6, 2007 (''the service bulletin''). Repeat the inspection thereafter at the applicable time specified in paragraph 1.D., ''Compliance,'' of the service bulletin. Application of corrosion-preventive treatment, in accordance with the Accomplishment Instructions of the service bulletin, extends the repetitive inspection interval, as specified in Table 2 in paragraph 1.D., ''Compliance,'' of the service bulletin.

Corrective Action for Additional Inspection

(m) If any discrepancy is found during any inspection required by paragraph (l) of this AD: Before further flight, perform applicable related investigative/corrective actions in accordance with the Accomplishment Instructions of BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, Revision 1, dated August 6, 2007, except as required by paragraph (n) of this AD.

Exceptions to BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, Revision 1

(n) If BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, Revision 1, dated August 6, 2007, specifies to contact the manufacturer for appropriate action, before further flight, repair per a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA (or its delegated agent).

(o) Where BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, Revision 1, dated August 6, 2007, specifies a compliance time after the issuance of the service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD. Where BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, Revision 1, dated August 6, 2007, specifies a compliance time ''since date of construction'' of the airplane, this AD requires compliance since the date of issuance of the original airworthiness certificate or the date of issuance of the original export certificate of airworthiness.

No Reporting

(p) Although BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, dated March 16, 2005; and Revision 1, dated August 6, 2007; specify to submit information to the manufacturer, this AD does not include such a requirement.

Alternative Methods of Compliance (AMOCs)

(q) The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office. The AMOC approval letter must specifically reference this AD.

Related Information

(r) European Aviation Safety Agency Airworthiness Directive 2008–0092 R1, dated May 15, 2008, also addresses the subject of this AD.

Material Incorporated by Reference

(s) You must BAE Systems (Operations) Limited Inspection Service Bulletin ISB.53–182, Revision 1, dated August 6, 2007; as

applicable; to do the actions required by this AD, unless the AD specifies otherwise.

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

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

(3) You may review copies of the service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

(4) You may also review copies of the service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Renton, Washington, on June 2, 2009.

Stephen P. Boyd,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–13567 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0557; Directorate Identifier 2009–CE–031–AD; Amendment 39–15944; AD 2009–13–05]

RIN 2120–AA64

Airworthiness Directives; SOCATA Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

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

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

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

DATES: This AD becomes effective July 9, 2009.

On July 9, 2009, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by July 20, 2009.

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

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

Examining the AD Docket

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

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued Emergency AD No. 2009–0096–E, dated April 21, 2009, (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyard linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

For the reason described above, SOCATA has released Pilot Operating Handbook (POH) Temporary Revision (TR) 03 which asks, in case of failure to release oxygen, to pull on the other mask lanyard in order to activate the oxygen generator.

A SOCATA modification enabling to solve this issue is under preparation. Once this modification release, this AD is expected to be revised to confirm the acceptability of that modification.

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

Relevant Service Information

SOCATA has issued SOCATA TBM 700 A & B Pilot Operating Handbook (POH), Temporary Revision No. 3, dated March 2009. The actions described in page 3.13.5 of this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

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

Differences Between This AD and the MCAI or Service Information

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

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

separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because if not corrected, in an emergency procedure due to decompression, this condition could lead to a risk of generator fault with subsequent lack of oxygen for crew and/or passenger. Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0557; Directorate Identifier 2009–CE–031–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2009–13–05 Socata: Amendment 39–15944; Docket No. FAA–2009–0557; Directorate Identifier 2009–CE–031–AD.

Effective Date

(a) This airworthiness directive (AD) becomes effective July 9, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following model and serial number airplanes that are:

(i) certificated in any category; and

(ii) equipped with a chemical oxygen generation system.

Model	Serial Nos.
TBM 700	1 through 204, 206 through 239, and 241 through 244.

Subject

(d) Air Transport Association of America (ATA) Code 35: Oxygen.

Reason

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

During a SOCATA flight test, it has been noted some difficulties for the pilot to release oxygen.

After investigation it has been found that, due to the design of the oxygen generator release pin, one of the mask's lanyards linked to the pin can be jammed when it is pulled by a pilot or a passenger.

This condition, if not corrected, would lead, in case of an emergency procedure due to decompression to a risk of generator fault with subsequent lack of oxygen on crew and/or passenger.

For the reason described above, SOCATA has released Pilot Operating Handbook (POH) Temporary Revision (TR) 03 which asks, in case of failure to release oxygen, to pull on the other mask lanyard in order to activate the oxygen generator.

A SOCATA modification enabling to solve this issue is under preparation. Once this modification is released, this AD is expected to be revised to confirm the acceptability of that modification.

Actions and Compliance

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

(1) Before further flight after July 9, 2009 (the effective date of this AD), insert Page 3.13.5 of Temporary Revision No. 3, dated March 2009, into the Emergency Procedures section and the Limitations sections of SOCATA TBM 700 A & B Pilot Operating Handbook (POH).

(2) Under 14 CFR 43.7 of the Federal Aviation Administration Regulations (14 CFR 43.7), the owner/operator holding at least a private pilot certificate is allowed to insert the temporary revision into the POH. Make an entry into the aircraft logbook showing compliance with this portion of the AD per compliance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: None.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; *telephone:* (816) 329–4119; *fax:* (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies,

notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) Emergency AD No. 2009–0096–E, dated April 21, 2009, and SOCATA TBM 700 A & B Pilot Operating Handbook (POH), Temporary Revision No. 3, dated March 2009, for related information.

Material Incorporated by Reference

(i) You must use page 3.13.5 of Temporary Revision No. 3, dated March 2009, of SOCATA TBM 700 A & B Pilot Operating Handbook (POH), to do the actions required by this AD, unless the AD specifies otherwise.

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

(2) For service information identified in this AD, contact SOCATA, 65921—TARBES Cedex 9, France; telephone: +33 6 07 32 62 24; or SOCATA, North Perry Airport, 7501 South Airport Rd., Pembrokes Pines, FL 33023; *telephone:* (954) 893–1400; *fax:* (954) 964–4141; *Internet: http://mysocata.com.*

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

(4) You may also review copies of the service information incorporated by reference for this AD at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

Issued in Kansas City, Missouri on June 10, 2009.

Scott A. Horn,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–14220 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Docket No. OAG 128; A.G. Order No. 3085–2009]

Organization; Office of Information Policy

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule updates the regulation that describes the structure, functions, and responsibilities of the Office of Information Policy of the Department of Justice. The rule updates the description of the Office to reflect certain changes to its structure and organizational location.

DATES: *Effective Date:* June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Janice Galli McLeod, Associate Director, Office of Information Policy, U.S. Department of Justice, Washington, DC 20530, (202) 514–3642.

SUPPLEMENTARY INFORMATION: This rule revises the Department's description of the Office of Information Policy to reflect the Office's establishment as a separate component within the Department of Justice. References to the advice and training formerly provided by the Office of Information Policy on Privacy Act matters have been deleted in light of the performance of those tasks by the recently created Office of Privacy and Civil Liberties.

Administrative Procedure Act

This rule relates to a matter of agency management or personnel and therefore is exempt from the usual requirements of prior notice and comment and a 30-day delay in effective date. See 5 U.S.C. 553(a)(2).

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed this rule and, by approving it, certifies that it will not have a significant economic impact on a substantial number of small entities because it pertains to personnel and administrative matters affecting the Department. A Regulatory Flexibility Analysis was not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter.

Executive Order 12866

This rule has been drafted and reviewed in accordance with Executive Order 12866, ''Regulatory Planning and Review,'' section 1(b), ''Principles of Regulation.'' This rule is limited to agency organization, management, and personnel as described by Executive Order 12866 section 3(d)(3) and, therefore, is not a ''regulation'' or ''rule'' as defined by that Executive Order. Accordingly, this rule has not been reviewed by the Office of Management and Budget.

Executive Order 13132

This rule 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. Therefore, in accordance with Executive Order 13132, ''Federalism,'' the Department of Justice has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988, ''Civil Justice Reform.''

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' for purposes of the reporting requirement of 5 U.S.C. 801.

Congressional Review Act

This action pertains to agency organization and management and does not substantially affect the rights or obligations of non-agency parties. Accordingly, it is not a ''rule'' as that term is used by the Congressional Review Act (Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)). Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies).

■ Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509 and 510, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

■ 1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–19.

§ 0.23a [Redesignated as § 0.24]

■ 2. Section 0.23a, currently under Subpart D–2, is redesignated as § 0.24, transferred to new Subpart D–3, and revised to read as follows:

Subpart D–3—Office of Information Policy

§ 0.24 General functions.

The Office of Information Policy shall be headed by a Director appointed by the Attorney General. The Director shall report to the Associate Attorney General. The following functions are assigned to, and shall be conducted, handled, or supervised by the Director of the Office of Information Policy:

(a) Exercising the power and performing the functions vested in the Attorney General under 5 U.S.C. 552(e).

(b) Developing, coordinating, and implementing policy with regard to the Freedom of Information Act (''FOIA''), including publishing guidance and other material related to FOIA matters;

(c) Providing legal assistance and advice to government agencies and organizational components of the Department on questions regarding the interpretation and application of the FOIA;

(d) Undertaking, arranging, or supporting training and informational programs concerning the FOIA for government agencies and the Department;

(e) Responding to initial requests made under the FOIA and the Privacy Act for the Office of Information Policy, as well as for the following Leadership Offices:

(i) Office of the Attorney General;

(ii) Office of the Deputy Attorney General;

(iii) Office of the Associate Attorney General;

(iv) Office of Legal Policy;

(v) Office of Legislative Affairs;

(vi) Office of Public Affairs;

(vii) Office of Intergovernmental and Public Liaison; and

(viii) Any other Department component that the Attorney General assigns to the Office of Information Policy for responding to requests made to such component under the FOIA and the Privacy Act.

(f) Acting on behalf of the Attorney General on FOIA and Privacy Act access administrative appeals for all components of the Department, except that a denial of a request by the Attorney General is the final action of the Department on that request;

(g) Representing government agencies in civil litigation claims arising under the FOIA through and under the direction of the United States Attorney's Office for the District of Columbia and any such other districts as may be designated;

(h) Providing staff support to the Department Review Committee, established by § 17.14 of this chapter; and

(i) Encouraging all Federal agencies that intend to deny FOIA requests raising novel issues to consult with the Office of Information Policy to the extent practicable.

Dated: June 12, 2009.

Eric H. Holder, Jr.,

Attorney General.

[FR Doc. E9–14413 Filed 6–18–09; 8:45 am]

BILLING CODE 4410–BE–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0110]

RIN 1625–AA00

Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing of a safety zone for a powerboat race in the Captain of the Port Buffalo zone. This rule is intended to restrict vessels from areas of water during events that pose a hazard to public safety. The safety zone established by this rule is necessary to protect spectators, participants, and vessels from the hazards associated with a powerboat race.

DATES: This rule is effective from 11 a.m. August 29, 2009 to 6 p.m. August 30, 2009.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–2009–0110 and are available online at *http://www.regulations.gov,* selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0110 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. This material is also available for inspection or copying at two locations: The Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays and the Coast Guard Sector Buffalo, 1 Fuhrmann Blvd, Buffalo, NY 14203 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call Lieutenant Brian Sadler, Prevention Department, U.S. Coast Guard Sector Buffalo, at (716) 843–9385. If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On April 30, 2009, we published a notice of proposed rulemaking (NPRM) entitled Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY in the **Federal Register** (74 FR 82). We received no comments on the proposed rule. No public meeting was requested, and none was held.

Background and Purpose

Temporary safety zones are necessary to ensure the safety of vessels and spectators from the hazards associated with powerboat races. Based on recent accidents that have occurred in other Captain of the Port zones, the Captain of

the Port Buffalo, has determined powerboat races pose significant risks to public safety and property. The likely combination of large numbers of recreational vessels, congested waterways, and alcohol use, could easily result in serious injuries or fatalities.

Discussion of Comments and Changes

There were no comments made to the proposed rule. Therefore, the temporary final rule is the same as the proposed rule.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary.

The Coast Guard's use of this safety zone will be periodic in nature, of short duration, and designed to minimize the impact on navigable waters. This safety zone will only be enforced immediately before and during the time the event occurs. Furthermore, this safety zone has been designed to allow vessels to transit unrestricted to portions of the waterway not affected by the safety zone. The Coast Guard expects insignificant adverse impact to mariners from the activation of this safety zone.

Small Entities

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

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

This temporary final rule may affect the following entities, some of which might be small entities: The owners of operators of vessels intending to transit or anchor in the area designated as the safety zone by this rule. This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. The safety zone in this temporary final rule would be in effect for short periods of time and only once per year. The safety zone has been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zone with the permission of the Captain of the Port.

Assistance for Small Entities

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

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–0110 to read as follows:

§ 165.T09–0110 Safety Zone; Thunder on Niagara, Niagara River, North Tonawanda, NY.

(a) *Location*. The following area is a temporary safety zone: all waters of the Upper Niagara River, North Tonawanda, NY within two miles of the Grand Island Bridge located at 42°03′36″ N, 078°54′45″ W to 43°03′09″ N, 078°55′21″ W to 43°03′00″ N, 078°53′42″ W to 43°02′42″ N, 078°54′09″ W. All Geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective Period*. This regulation is effective from 11 a.m. August 29, 2009 to 6 p.m. August 30, 2009. This zone will be enforced from 11 a.m. to 6 p.m. on August 29, 2009 and August 30, 2009.

(c) *Regulations*. The general regulations contained in 33 CFR 165.23 apply.

(1) All persons and vessels must comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(2) Commercial vessels may request permission from the Captain of the Port Buffalo to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Sector Buffalo on Channel 16, VHF–FM.

Dated: May 29, 2009.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E9–14382 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0472]

Safety Zones: Annual Events Requiring Safety Zones in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zones for annual fireworks displays in the Captain of the Port Buffalo Zone during June 1, 2009 through June 30, 2009. This action is necessary for the safety of life and property on navigable waters during these events. During the enforcement period, no person or vessel may enter the safety zones without the permission of the Captain of the Port Buffalo.

DATES: The regulations in 33 CFR 165.939(a)(10) and (a)(12) will be enforced on June 26, 2009 at 9:30 p.m. to 10:30 p.m. and June 27, 2009 at 8 p.m. to 10 p.m. respectively.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or e-mail LT Brian Sadler, Waterways Management Division Chief, Coast Guard Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203; telephone 716–843–9573, e-mail *Brian.L.Sadler@USCG.MIL*.

SUPPLEMENTARY INFORMATION:

The Coast Guard will enforce the safety zone for the City of Syracuse Fireworks Celebration on Onondaga Lake Inner Harbor, Syracuse, NY in 33 CFR 165.939(a)(10) on June 26, 2009 from 9:30 p.m. to 10:30 p.m. and the safety zone for Rochester Harbor and Carousel Festival Fireworks on the Genesee River at Lake Ontario, Rochester, NY in 33 CFR 165.939(a)(12) on June 27, 2009 from 8 p.m. to 10 p.m. These regulations can be found in the May 19, 2008 issue of the **Federal Register** (73 FR 28704).

Under the provisions of 33 CFR 165.20, entry into, transiting, or anchoring within these safety zones is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Vessels that wish to transit through the safety zones may request permission from the Captain of the Port Buffalo. Requests must be made in advance and approved by the Captain of Port before transits will be authorized. Approvals will be granted on a case by case basis. The Captain of the Port may be contacted via U.S. Coast Guard Sector Buffalo on channel 16, VHF–FM. The Coast Guard will give notice to the public via a Broadcast to Mariners that the regulation is in effect.

This notice is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). If the District Commander, Captain of the Port, or other official authorized to do so, determines that the regulated area need not be enforced for the full duration stated in this notice, he or she may use a Broadcast Notice to Mariners to grant general permission to enter the safety zone.

Dated: June 4, 2009.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E9–14384 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0478]

RIN 1625–AA00

Safety Zone; Southside Summer Fireworks, St. Clair River, Port Huron, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port Detroit Zone on the St. Clair River, Port Huron, Michigan. This Zone is intended to restrict vessels from portions of the St. Clair River during the Southside Summer Fireworks. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 10 p.m. on June 27, 2009 until 11 p.m. on June 28, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0478 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0478 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the following location: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, e-mail *Joseph.H.Snowden@uscg.mil.* If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish an NPRM followed by a final rule before the effective date and immediate action is necessary to prevent possible loss of life and property that is potentially associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event, and immediate action is necessary to prevent possible loss of life and property. The Coast Guard has not received any complaints or negative comments previously with regard to events of this type and duration.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Southside Summer Fireworks Display. The fireworks display will occur between 10 p.m. and 11 p.m., June 27, 2009. If the event is delayed by inclement weather, the fireworks display will occur between 10 p.m. and 11 p.m. on June 28, 2009.

The safety zone will encompass all waters of St. Clair River within a 300 yard radius of position 42°57′55″ N, 082°25′20″ W. This position is located on the shore of the St. Clair River in the vicinity of Oak and 3rd Street, Port Huron, MI. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: The owners and operators of vessels intending to transit or anchor in a portion of the St. Clair River near Port Huron, MI between 10 p.m. on June 27, 2009 and 11 p.m. on June 28, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect for one hour. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via

a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–0478 as follows:

§ 165.T09–0478 Safety Zone; Southside Summer Fireworks; St. Clair River; Port Huron, MI.

(a) *Location.* The following area is a temporary safety zone: all waters of St. Clair River within a 300 yard radius of position 42°57′55″ N, 082°25′20″ W. This position is located on the shore of the St. Clair River in the vicinity of Oak and 3rd Street, Port Huron, MI. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective Period.* This regulation is effective from 10 p.m. on June 27, 2009, to 11 p.m. on June 28, 2009. This regulation will be enforced from 10 p.m. until 11 p.m. on June 27, 2009. If the event is delayed by inclement weather,

this regulation will be enforced from 10 p.m. to 11 p.m. on June 28, 2009.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: June 3, 2009.

F.M. Midgette,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E9–14388 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0477]

RIN 1625–AA00

Safety Zone; Sigma Gamma Fireworks, Lake St. Clair, Grosse Pointe Farms, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone in the Captain of the Port Detroit Zone on Lake St. Clair, Grosse Pointe Farms, Michigan. This Zone is intended to restrict vessels from portions of Lake St. Clair during the Sigma Gamma Fireworks. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 9 p.m. until 10 p.m. on June 22, 2009.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket USCG–2009–0477 and are available online by going to *http://www.regulations.gov*, selecting the Advanced Docket Search option on the right side of the screen, inserting USCG–2009–0477 in the Docket ID box, pressing Enter, and then clicking on the item in the Docket ID column. They are also available for inspection or copying at the following location: the Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary rule, call or e-mail CDR Joseph Snowden, Prevention Department, Sector Detroit, Coast Guard; telephone (313) 568–9508, e-mail *Joseph.H.Snowden@uscg.mil*. If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Regulatory Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because the permit application was not received in time to publish an NPRM followed by a final rule before the effective date and immediate action is necessary to prevent possible loss of life and property that is potentially associated with this fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying this rule would be contrary to the public interest of ensuring the safety of spectators and vessels during this event, and immediate action is necessary to prevent possible loss of life and property. The Coast Guard has not received any complaints or negative comments previously with regard to events of this type and duration.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of vessels and spectators from hazards associated with a fireworks display. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm. Establishing a safety zone to control vessel movement around the location of the launch platform will help ensure the safety of persons and property at these events and help minimize the associated risks.

Discussion of Rule

A temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading, and launching of the Sigma Gamma Fireworks Display. The fireworks display will occur between 9 p.m. and 10 p.m., June 22, 2009.

The safety zone will encompass all U.S. waters of Lake St. Clair, off Ford's Cove, within a 300-yard radius of the fireworks launch site located at position 42°27′ N, 082°52′ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Detroit or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

Order. It is not ''significant'' under the regulatory policies and procedures of the Department of Homeland Security (DHS).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under the regulatory policies and procedures of DHS is unnecessary.

This determination is based on the minimal time that vessels will be restricted from the zone and the zone is an area where the Coast Guard expects insignificant adverse impact to mariners from the zone's activation.

Small Entities

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

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

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of Lake St. Clair near Grosse Pointe Farms, MI between 9 p.m. and 10 p.m. on June 22, 2009.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This rule will only be in effect for one hour. In the event that this temporary safety zone affects shipping, commercial vessels may request permission from the Captain of the Port Detroit to transit through the safety zone. The Coast Guard will give notice to the public via a Broadcast Notice to Mariners that the regulation is in effect.

Assistance for Small Entities

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

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

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

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

Energy Effects

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

Technical Standards

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

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

Environment

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

excluded, under figure 2–1, paragraph (34)(g) of the Instruction because it involves the establishment of a temporary safety zone. An environmental analysis checklist and a categorical exclusion determination are available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add new temporary § 165.T09–0477 as follows:

§ 165.T09–0477 Safety Zone; Sigma Gamma Fireworks; Lake St. Clair; Grosse Pointe Farms, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. waters of Lake St. Clair, off Ford's Cove, within a 300-yard radius of the fireworks launch site located at position 42°27′ N, 082°52′ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Effective Period.* This regulation is effective and will be enforced from 9 p.m. until 10 p.m. on June 22, 2009.

(c) *Regulations.* (1) In accordance with the general regulations in section 165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Detroit, or his designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Detroit or his designated on-scene representative.

(3) The ''on-scene representative'' of the Captain of the Port is any Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port to act on his behalf. The on-scene representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Detroit or his on-scene representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port or his on-scene representative.

Dated: June 3, 2009.

F.M. Midgette,

Captain, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. E9–14389 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 112

[EPA–HQ–OPA–2008–0546; FRL–8919–9]

RIN 2050–AG49

Oil Pollution Prevention; Non-Transportation Related Onshore and Offshore Facilities

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is amending the dates by which facilities must prepare or amend their Spill Prevention, Control, and Countermeasure (SPCC) Plans, and implement those Plans to November 10, 2010. The Agency is also establishing November 10, 2010 as the date for farms to prepare or amend their Spill Prevention, Control, and Countermeasure Plans (SPCC Plans), and implement those Plans.

DATES: This final rule is effective June 19, 2009.

ADDRESSES: The public docket for this rulemaking, Docket ID No. EPA–HQ–OPA–2008–0546, contains the information related to this rulemaking, including the response to comment document. All documents in the docket are listed in index at the *http://www.regulations.gov.* Although listed in the index, some information may not be publicly available, such as Confidential Business Information (CBI) or other information the disclosure of which is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at *http://www.regulations.gov* or in hard copy at the EPA Docket, 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 of the Public Reading Room is 202–566–1744, and the telephone number to make an appointment to view the docket is 202–566–0276.

FOR FURTHER INFORMATION CONTACT: For general information, contact the Superfund, TRI, EPCRA, RMP and Oil Information Center at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For more detailed information on specific aspects of this final rule, contact either Vanessa Principe at (202) 564–7913 (*principe.vanessa@epa.gov*) or Mark W. Howard at (202) 564–1964 (*howard.markw@epa.gov*), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460–0002, Mail Code 5104A.

SUPPLEMENTARY INFORMATION:

I. General Information

Does This Action Apply to Me?

Industry sector	NAICS code
Oil Production	211111
Farms	111, 112
Electric Utility Plants	2211
Petroleum Refining and Related Industries	324
Chemical Manufacturing	325
Food Manufacturing	311, 312
Manufacturing Facilities Using and Storing Animal Fats and Vegetable Oils	311, 325
Metal Manufacturing	331, 332
Other Manufacturing	31–33
Real Estate Rental and Leasing	531–533

Industry sector	NAICS code
Retail Trade	441–446, 448, 451–454
Contract Construction	23
Wholesale Trade	42
Other Commercial	492, 541, 551, 561–562
Transportation	481–488
Arts Entertainment & Recreation	711–713
Other Services (Except Public Administration)	811–813
Petroleum Bulk Stations and Terminals	4247
Education	61
Hospitals & Other Health Care	621, 622
Accommodation and Food Services	721, 722
Fuel Oil Dealers	45431
Gasoline stations	4471
Information Finance and Insurance	51, 52
Mining	212
Warehousing and Storage	493
Religious Organizations	813110
Military Installations	928110
Pipelines	4861, 48691
Government	92

The list of potentially affected entities in the above table may not be exhaustive. The Agency's goal is to provide a guide for readers to consider regarding entities that potentially could be affected by this action. However, this final rule may affect other entities not listed in this table. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section titled **FOR FURTHER INFORMATION CONTACT**.

II. Authority

33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O.12777 (October 18, 1991), 3 CFR, 1991 Comp., p.351.

III. Background

On July 17, 2002, the Agency published a final rule that amended the Spill Prevention, Control, and Countermeasure (SPCC) regulations (67 FR 47042). The rule became effective on August 16, 2002. The final rule included compliance dates in § 112.3 for preparing, amending, and implementing SPCC Plans. Since that time, the compliance dates were amended on January 9, 2003 (68 FR 1348), on April 17, 2003 (68 FR 18890), on August 11, 2004 (69 FR 48794), on February 17, 2006 (71 FR 8462), and on May 16, 2007 (72 FR 27444).

On December 26, 2006, EPA finalized a set of SPCC amendments that address certain targeted areas of the SPCC requirements, based on issues and concerns raised by the regulated community (71 FR 77266). In addition, while EPA worked to determine if the agriculture sector warranted specific consideration under the SPCC rule, it extended the compliance dates for preparing, or amending and implementing SPCC Plans for farms subject to SPCC (71 FR 77266, December 26, 2006). Under the provisions in § 112.3(a) and (b), the compliance dates for farms were extended until the effective date of a rule that establishes the SPCC requirements specifically for this sector or that otherwise establishes dates by which farms must comply with the provisions of this part. This final rule establishes such dates.

On December 5, 2008 (73 FR 74236), EPA amended the SPCC rule to provide increased clarity, tailor requirements to particular industry sectors (including farms), and streamline certain requirements for a facility owner or operator subject to the rule. The effective date of the December 2008 rulemaking was delayed until April 4, 2009, in accordance with the January 20, 2009 White House memorandum entitled, ''Regulatory Review,'' and the memorandum from the Office of Management and Budget entitled, ''Implementation of Memorandum Concerning Regulatory Review'' (M–09–08, January 21, 2009) (OMB memorandum) (74 FR 5900, February 3, 2009). The Agency took this action to ensure that the rule properly reflects consideration of all relevant facts. EPA requested public comment on the delay of the effective date and its duration, and on the regulatory amendments contained in the final rule. EPA received numerous comments on these regulatory amendments. Many comments offered recommendations related to specific amendments, such as the optional approaches for produced water containers and the criteria for qualified oil production facilities. Many other amendments received no comment or received support and ultimately may not change. Consistent with the January 21, 2009 OMB memorandum ''Implementation of Memorandum Concerning Regulatory Review,'' the EPA Administrator has chosen the December 2008 rule for additional assessment; therefore, EPA must carefully consider the issues raised in these comments. Because EPA could not adequately address the comments before the April 4, 2009 effective date, it has again delayed the effective date of the final rule to allow sufficient time to review and address these comments. The December 2008 SPCC amendments will become effective on January 14, 2010 (74 FR 14736, April 1, 2009).

On November 26, 2008 (73 FR 72016), EPA proposed to amend the dates by which facilities must prepare or amend their SPCC Plans, and implement those Plans, and proposed to establish dates for farms to prepare or amend their SPCC Plans, and implement those Plans. Different dates were proposed for farms and oil production facilities that meet the qualified facilities criteria in § 112.3(g). Although the Agency finalized a compliance date extension in January 2009, that action was never published in the **Federal Register**. This notice finalizes the November 2008 proposal to extend the compliance dates in § 112.3. This compliance date extension was intended to provide the owner or operator of a facility the opportunity to fully understand the regulatory amendments offered by all of the amendments to the SPCC rule since July 2002.

IV. Summary of This Final Rule

This final rule amends the dates in § 112.3(a), (b) and (c) by which facilities, including farms, must prepare or amend their SPCC Plans, and implement those Plans. The revision also includes a technical correction in § 112.3(a)(1) to

address a misspelling of the word ''must.'' Under the amended § 112.3(a), the owner or operator of a facility that was in operation on or before August 16, 2002, must maintain his SPCC Plan, make any necessary amendments to the Plan and fully implement it by November 10, 2010, while the owner or operator of a facility that came into operation after August 16, 2002, but before November 10, 2010, is required to prepare and implement an SPCC Plan on or before November 10, 2010.

Under the amended § 112.3(b)(1), the owner or operator of an onshore or offshore facility that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), must prepare and implement a Plan before beginning operations. The Agency is establishing the same compliance dates for farms as for all other facilities and thus, this rule amends the paragraphs in § 112.3 specific to farms (§ 112.3(a)(2) and (b)(2)) to include the November 10, 2010 compliance date. Additionally, the rule text in § 112.3(a)(2) and (b)(2) is revised to remove reference to ''onshore facility'' because this text is unnecessary. For simplicity, the rule text now references ''a farm as defined in § 112.2.''

Under amended § 112.3(c), an owner or operator of a mobile facility is required to maintain his SPCC Plan, but must make any necessary amendments and implement it on or before November 10, 2010. The owner or operator of an onshore or offshore mobile facility that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), must prepare and implement an SPCC Plan before beginning operations.

The Agency believes that an extension of the compliance date is appropriate because it provides the owner or operator of a facility the opportunity to fully understand all of the regulatory amendments offered by revisions to the SPCC rule promulgated since July 2002.[1] This extension will allow the regulated community approximately 16 months beyond the previous compliance date of July 1, 2009 to make changes to their facilities and to their SPCC Plans necessary to comply with the revised SPCC requirements. Furthermore, because EPA has not yet decided how to proceed on the December 2008 rule amendments, the Agency believes that this compliance date extension provides sufficient time for the Agency to review those comments and to promulgate any additional revisions that result from this review. The Agency expects to promulgate final revisions to the December 5, 2008 amendments, if any, in November of 2009 and is therefore choosing a compliance date that is approximately one year from the expected publication date of those revisions.

The Agency also believes the compliance date for farms established in this notice is warranted for several reasons. The original compliance date extension for farms (71 FR 77266, December 26, 2006) allowed the Agency to conduct additional information collection and analyses to determine if differentiated SPCC requirements may be appropriate for farms. The Agency worked with the U.S. Department of Agriculture (USDA) to collect data to more accurately characterize oil handling at these facilities, thus allowing the Agency to better tailor and streamline the SPCC requirements to address the concerns of the farming sector; on December 5, 2008 (73 FR 74236), EPA promulgated a final set of SPCC amendments that targeted certain SPCC requirements particularly relevant to farms. Given the delay in the effective date for the December 2008 amendments, the compliance date amendment provides facilities the necessary time to fully understand the regulatory amendments, including the July 2002 and December 2006 SPCC amendments, in addition to those finalized on December 5, 2008. The final compliance date allows this sector sufficient time to make changes to their facilities and to their SPCC Plans necessary to comply with the revised requirements.

The Agency believes that a single compliance date for all regulated facilities avoids potential confusion by an owner or operator when determining the date for compliance at his facility. In providing a single compliance date applicable to all sectors, EPA believes that facility owners and operators will have additional clarity which will result in increased compliance with the SPCC rule. However, if an owner or operator of an SPCC-regulated facility requires additional time to comply with the SPCC rule, he may submit a written request to the Regional Administrator in accordance with § 112.3(f). Such requests will be granted if the Regional Administrator finds that the owner or operator cannot comply with all SPCC requirements by the compliance date as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond his control.

It should be noted that these compliance date amendments affect only requirements of the July 2002 and December 2006 SPCC rule amendments (July 17, 2002, 67 FR 47042; and December 26, 2006, 71 FR 77266) that impose new or more stringent compliance obligations than did the 1973 SPCC rule. Provisions in these amendments that provide regulatory relief are not affected by these compliance date amendments because they would not require amendments to existing Plans ''to ensure compliance'' (*see* § 112.3). Provisions in these amendments that provide regulatory relief to facilities are applicable as of the effective date of the amendment. Once the December 2008 rule (December 5, 2008, 73 FR 74236) becomes effective, the regulatory relief applies immediately but the facility owner or operator must amend the SPCC Plan to include more stringent provisions by the compliance date. This issue was discussed by the Agency in two previous extension notices on April 17, 2003 (68 FR 18890, at 18892–18893), and on August 11, 2004 (69 FR 48794, at 48796).

This rule is effective immediately. Section 553(d) of the Administrative Procedures Act requires 30 days notice before the effective date of a final rule. However, section 553(d)(1) allows an exception to the 30-day notice where a rule relieves a restriction. Because this final rule relieves a restriction, the Agency invokes section 553(d)(1) to allow an immediate effective date.

V. Response to Comment

The Agency received approximately 25 comments on the proposed rule. The discussion below summarizes and responds to the major comments received. A more complete response to comments can be found in the docket for this rulemaking, EPA–HQ–OPA–2008–0546.

Comments. The majority of comments supported the Agency's proposal to extend the compliance dates in § 112.3. They agreed with the Agency that the extension was necessary to allow owners and operators sufficient time to amend and implement their SPCC Plans. Of those that supported an extension of the compliance dates, some comments agreed with extending the compliance dates as proposed. Other comments supported an extension, but did not agree with the length of the extension proposed by the Agency. These requests cited the extent of

[1] As stated in the rule, a facility owner or operator must maintain its existing SPCC Plan. A facility owner or operator who wants to take advantage of the July 2002 and December 2006 regulatory changes may do so, but will need to modify the existing SPCC Plan accordingly.

modifications necessary at facilities, the need to obtain the services of Professional Engineers (PE), and the need for EPA to revise the *SPCC Guidance for Regional Inspectors* to help stakeholders better understand the regulations and the December 2006 and December 2008 regulatory amendments.

Specifically, a number of comments requested that the Agency extend the compliance date to December 5, 2009. These comments argued that, because the official promulgation of the rule occurred with its publication in the **Federal Register** on December 5, 2008, the one-year compliance period should be calculated from that date.

A subset of comments also requested that the Agency reinstate a six-month interim period between the compliance dates for Plan amendment and implementation. Those comments requested that the date for implementing amended SPCC Plans be revised to include a six-month period after the date for Plan amendment. Thus, if the Agency extended the compliance date for one year for Plan amendment, comments suggested that the Agency provide an additional 6 months to actually implement the Plan, for a total of 18 months.

Some comments requested that the compliance date for oil production facilities that do not meet the qualified facilities criteria in § 112.3(g) be extended to December 5, 2010, to allow an additional year for two full years from publication of the final rule amendments in the **Federal Register**. These comments indicated that the November 20, 2009 date provides insufficient time to comply with the rule.

Other comments objected to the Agency's proposal of different compliance dates for qualified farms and qualified oil production facilities. Comments requested that the compliance dates for all farms and oil production facilities, whether they meet the qualified facilities criteria in § 112.3(g) or not, be extended to November 20, 2013. Those comments stated that assigning differentiated compliance dates to different industries was unnecessary and that additional time was necessary to conduct outreach and compliance assistance to the regulated community. Some comments also stated that assigning differentiated compliance dates to qualified facilities and all other facilities within one industry caused confusion over the applicability of the rule.

Response to comment. EPA agrees with comments that an extension of the compliance dates is necessary because it provides the owner or operator of a facility the opportunity to fully understand the regulatory amendments offered by revisions to the SPCC rule promulgated on December 5, 2008 (73 FR 74236). The Agency expects to promulgate final revisions to the December 5, 2008 amendments, if any, in November of 2009 and is therefore choosing a compliance date that is approximately one year from the expected publication date of those revisions. This will allow the regulated community time to fully understand all of the regulatory amendments offered by revisions to the SPCC rule promulgated since July 2002.

The Agency proposed a two-year and a five-year extension of the compliance dates for farms and oil production facilities, respectively, that meet the qualified facilities criteria in § 112.3(g). This was intended to allow additional time for EPA to partner with Federal and state agencies and industry stakeholders to conduct outreach and compliance assistance to these facilities. However, after reviewing comments and further considering the amendments that were recently promulgated in December 2008, EPA believes that an extension of the compliance dates to November 10, 2010 is appropriate for all facilities for a number of reasons.

The SPCC compliance dates have been delayed since the promulgation of amendments in July 2002; during this time, new facilities (those that have become operational after the effective date of the July 2002 amendments) have not yet been required to prepare and implement an SPCC Plan. Therefore, EPA believes that any compliance date beyond the extension finalized in this action would be inappropriate and not environmentally protective.

Facilities in operation prior to the effective date of the July 2002 amendments are required to maintain their SPCC Plans and have had ample time to schedule and conduct facility modifications (as necessary) to comply with these amendments. Additionally, because the SPCC amendments published in December 2006 and December 2008 were intended to streamline rule requirements, facilities should not require extensive modifications in order to comply with these regulatory amendments.

Since promulgating the 2002 amendments to the SPCC rule, the Agency has and will continue to provide outreach and compliance assistance to SPCC regulated facilities so that a compliance extension to November 10, 2010 should be sufficient. The Agency does not believe that ongoing outreach activities or updates to guidance are a basis for further extending the compliance date.

Finally, EPA provided an option to allow owners and operators of eligible facilities to self-certify their SPCC Plans in December 2006, thereby minimizing reliance on PEs to certify SPCC Plans. This should greatly reduce the scheduling problems associated with obtaining a PE to certify a facility's SPCC Plan amendments.

It should also be noted that if an owner or operator of an SPCC-regulated facility requires additional time to comply with the SPCC rule, he may submit a written request to the Regional Administrator in accordance with § 112.3(f). The Regional Administrator may authorize an extension of time for the owner or operator to prepare or amend and implement an SPCC Plan for the facility, when he finds that the owner or operator cannot comply with all SPCC requirements by the compliance date as a result of either non-availability of qualified personnel, or delays in construction or equipment delivery beyond his control.

The Agency disagrees with those comments that suggest the compliance dates be amended to exactly correspond with the publication date of the final rule amendments in the **Federal Register** on December 5, 2008. Because EPA has delayed the effective date of the December 2008 rule amendments until January 14, 2010, the Agency believes that it will cause less confusion among the regulated community to extend the compliance date by one year beyond the approximate date when revisions, if any, to the December 2008 amendments are promulgated.[2]

The Agency also disagrees with comments that requested that EPA incorporate a six-month period between the SPCC Plan preparation/amendment date and the SPCC Plan implementation date. In February 2006, the Agency eliminated the gap between SPCC Plan preparation/amendment and implementation to allow the owner or operator of a facility additional time to prepare or amend the SPCC Plan (71 FR 8462, February 17, 2006). The Agency still believes that this approach provides added flexibility, given that owners and operators of regulated-facilities are not required to submit their SPCC Plans to the Agency at the time of Plan preparation or amendment.

The Agency agrees, however, with comments that argued that the

[2] Based on the Congressional Review Act which requires that the Agency allow 60 days after promulgation of a major rule before it goes into effect, the Agency will need to promulgate any amendments to the December 2008 rule by November 2009.

compliance dates should be extended beyond the proposed November 20, 2009 date. The Agency recognizes that the owner or operator of a regulated facility needs adequate time to comply with the SPCC rule following amendments to the regulation. Therefore, the Agency has extended the compliance date to allow facilities time to prepare, amend, and implement an SPCC Plan following final Agency action on the SPCC rule. The Agency is working to promulgate any amendments to the December 2008 rule by November 2009.

The Agency also believes that this action is appropriate because it will provide the owner or operator of all facilities the opportunity to fully understand the regulatory amendments offered by revisions to the SPCC rule promulgated on December 5, 2008 (73 FR 74236). EPA has not yet decided what changes, if any, to make to the December 2008 amendments. However, the Agency believes that a full year from the approximate date of promulgation of any revisions to the December 2008 amendments provides sufficient time to review comments received on the 2008 amendments and to promulgate any additional revisions that result from this review and still provide those potentially affected facilities ample time to come into compliance.

EPA intends to issue revisions to the *SPCC Guidance for Regional Inspectors* that address changes made to the SPCC rule, consistent with the December 2006 and December 2008 regulatory amendments (71 FR 77266, December 26, 2006; 73 FR 74236, December 5, 2008). The guidance document is designed to provide more detail about the rule's applicability, to clarify the role of the inspector in the review and evaluation of a facility owner or operator's compliance with the performance-based SPCC requirements, and to provide a consistent national policy on several SPCC-related issues. EPA welcomes comments from the regulated community and the public on the guidance document at any time. Instructions for submitting comments are provided on the EPA Office of Emergency Management Web site at *http://www.epa.gov/emergencies.*

Finally, EPA agrees with those comments that objected to different compliance dates for certain sectors. The Agency agrees that providing one compliance date for all regulated facilities simplifies compliance outreach activities and avoids confusion for the regulated community.

VI. Statutory and Executive Order Reviews

A. Executive Order 12866—Regulatory Planning and Review

Under the terms of Executive Order 12866 (58 FR 51735, October 4, 1993), this action has been determined to be a ''significant regulatory action.'' This rule was submitted to the Office of Management and Budget (OMB) for review. Any changes made in response to OMB's recommendations have been documented in the docket for this action.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. This final rule merely extends the compliance dates for facilities subject to the rule. However, the Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations (40 CFR part 112) under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2050–0021. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act 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.

Small entity is defined as: (1) A small business as defined in the Small Business Administration's (SBA) regulations at 13 CFR 121.201—the SBA defines small businesses by category of business using North American Industry Classification System (NAICS) codes, and in the case of farms and oil production facilities, which constitute a large percentage of the facilities affected by this rule, generally defines small businesses as having less than $500,000 in revenues or 500 employees, respectively; (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 that is independently owned and operated and is not dominant in its field.

In determining whether a rule has a significant economic impact on a substantial number of small entities, the impact of concern is any significant adverse economic impact on small entities, since the primary purpose of the regulatory flexibility analyses is to identify and address regulatory alternatives ''which minimize any significant economic impact of the rule on small entities.'' 5 U.S.C. 603 and 604. Thus, an agency head may certify that a rule will not have a significant economic impact on a substantial number of small entities if the rule relieves regulatory burden, or otherwise has a positive economic effect on all of the small entities subject to the rule. This rule will defer the regulatory burden for small entities by extending the compliance dates in § 112.3. After considering the economic impacts of this rule on small entities, I certify that this rule will not have a significant economic impact on a substantial number of 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. The action imposes no enforceable duty on any State, local or tribal governments or the private sector. Therefore, this action is not subject to the requirements of sections 202 or 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 merely extends the compliance dates for facilities subject to the rule.

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. Under CWA section 311(o), States may impose additional requirements, including more stringent requirements, relating to the prevention of oil discharges to navigable waters. EPA encourages States to supplement the Federal SPCC regulation and recognizes that some States have more stringent requirements (56 FR 54612, October 22, 1991). This rule will not preempt State law or regulations. 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 does not significantly or uniquely affect communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045—Protection of Children From Environmental Health and Safety Risk

This action is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

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

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Further, we have concluded that this rule is not likely to have any adverse energy effects because this action is limited to an extension of the compliance date for the preparation of SPCC Plans and does not impact energy supply, distribution, or use.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. 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, February 16, 1994) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States.

EPA has determined that this final rule will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because it does not affect the level of protection provided to human health or the environment.

K. Congressional Review Act

The Congressional Review Act (CRA), 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. Prior to publication of the final rule in the **Federal Register**, we will submit all necessary information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States. Under the CRA, 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 19, 2009.

List of Subjects in 40 CFR Part 112

Environmental protection, Oil pollution, Penalties, Reporting and recordkeeping requirements.

Dated: June 11, 2009.

Lisa P. Jackson,

Administrator.

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

PART 112—OIL POLLUTION PREVENTION

■ 1. The authority citation for part 112 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*; 33 U.S.C. 2720; E.O. 12777 (October 18, 1991), 3 CFR, 1991 Comp., p. 351.

Subpart A—[Amended]

■ 2. Section 112.3 is amended by revising paragraphs (a)(1), (a)(2), (b)(1), (b)(2) and (c) to read as follows:

§ 112.3 Requirement to prepare and implement a Spill Prevention, Control, and Countermeasure Plan.

* * * * *

(a)(1) If your onshore or offshore facility was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the Plan no later than November 10, 2010. If your onshore or offshore facility becomes operational after August 16, 2002, through November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before November 10, 2010.

(2) If your farm as defined in § 112.2 was in operation on or before August 16, 2002, you must maintain your Plan, but must amend it, if necessary to ensure compliance with this part, and implement the Plan no later than November 10, 2010. If your farm becomes operational after August 16, 2002, through November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan on or before November 10, 2010.

(b)(1) If you are the owner or operator of an onshore or offshore facility that becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(2) If you are the owner or operator of a farm as defined in § 112.2 that becomes operational after November 10,

2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations.

(c) If you are the owner or operator of an onshore or offshore mobile facility, such as an onshore drilling or workover rig, barge mounted offshore drilling or workover rig, or portable fueling facility, you must prepare, implement, and maintain a facility Plan as required by this section. You must maintain your Plan, but must amend and implement it, if necessary to ensure compliance with this part, on or before November 10, 2010. If your onshore or offshore mobile facility becomes operational after November 10, 2010, and could reasonably be expected to have a discharge as described in § 112.1(b), you must prepare and implement a Plan before you begin operations. This provision does not require that you prepare a new Plan each time you move the facility to a new site. The Plan may be a general Plan. When you move the mobile or portable facility, you must locate and install it using the discharge prevention practices outlined in the Plan for the facility. The Plan is applicable only while the facility is in a fixed (non-transportation) operating mode.

* * * * *

[FR Doc. E9–14247 Filed 6–18–09; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 74, No. 117
Friday, June 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.

FARM CREDIT ADMINISTRATION

12 CFR Part 617

RIN 3052–AC45

Borrower Rights; Effective Interest Rates

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA) proposes to amend two sections of its borrower rights regulations governing what initial and subsequent disclosures a qualified lender must make to a borrower when the borrower's interest rate is directly tied to a widely publicized external index. The proposed revisions would require qualified lenders to provide additional disclosure to borrowers at loan closing on how and where to track the external index, and allow qualified lenders, who are required to provide the additional disclosure, to send written notices of subsequent rate changes to borrowers no later than the borrower's first regularly scheduled billing statement after the effective date of the change.

DATES: You may send comments on or before August 18, 2009.

ADDRESSES: We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's Web site. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- *E-mail:* Send us an e-mail at *reg-comm@fca.gov.*
- *FCA Web site: http://www.fca.gov.* Select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Submitting a Comment.''
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102–5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at *http://www.fca.gov.* Once you are in the Web site, select ''Public Commenters,'' then ''Public Comments,'' and follow the directions for ''Reading Submitted Public Comments.'' We will show your comments as submitted but, for technical reasons, we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

FOR FURTHER INFORMATION CONTACT:

Jacqueline R. Melvin, Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA, (703) 883–4414, TTY (703) 883–4434; or

Robert Taylor, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–4020.

SUPPLEMENTARY INFORMATION:

I. Objective

The objective of this proposed rule is to ensure that borrowers with loans directly tied to a widely publicized external index receive appropriate disclosure of interest rate changes in accordance with statutory requirements while minimizing regulatory burden on Farm Credit System (FCS or System) institutions.

II. What Does the Statute Require?

Section 4.13(a)(4) of the Farm Credit Act of 1971, as amended (Act), requires qualified lenders to provide borrowers, for all loans not subject to the Truth in Lending Act (15 U.S.C. 1601 *et seq.*), ''meaningful and timely disclosure'' of any change in the interest rate applicable to the borrower's loan within a ''reasonable time after the effective date'' of a change.[1]

III. Why did Congress Establish this Requirement?

At the time of the 1985 adoption of the interest rate notice requirements, almost all FCS loans were administered[2] rate loans and there were few, if any, FCS loans directly tied to an external index.[3] Administered rates require definitive action at the discretion of the lending bank or association to change the interest rate charged. Administered rates are usually based on an institution's internal index or other standard and take into account the lending institution's costs. Administered rates may also reflect management's assessments of whether rate changes are warranted or feasible in view of competitive market conditions; therefore, the actual interest rates charged on administered rate loans may not mirror the movement of market interest rates.[4]

Prior to adopting the interest rate notice requirements (during the farm crisis of the 1980s), Congress and FCA received a number of complaints and inquiries from borrowers about interest rate changes made on administered rate loans without adequate explanation to borrowers. Therefore, it appears that the new notice provisions were necessary to protect borrower rights because of the lack of transparency associated with the System's administered rate loans. While Congress may not have anticipated that the interest rate notice provisions cover widely publicized external index loans, these loans are not excluded from the reach of the Act.

IV. Section-by-Section Analysis

What initial disclosures must a qualified lender make to a borrower? [§ 617.7130]

The proposed revision to § 617.7130(b) would add a paragraph

[1] 12 U.S.C. 2199(a)(4). ''Qualified lenders'' include Farm Credit System lenders (except for a bank for cooperatives), and non-System lenders (other financing institutions (OFIs)) for loans that OFIs make with funding from a Farm Credit bank. *See* 12 U.S.C. 2202a(a)(6).

[2] ''Administered'' and ''adjustable'' rates are synonymous terms that describe the types of variable rates offered by System institutions.

[3] FCA considers the nationally published commercial bank Prime Rate and the London Interbank Offered Rate (LIBOR) to be the primary examples of widely publicized external indexes. Other rates may also meet the criteria, but the qualified lender must ensure that the rate is published in a source readily available to its borrowers. *See* 68 FR 5587 (Feb. 4, 2003).

[4] *See* the Federal Farm Credit Bank Funding Corporation's annual report to investors at *http://www.farmcredit-ffcb.com.*

(6), requiring, when the borrower's interest rate is directly tied to a widely publicized external index, that a qualified lender must provide information on how and where the borrower may track changes to the index and when the borrower will receive written notice of changes to the borrower's interest rate.

This additional information would be included in the initial disclosure to ensure that borrowers have adequate knowledge, at loan closing, of how and where they may access information to monitor changes in the interest rate. Further, the borrower would be fully informed as to how billing or other statements would reflect changes in the loan's interest rate.

What subsequent disclosures must a qualified lender make to a borrower? [§ 617.7135]

Section 4.13(a)(4) of the Act requires qualified lenders to provide, no later than loan closing, notice to borrowers that change in the interest rate applicable to the borrower's loan may be made within a reasonable time after the effective date of increase or decrease. Current § 617.7135(a)(2) requires that the qualified lender provide the borrower whose loan is directly tied to a widely publicized external index a notice within 45 days after the effective date of the rate change.

We propose amending the regulation to require the qualified lender to provide written notice to the borrower of a rate change applicable to the borrower's loan no later than the borrower's first regularly scheduled billing statement after the effective date of the change, so long as the qualified lender provided the disclosures required by proposed § 617.7130(b)(6) no later than the time of loan closing.

There have been several trends in the use of external indexes and enhanced information availability that have caused us to now believe that the billing statement option is reasonable and justifiable. For example, between 1999 and 2008, the volume of administered rate loans has declined by 16 percent as more borrowers opt to use their knowledge and understanding of index loans to meet their operating needs.[5] Further, advances in technology, such as broad band Internet access in rural communities, increased usage of mobile phones and personal computers for accessing the Internet and receiving information via e-mails and text messages, provide borrowers instantaneous information regarding any changes in external index rates. Moreover, most System associations now offer borrowers online access to their loan balances, rate changes, and other information. Therefore, when a qualified lender provides the initial disclosure proposed for § 617.7130(b), we believe that written notice of subsequent rate changes to the borrower, no later than the first regularly scheduled billing statement after the effective date of the change, protects borrower rights in accordance with the statute regarding ''meaningful and timely disclosure.'' Also, institutions do not incur the burden of additional mailing costs, which may be passed on to their borrowers.

The new notice requirements would not apply to rate changes applicable to a borrower's loan closed prior to the effective date of the final rule (the borrowers would not have received the enhanced initial disclosures). Therefore, the current 45-day notice requirement would still apply to interest rate changes on those loans.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the FCA hereby certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Each of the banks in the System, considered together with its affiliated associations, has assets and annual income in excess of the amounts that would qualify them as small entities. Therefore, System institutions are not ''small entities'' as defined in the Regulatory Flexibility Act.

List of Subjects in 12 CFR Part 617

Agriculture, Banks, banking, Rural areas.

For the reasons stated in the preamble, part 617 of chapter VI, title 12 of the Code of Federal Regulations is proposed to be amended as follows:

PART 617—BORROWER RIGHTS

1. The authority citation for part 617 continues to read as follows:

Authority: Secs. 4.13, 4.13A, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.36, 5.9, 5.17 of the Farm Credit Act (12 U.S.C. 2199, 2200, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2219a, 2243, 2252).

Subpart B—Disclosure of Effective Interest Rates

2. Amend § 617.7130 by revising introductory text of paragraph (b) and adding a new paragraph (b)(6) to read as follows:

§ 617.7130 What initial disclosures must a qualified lender make to a borrower?

* * * * *

(b) *Adjustable rate loans.* A qualified lender must provide the following information for adjustable rate loans in addition to the requirements of paragraph (a) of this section:

* * * * *

(6) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide:

(i) How and where the borrower may track changes to the index; and

(ii) When the borrower will receive written notice of changes to the borrower's interest rate.

3. Amend § 617.7135 by revising paragraph (a)(2) to read as follows:

§ 617.7135 What subsequent disclosures must a qualified lender make to a borrower?

* * * * *

(a) * * *

(2) If the borrower's interest rate is directly tied to a widely publicized external index, a qualified lender must provide written notice to the borrower of the rate change no later than the borrower's first regularly scheduled billing statement after the effective date of the change, except that a qualified lender must provide written notice to the borrower of the rate change within 45 days after the effective date of the change if the loan closed before the disclosures required under § 617.7130(b)(6).

* * * * *

Dated: June 16, 2009.

Roland E. Smith,

Secretary, Farm Credit Administration Board.

[FR Doc. E9–14484 Filed 6–18–09; 8:45 am]

BILLING CODE 6705–01–P

[5] Historical data compiled from 1999 to 2008 in the Federal Farm Credit Banks Funding Corporation annual report to investors available at *http://www.farmcredit-ffcb.com.*

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0563; Directorate Identifier 2008–NM–180–AD]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F28 Mark 0070 and 0100 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above that would supersede an existing AD. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A recent design review has been carried out on the F28 Mark 0070/0100 fuel system in accordance with the guidelines related to FAA SFAR 88 [Special Federal Aviation Regulation No. 88] (Fuel Tank Safety Program) and JAA [Joint Aviation Authorities] INT/POL/25/12. The review revealed that under certain failure conditions, prolonged dry running of the fuel transfer pumps may result in an ignition source in the centre wing fuel tank. This condition, if not corrected, could lead to ignition of flammable fuel vapors, resulting in fuel tank explosion and consequent loss of the airplane.

* * * * *

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

DATES: We must receive comments on this proposed AD by July 20, 2009.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For Fokker service information identified in this proposed AD, contact Fokker Services B.V., Technical Services Dept., P.O. Box 231, 2150 AE Nieuw-Vennep, the Netherlands; telephone +31 (0)252–627–350; fax +31 (0)252–627–211; e-mail *technicalservices.fokkerservices @stork.com;* Internet *http://www.myfokkerfleet.com.*

For AlliedSignal Grimes Aerospace and Honeywell service information identified in this proposed AD, contact Honeywell Aerospace, Technical Publications and Distribution, M/S 2101–201, P.O. Box 52170, Phoenix, Arizona 85072–2170; telephone 602–365–5535; fax 602–365–5577; Internet *http://www.honeywell.com.*

You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

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

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

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2009–0563; Directorate Identifier 2008–NM–180–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

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

Discussion

The FAA has examined the underlying safety issues involved in fuel tank explosions on several large transport airplanes, including the adequacy of existing regulations, the service history of airplanes subject to those regulations, and existing maintenance practices for fuel tank systems. As a result of those findings, we issued a regulation titled ''Transport Airplane Fuel Tank System Design Review, Flammability Reduction and Maintenance and Inspection Requirements'' (66 FR 23086, May 7, 2001). In addition to new airworthiness standards for transport airplanes and new maintenance requirements, this rule included Special Federal Aviation Regulation No. 88 (''SFAR 88,'' Amendment 21–78, and subsequent Amendments 21–82 and 21–83).

Among other actions, SFAR 88 requires certain type design (i.e., type certificate (TC) and supplemental type certificate (STC)) holders to substantiate that their fuel tank systems can prevent ignition sources in the fuel tanks. This requirement applies to type design holders for large turbine-powered transport airplanes and for subsequent modifications to those airplanes. It requires them to perform design reviews and to develop design changes and maintenance procedures if their designs do not meet the new fuel tank safety standards. As explained in the preamble to the rule, we intended to adopt airworthiness directives to mandate any changes found necessary to address unsafe conditions identified as a result of these reviews.

In evaluating these design reviews, we have established four criteria intended to define the unsafe conditions associated with fuel tank systems that require corrective actions. The percentage of operating time during which fuel tanks are exposed to flammable conditions is one of these criteria. The other three criteria address the failure types under evaluation: single failures, single failures in combination with a latent condition(s), and in-service failure experience. For all four criteria, the evaluations included consideration of previous actions taken that may mitigate the need for further action.

The Joint Aviation Authorities (JAA) has issued a regulation that is similar to SFAR 88. (The JAA is an associated body of the European Civil Aviation Conference (ECAC) representing the civil aviation regulatory authorities of a number of European States who have agreed to co-operate in developing and implementing common safety regulatory standards and procedures.) Under this regulation, the JAA stated that all members of the ECAC that hold type certificates for transport category airplanes are required to conduct a design review against explosion risks.

We have determined that the actions identified in this proposed AD are necessary to reduce the potential of ignition sources inside fuel tanks, which, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane.

On September 13, 1999, we issued AD 99–20–01, Amendment 39–11329 (64 FR 51202, September 22, 1999). That AD requires actions intended to address an unsafe condition on the products listed above.

Since we issued AD 99–20–01, Fokker has released a new version of the flight warning computer (FWC) software. (AD 99–20–01 requires installation of an earlier version of the FWC software.) In addition, Fokker also released a new version of the software for the multifunction display unit (MFDU), which is necessary to install before the installation of the new version of the FWC software. The installation of the MFDU software depends on prior installation of a resistor in the thrust reverser indication and control system or installation of an improved thrust reverser unlock indication relay.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA Airworthiness Directive 2008–0090, dated May 13, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> A recent design review has been carried out on the F28 Mark 0070/0100 fuel system in accordance with the guidelines related to FAA SFAR 88 [Special Federal Aviation Regulation No. 88] (Fuel Tank Safety Program) and JAA [Joint Aviation Authorities] INT/POL/25/12. The review revealed that under certain failure conditions, prolonged dry running of the fuel transfer pumps may result in an ignition source in the centre wing fuel tank. This condition, if not corrected, could lead to ignition of flammable fuel vapors, resulting in fuel tank explosion and consequent loss of the airplane.
>
> To address and correct this unsafe condition, new software (version V13.55) has been developed for the Flight Warning Computer (FWC). This software update introduces a decreased time delay of the centre wing fuel tank low pressure alert from 15 minutes to 60 seconds, to stop prolonged dry running of the fuel transfer pumps.
>
> For the reasons described above, this EASA Airworthiness Directive (AD) requires the replacement of the FWC with a modified unit, incorporating software version V13.55.

The corrective actions also include revising the airplane flight manual (AFM) to change certain indications and warnings; installing new software for the MFDU; and installing a new resistor in the thrust reverser indicator and control system, or an improved thrust reverser unlock indication relay. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Fokker Services B.V. has issued Service Bulletins SBF100–31–067, Revision 1, dated April 24, 2008; SBF100–31–060, dated June 1, 2002; SBF100–78–016, dated October 1, 1999; SBF100–78–017, dated December 1, 1999; and Manual Change Notification—Operational Documentation (MCNO) F100–050, dated January 31, 2008. Honeywell has issued Service Bulletin 80–0610–31–0003, dated February 13, 2008. The actions described in the service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

Differences Between This AD and the MCAI or Service Information

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

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

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 4 products of U.S. registry.

The actions that are required by AD 99–20–01 and retained in this proposed AD take about 7 work-hours per product, at an average labor rate of $80 per work hour. Required parts cost about $1,593 per product. Based on these figures, the estimated cost of the currently required actions is $2,153 per product.

We estimate that it would take about 7 work-hours per product to comply with the new basic requirements of this proposed AD. The average labor rate is $80 per work-hour. Required parts would cost about $5,350 per product. Where the service information lists required parts costs that are covered under warranty, we have assumed that there will be no charge for these costs. As we do not control warranty coverage for affected parties, some parties may incur costs higher than estimated here. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $23,640, or $5,910 per product.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with

this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

2. The FAA amends § 39.13 by removing Amendment 39–11329 (64 FR 51202, September 22, 1999) and adding the following new AD:

Fokker Services B.V.: Docket No. FAA–2009–0563; Directorate Identifier 2008–NM–180–AD.

Comments Due Date

(a) We must receive comments by July 20, 2009.

Affected ADs

(b) The proposed AD supersedes AD 99–20–01, Amendment 39–11329.

Applicability

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

(1) Fokker Model F.28 Mark 0100 airplanes, all serial numbers.

(2) Fokker Model F.28 Mark 0070 airplanes, serial numbers 11521, 11528 through 11537 inclusive, 11545, 11547, 11553, 11557, 11561, 11562, 11566, 11567, 11571, 11572, 11576 through 11579 inclusive, and 11581 through 11583 inclusive. All airplanes with these serial numbers are fitted with center wing fuel tanks.

Subject

(d) Air Transport Association (ATA) of America Codes 31 and 78: Instruments and Engine Exhaust, respectively.

Reason

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

A recent design review has been carried out on the F28 Mark 0070/0100 fuel system in accordance with the guidelines related to FAA SFAR 88 [Special Federal Aviation Regulation No. 88] (Fuel Tank Safety Program) and JAA [Joint Aviation Authorities] INT/POL/25/12. The review revealed that under certain failure conditions, prolonged dry running of the fuel transfer pumps may result in an ignition source in the centre wing fuel tank. This condition, if not corrected, could lead to ignition of flammable fuel vapors, resulting in fuel tank explosion and consequent loss of the airplane.

To address and correct this unsafe condition, new software (version V13.55) has been developed for the Flight Warning Computer (FWC). This software update introduces a decreased time delay of the centre wing fuel tank low pressure alert from 15 minutes to 60 seconds, to stop prolonged dry running of the fuel transfer pumps.

For the reasons described above, this EASA Airworthiness Directive (AD) requires the replacement of the FWC with a modified unit, incorporating software version V13.55.

The corrective actions also include revising the airplane flight manual (AFM) to change certain indications and warnings; installing new software for the multifunction display unit (MFDU); and installing a new resistor in the thrust reverser indicator and control system, or an improved thrust reverser unlock indication relay.

Restatement of Requirements of AD 99–20–01 With No Changes to the Modifications

Modifications

(f) Unless already done, within 18 months after October 27, 1999 (the effective date of AD 99–20–01), modify the electrical wiring of the FWC in accordance with Part 1 or 2, as applicable, of the Accomplishment Instructions of Fokker Service Bulletin SBF100–31–047, Revision 1, dated March 21, 1997.

Note 1: It is not necessary to install computer software version V10.40 into the FWC, since a later version is available and is required to be installed by AD 99–20–01.

(g) Unless already done, concurrently with the accomplishment of the requirements of paragraph (f) of this AD, install upgraded computer software version V11.45 into the FWC in accordance with Fokker Service Bulletin SBF100–31–051, dated August 15, 1998.

Note 2: AlliedSignal Grimes Aerospace has issued Service Bulletin 80–0610–31–0031, dated May 14, 1998, as an additional source of service information for installation of the upgraded computer software version into the FWC.

Note 3: Operators should note that Fokker Service Bulletin SBF100–31–051, dated August 15, 1998, specifies prior or concurrent accomplishment of Fokker Service Bulletin SBF100–78–014 [which specifies concurrent accomplishment of Fokker Component Service Bulletin (CSB) P41440–78–04, and prior or concurrent accomplishment of Fokker Service Bulletin SBF100–78–012 and CSB P41440–78–05]. Related FAA AD 99–20–02, amendment 39–11330, requires accomplishment of these four other service bulletins.

New Requirements of This AD: Actions and Compliance

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

(1) Within 36 months after the effective date of this AD, replace FWC units having part number (P/N) 80–0610–3–45 and P/N 80–0610–3–50 with modified units having P/N 80–0610–3–55, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–31–067, Revision 1, dated April 24, 2008.

(2) Within 36 months after the effective date of this AD and concurrently with the accomplishment of paragraph (h)(1) of this AD, revise the Emergency and Abnormal Procedures sections of the airplane flight manual (AFM), as specified in Fokker Manual Change Notification-Operational Documentation (MCNO) F100–050, dated January 31, 2008. These sections provide alterations, which are introduced by Fokker Service Bulletin SBF100–31–067, Revision 1, dated April 24, 2008.

Note 4: Revisions to the Emergency Procedures and Abnormal Procedures sections of the AFM, as specified in Fokker MCNO F100–050, dated January 31, 2008, may be done by inserting copies of Fokker MCNO F100–050, dated January 31, 2008, into the AFM. When the information in Fokker MCNO F100–050, dated January 31, 2008, has been included in general revisions of the AFM, the general revisions may be inserted in the AFM, provided the relevant information in the general revision is identical to that in Fokker MCNO F100–050, dated January 31, 2008.

(3) After accomplishing paragraph (h)(1) of this AD, no person may install an FWC having P/N 80–0610–3–45 or P/N 80–0610–3–50, unless it has been modified to P/N 80–0610–3–55 standard in accordance with Honeywell Service Bulletin 80–0610–31–0003, dated February 13, 2008.

(4) Within 36 months after the effective date of this AD, install software version V12 for the MFDU in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–31–060, dated June 1, 2002.

(5) Within 36 months after the effective date of this AD, modify the thrust reverser indication and control system in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–78–016, dated October 1, 1999; or modify the thrust reverser unlock indication relay in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–78–017, dated December 1, 1999.

FAA AD Differences

Note 5: This AD differs from the MCAI and/or service information as follows:

Item 1. Replacing the MFDU in accordance with Fokker Service Bulletin SBF100–31–060, dated June 1, 2002, is not included in the MCAI; however, this AD includes that action. It is necessary to install a new version of the MFDU software before installing the new version of the FWC software.

Item 2. Modifying the thrust reverser indication and control system in accordance with Fokker Service Bulletin SBF100–78–016, dated October 1, 1999; or modifying the thrust reverser unlock indication relay in accordance with Fokker Service Bulletin SBF100–78–017, dated December 1, 1999, is not included in the MCAI; however, this AD includes those actions. It is necessary to do one of those actions before installing the MFDU software.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Tom Rodriguez, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1137; fax (425) 227–1149. Before using any approved AMOC on any airplane to which the AMOC applies, notify your principal maintenance inspector (PMI) or principal avionics inspector (PAI), as appropriate, or lacking a principal inspector, your local Flight Standards District Office.

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

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

Related Information

(j) Refer to MCAI European Aviation Safety Agency Airworthiness Directive 2008–0090, dated May 13, 2008, and the service information in Table 1 of this AD, for related information.

TABLE 1—RELATED INFORMATION

Service information—	Revision level—	Dated—
Fokker MCNO F100–50	Original	January 31, 2008.
Fokker Service Bulletin SBF100–31–060	Original	June 1, 2002.
Fokker Service Bulletin SBF100–31–067	Revision 1	April 24, 2008.
Fokker Service Bulletin SBF100–78–016	Original	October 1, 1999.
Fokker Service Bulletin SBF100–78–017	Original	December 1, 1999.
Honeywell Service Bulletin 80–0610–31–0003	Original	February 13, 2008.

Issued in Renton, Washington, on June 11, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–14410 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2009–0559; Directorate Identifier 2008–SW–66–AD]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–92A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) for Sikorsky Model S–92A helicopters. The AD would require revising the Limitations section of the Rotorcraft Flight Manual (RFM) by clarifying that the Model S–92A helicopter was certificated as a transport category rotorcraft in both Categories A and B with different operating limitations for each category and must be operated accordingly. We have received reports that some operators are inappropriately operating Model S–92A helicopters using Category B limitations when the helicopter is configured with 10 or more passenger seats. Operating this helicopter when configured with 10 or more passenger seats and adhering to the less stringent limitations for the Category B configuration approved for a 9 or less passenger seat configuration does not maintain the FAA required minimum level of safety. This condition if not corrected, could result in operating under less stringent requirements.

DATES: Comments must be received on or before August 18, 2009.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD:

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

FOR FURTHER INFORMATION CONTACT: John Coffey, Flight Test Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7161, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any written data, views, or arguments regarding this proposed AD. Send your comments to the address listed under the caption **ADDRESSES**. Include the docket number ''FAA–2009–0559, Directorate Identifier 2008–SW–66–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed rulemaking. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent or signed the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000.

Examining the Docket

You may examine the docket that contains the proposed AD, any comments, and other information in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room

W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

Discussion

This document proposes adopting a new AD for Sikorsky Model S–92A helicopters. The AD would require revising the Limitations section of the RFM by clarifying that the Model S–92A helicopter was certificated as a transport category rotorcraft in both Categories A and B with different operating limitations for each category and must be operated accordingly. The Model S–92A helicopter was certificated to Category A requirements on December 17, 2002, and certificated to Category B requirements on May 7, 2004. When the Model S–92A is configured with 10 or more passenger seats, it is a Category A rotorcraft, and operators must follow the limitations for Category A. When it is configured with 9 or less passenger seats, it may be considered a Category B rotorcraft, and operators may follow the less stringent Category B limitations. The current limitation language in the RFM does not make a clear distinction between Categories A and B based on the seating configuration. We have received reports that some operators are inappropriately operating Model S–92A helicopters using Category B limitations when the helicopter is configured with 10 or more passenger seats. Operating this helicopter when configured with 10 or more passenger seats and adhering to the less stringent limitations for the Category B configuration approved for a 9 or less passenger seat configuration does not maintain the FAA required minimum level of safety. Therefore, we are proposing to change the Limitations section of the RFM to make it clear that this model helicopter is a Category A helicopter when configured with 10 or more passenger seats.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the proposed AD would require revising the Limitations section of the RFM by replacing the wording in Part 1, Section 1, of the Operating Limitations under Types of Operation. Replace this wording: ''Category 'A' and 'B', Day, Night, VFR and IFR, transport, with maximum seating for 19 passengers'' with this wording: ''Category 'A' with a maximum of 19 passenger seats or Category 'B' with 9 or less passenger seats; day, night, VFR and IFR.''

We estimate this proposed AD would affect about 65 helicopters of U.S. registry. Revising the RFM would result in minimal costs.

Regulatory Findings

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

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

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

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

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

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.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (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. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation: Docket No. FAA–2009–0559; Directorate Identifier 2008–SW–66–AD.

Applicability

Model S–92A helicopters, certificated in any category.

Compliance

Within the next 10 days, unless accomplished previously.

To prevent operating under less stringent requirements, do the following:

(a) Make the following pen and ink changes or insert a copy of this AD into the Limitations section of the Rotorcraft Flight Manual (RFM), Part 1, Section 1, of the Operating Limitations under Types of Operation:

Replace this wording:

''Category 'A' and 'B', Day, Night, VFR and IFR, transport, with maximum seating for 19 passengers''

With this wording:

''Category 'A' with a maximum of 19 passenger seats or Category 'B' with 9 or less passenger seats; Day, Night, VFR and IFR.''

(b) Making the change required by paragraph (a) of this AD is terminating action for the requirements of this AD.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Boston Aircraft Certification Office, FAA, ATTN: John Coffey, Flight Test Engineer, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7161, fax (781) 238–7170, for information about previously approved alternative methods of compliance.

Issued in Fort Worth, Texas, on June 15, 2009.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E9–14356 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL TRADE COMMISSION

16 CFR Part 437

Business Opportunity Rule

AGENCY: Federal Trade Commission

ACTION: Extension of period to submit workshop comments.

SUMMARY: In a **Federal Register** notice published on April 24, 2009, 74 FR 18712, the FTC announced a workshop, to be held June 1, 2009, in the rulemaking proceeding to amend the Rule on Disclosure Requirements and Prohibitions Concerning Business Opportunities, 16 CFR Part 437 (''The Business Opportunity Rule''). Among other things, the Notice stated that

workshop comments would be accepted until June 15, 2009. In response to a request received on June 11, 2009, for an extension of the comment period, the Commission has extended the workshop comment period until June 29, 2009.

DATES: Workshop comments in the Business Opportunity Rule amendment proceeding must be received on or before June 29, 2009.

ADDRESSES: Comments should respectively refer to ''Business Opportunity Rule Workshop—Comment, Project No. P084405. ''A comment may be filed electronically or in paper form. Please note that your comment— including your name and your state— will be placed on the public record of this proceeding, including on the publicly accessible FTC Website, at (*http://www.ftc.gov/os/publiccomments.shtm*).

Because comments will be made public, they should not include any sensitive personal information, such as an individual's Social Security Number; date of birth; driver's license number or other state identification number, or foreign country equivalent; passport number; financial account number; or credit or debit card number. Comments also should not include any sensitive health information, such as medical records or other individually identifiable health information. In addition, comments should not include any ''[t]rade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential. . . .,'' as provided in Section 6(f) of the Federal Trade Commission Act (''FTC Act''), 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). Comments containing material for which confidential treatment is requested must be filed in paper form, must be clearly labeled ''Confidential,'' and must comply with FTC Rule 4.9(c), 16 CFR 4.9(c).[1]

Because paper mail addressed to the FTC is subject to delay due to heightened security screening, please consider submitting your comments and requests to participate in electronic form. Comments filed in electronic form should be submitted by using the following weblink: (*https://secure.commentworks.com/ftc-businessopportunityworkshop*) (and following the instructions on the web-based form). To ensure that the Commission considers an electronic comment, you must file it on the web-based form at the weblink (*https://secure.commentworks.com/ftc-businessopportunityworkshop*). If this Notice appears at (*http://www.regulations.gov/search/index.jsp*), you may also file an electronic comment through that website. The Commission will consider all comments that regulations.gov forwards to it. You may also visit the FTC Website at *http://www.ftc.gov/* to read the Notice and the news release describing it.

A comment filed in paper form should include the ''Business Opportunity Rule Workshop—Comment, Project No. P084405'' reference both in the text and on the envelope, and should be mailed or delivered, with two complete copies, to the following address: Federal Trade Commission, Office of the Secretary, Room H–135 (Annex S), 600 Pennsylvania Avenue, NW, Washington, DC 20580. The FTC is requesting that any comment filed in paper form be sent by courier or overnight service, if possible, because U.S. postal mail in the Washington area and at the Commission is subject to delay due to heightened security precautions.

The FTC Act and other laws the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives, whether filed in paper or electronic form. Comments received will be available to the public on the FTC Website, to the extent practicable, at (*http://www.ftc.gov/os/publiccomments.shtm*). As a matter of discretion, the Commission makes every effort to remove home contact information for individuals from the public comments it receives before placing those comments on the FTC Website. More information, including routine uses permitted by the Privacy Act, may be found in the FTC's privacy policy, at (*http://www.ftc.gov/ftc/privacy.shtm*).

Comments on any proposed filing, recordkeeping, or disclosure requirements that are subject to paperwork burden review under the Paperwork Reduction Act should additionally be submitted to: Office of Information and Regulatory Affairs, Office of Management and Budget (''OMB''), Attention: Desk Officer for Federal Trade Commission. Comments should be submitted via facsimile to (202) 395–5167 because U.S. postal mail at the OMB is subject to delays due to heightened security precautions.

FOR FURTHER INFORMATION CONTACT: Kathleen Benway (202) 326–2024, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Room H–286, Washington, DC 20580.

SUPPLEMENTARY INFORMATION On April 24, 2009, the Commission announced in the **Federal Register** a workshop, to be held June 1, 2009, in the rulemaking proceeding to amend the Rule on Disclosure Requirements and Prohibitions Concerning Business Opportunities, 16 CFR Part 437 (''The Business Opportunity Rule'').[2] The announcement indicated that the workshop would focus on ''issues relating to the effectiveness of the proposed revised Business Opportunities Disclosure Form attached to this Notice as a means of conveying material information to prospective purchasers of business opportunities.''[3] The announcement further explained that, based on a consultant's copy testing of an earlier version of the proposed a one-page pre-sale disclosure document, a revised version of the disclosure document, with improved clarity, readability, and understandability, was being proposed. The announcement stated that written comments would be accepted until June 15, 2009.

As indicated in the announcement, the workshop was conducted on June 1, 2009. On June 11, 2009, one of the panelists who had participated at the workshop requested a ten-day extension of the comment period.

The Commission believes that a brief extension of the comment period will not materially delay the completion of this rule amendment proceeding. Accordingly, the Commission has determined to extend the workshop comment period until June 29, 2009.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. E9–14449 Filed 6–18–09: 8:45 am]

BILLING CODE 6750–01–S

[1] The comment must be accompanied by an explicit request for confidential treatment, including the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. The request will be granted or denied by the Commission's General Counsel, consistent with applicable law and the public interest. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

[2] 74 Fed. Reg. 18712 (Apr. 24, 2009).

[3] *Id.* at 18713.

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2009–0461]

RIN 1625–AA00

Safety Zones; Annual Events Requiring Safety Zones in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes establishment of safety zones for annual events in the Captain of the Port Buffalo Zone. This proposed rule adds events not previously published in Coast Guard regulations. These safety zones are necessary to protect spectators, participants, and vessels from the hazards associated with fireworks displays or other events.

DATES: Comments and related materials must reach the Coast Guard on or before July 20, 2009.

ADDRESSES: You may submit comments identified by Coast Guard docket number USCG–2009–0461 to the Docket Management Facility at the U.S. Department of Transportation. To avoid duplication, please use only one of the following methods:

(1) *Federal eRulemaking Port: http://www.regulations.gov.*

(2) *Fax:* 202–493–2251

(3) *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590–0001.

(4) *Hand delivery:* Room W12–140 on the Ground Floor of the West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: LT Brian Sadler, Waterways Management Division Chief, Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203; telephone 716–843–9573, e-mail *Brian.L.Sadler@USCG.MIL.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Public Participation and Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related materials. All comments received will be posted, without change, to *http://www.regulations.gov* and will include any personal information you have provided.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (USCG–2009–0461), indicate the specific section of this document to which each comment applies, and give the reason for each suggestion or recommendation. You may submit your comments and material online (via *http://www.regulations.gov*) or by fax, mail, or hand delivery, but please use only one of these means. If you submit a comment online via *http://www.regulations.gov,* it will be considered received by the Coast Guard when you successfully transmit the comment. If you fax, hand deliver, or mail your comment, it will be considered as having been received by the Coast Guard when it is received at the Docket Management Facility. We recommend that you include your name and a mailing address, an e-mail address, or a telephone number in the body of your document so that we can contact you if we have questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert ''USCG–2009–0461'' in the Docket ID box, press Enter, and then click on the balloon shape in the Actions column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period and may change the rule based on your comments.

Viewing Comments and Documents

To view comments, as well as documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* select the Advanced Docket Search option on the right side of the screen, insert USCG–2009–0461 in the Docket ID box, press Enter, and then click on the item in the Docket ID column. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. We have an agreement with the Department of Transportation to use the Docket Management Facility.

Privacy Act

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

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for one using one of the four methods specified under **ADDRESSES**. Please explain why you believe a public meeting would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

We propose these safety zones to control vessel traffic within the immediate location of the fireworks launching area during annual fireworks displays.

The Coast Guard is now proposing to add 6 permanent safety zones in 33 CFR 165.939. Establishing permanent safety zones provides better notice than promulgating temporary rules annually, and decreases the amount of paperwork required for these events. The Coast Guard has not previously received notice of any impact caused by safety zones created for these events.

These safety zones are necessary to protect vessels and people from the hazards associated with fireworks displays or other events. Such hazards include obstructions to the waterway that may cause marine casualties and the explosive danger of fireworks and debris falling into the water that may cause death or serious bodily harm.

Discussion of Proposed Rule

The proposed rule and associated safety zones are necessary to ensure the safety of vessels and people during

annual firework events in the Captain of the Port Buffalo area of responsibility that may pose a hazard to the public.

The proposed safety zones will be enforced only immediately before, during, and after events that pose hazard to the public, and only upon notice by the Captain of the Port.

The Captain of the Port Buffalo will notify the public that the zones in this proposal are or will be enforced by all appropriate means to the affected segments of the public including publication in the **Federal Register** as practicable, in accordance with 33 CFR 165.7(a). Such means of notification may also include, but are not limited to Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port will issue a Broadcast Notice to Mariners notifying the public when enforcement of the safety zone established by this section is cancelled.

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port Buffalo or the designated representative. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Buffalo Zone, or his designated representative. The Captain of the Port Buffalo Zone or his designated representative may be contacted via VHF Channel 16.

Regulatory Analyses

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

Regulatory Planning and Review

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

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation is unnecessary. The Coast Guard's use of these safety zones will be periodic, of short duration, and designed to minimize the impact on navigable waters. These safety zones will only be enforced immediately before, during, and after the time the events occur. Furthermore, these safety zones have been designed to allow vessels to transit unrestricted to portions of the waterways not affected by the safety zones. The Coast Guard expects insignificant adverse impact to mariners from the activation of these safety zones.

Small Entities

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

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

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in the areas designated as safety zones during the dates and times the safety zones are being enforced.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: This proposed rule would be in effect for short periods of time, and only once per year, per zone. The safety zones have been designed to allow traffic to pass safely around the zone whenever possible and vessels will be allowed to pass through the zones with the permission of the Captain of the Port.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CDR Joseph Boudrow, Prevention Dept. Chief, Sector Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203; telephone 716–843–9572, e-mail *Joseph.A.Boudrow@uscg.mil.* The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

Collection of Information

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

Federalism

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

Unfunded Mandates Reform Act

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

Taking of Private Property

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

Civil Justice Reform

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

Protection of Children

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

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive

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

Energy Effects

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

Technical Standards

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

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

Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have made a preliminary determination that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. A preliminary environmental analysis checklist supporting this determination is available in the docket where indicated under **ADDRESSES**. This proposed rule involves the establishment of safety zones and as such should be categorically excluded, under figure 2–1, paragraph 34(g) of the Instruction from further environmental documentation.

We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

2. In § 165.939 revise paragraph (a) introductory text and add paragraphs (a)(27) through (32) to read as follows:

§ 165.939 Safety Zones; Annual Fireworks Events in the Captain of the Port Buffalo Zone.

(a) *Safety Zones:*

* * * * *

(27) *Independence Celebration Fireworks, Lake Ontario, Oswego Harbor, Oswego, NY*—(i) *Location.* All waters of Lake Ontario at within an 800-foot radius of position 43°28′05″ N, 076°31′01″ W; in Oswego Harbor, Oswego, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* One day in the first week of July.

(28) *Rochester Harborfest, Lake Ontario at the Genesee River, Rochester, NY*—(i) *Location.* All waters of Lake Ontario at Genesee River, within a 500-foot radius of position 43°15′21″ N, 077°36′19″ W; in Rochester, NY. [DATUM: NAD 83]. Located on the Ontario Beach West pier.

(ii) *Enforcement date.* One weekend after Fathers Day weekend in June.

(29) *A Salute to Our Hero's, Lake Ontario, Hamlin, NY*—(i) *Location.* All waters of Lake Ontario within a 300-foot radius of position 43°16′27″ N, 076°58′27″ W; off Hamlin Beach State Park Area 1. (DATUM: NAD 83).

(ii) *Enforcement date.* One day in the first week of July.

(30) *Olcott NY Fireworks, Lake Ontario, Olcott, NY*—(i) *Location.* All waters of Lake Ontario within a 600-foot radius of position 43°20′24″ N, 078°43′09″ W; located on the West Federal Pier in Olcott, NY. (DATUM: NAD 83).

(ii) *Enforcement date.* One day in the first week of July.

(31) *Erie Summer Festival of the Arts, Lake Erie, Presque Isle Bay, Erie, PA*—(i) *Location.* All waters of Lake Erie, Presque Isle Bay within a 420-foot radius of position 42°07′45″ N, 080°06′20″ W; in Erie, PA (DATUM: NAD 83).

(ii) *Enforcement date.* One day in the last week of June.

(32) *Mercyhurst College ''Old Fashion 4th of July,'' Lake Erie, Presque Isle Bay, Erie, PA*—(i) *Location.* All waters of Lake Erie, Presque Isle Bay 1,000 feet NW of the Chestnut Street Boat Launch in a 400-foot radius of position 42°08′41″ N, 080°06′40″ W; in Erie, PA. (DATUM: NAD 83).

(ii) *Enforcement date.* One day in the first week of July.

Dated: June 4, 2009.

R.S. Burchell,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. E9–14381 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 8

RIN 0930–AA14

Opioid Drugs in Maintenance and Detoxification Treatment of Opiate Addiction; Buprenorphine and Buprenorphine Combination; Approved Opioid Treatment Medications Use

AGENCY: Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule amends the Federal opioid treatment program regulations by modifying the dispensing requirements for buprenorphine and buprenorphine combination products approved by FDA for opioid dependence and used in federally certified and registered opioid treatment programs. Opioid treatment programs that use these products in the treatment of opioid dependence will adhere to all other Federal treatment standards established for methadone.

DATES: Written comments must be received by the Substance Abuse and Mental Health Services Administration (SAMHSA) on or before August 18, 2009.

ADDRESSES: To assure proper handling of comments, please reference ''Docket No. CSAT 001'' on all written and electronic correspondence. Written comments may be submitted to the Division of Pharmacologic Therapies, Center for Substance Abuse Treatment, 1 Choke Cherry Road, Room 2–1063, Rockville, MD 20857; Attention: DPT Federal Register Representative. Alternatively, comments may be submitted directly to SAMHSA by sending an electronic message to *dpt_interimrule@samhsa.hhs.gov.* Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulation.gov* Web site. Comments may also be sent electronically through *http://www.regulations.gov* using the electronic comment form provided on that site. An electronic copy of this document is also available at the *http://www.regulations.gov* Web site. SAMHSA will accept attachments to electronic comments in Microsoft Word, WordPerfect, Adobe PDF, or Excel file formats only. SAMHSA will not accept any file formats other than those specifically listed here.

Please note that SAMHSA is requesting that electronic comments be submitted before midnight Eastern time on the day the comment period closes because *http://www.regulations.gov* terminates the public's ability to submit comments at midnight Eastern time on the day the comment period closes. Commenters in time zones other than Eastern time may want to consider this so that their electronic comments are received. All comments sent via regular or express mail will be considered timely if postmarked on the day the comment period closes.

Posting of public comments: Please note that all comments received are considered part of the public record and made available for public inspection online at *http://www.regulations.gov* and in the SAMHSA's public docket. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''PERSONAL IDENTIFYING INFORMATION'' in the first paragraph of your comment. You must also place all the personal identifying information you do not want posted online or made available in the public docket in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment, but do not want it to be posted online or made available in the public docket, you must include the phrase ''CONFIDENTIAL BUSINESS INFORMATION'' in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted online or made available in the public docket.

Personal identifying information and confidential business information identified and located as set forth above will be redacted and the comment, in redacted form, will be posted online and placed in the SAMHSA's public docket file. Please note that the Freedom of Information Act applies to all comments received. If you wish to inspect the agency's public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

FOR FURTHER INFORMATION CONTACT: Nicholas Reuter, Center for Substance Abuse Treatment (CSAT), Division of Pharmacologic Therapies, SAMHSA, 1 Choke Cherry Road, Room 2–1063, Rockville, MD 20857, (240) 276–2716, e-mail: *Nicholas.Reuter@samhsa.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a document published in the **Federal Register** of January 17, 2001 (66 FR 4076, January 17, 2001), SAMHSA issued final regulations for the use of narcotic drugs in maintenance and detoxification treatment of opioid addiction. That final rule established an accreditation-based regulatory system under 42 CFR part 8 (''Certification of Opioid Treatment Programs (OTPs)''). The regulations also established (under § 8.12) the Secretary's standards for the use of opioid medications in the treatment of addiction, including standards regarding the quantities of opioid drugs which may be provided for unsupervised use. The SAMHSA regulations establish the standards for determining that practitioners (programs) are qualified for Drug Enforcement Administration (DEA) registration under 21 U.S.C. 823(g)(1).

Section 8.12(h) sets forth the standards for medication administration, dispensing and use. Under this Section, OTPs shall use only those opioid agonist treatment medications that are approved by the Food and Drug Administration (FDA) under section 505 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) for use in the treatment of opioid addiction. The regulation listed methadone and levomethadyl acetate (''ORLAAM'') as the opioid agonist treatment medications considered to be approved by the FDA for use in the treatment of opioid addiction.

A. Interim Final Rule—SAMHSA/CSAT expanded the list of approved medications for use in certified opioid treatment programs by issuing an Interim Final Rule on May 22, 2003 (68 FR 27937, May 22, 2003, ''Interim Final Rule''). This document was preceded by the Food and Drug Administration's approval of two buprenorphine products (Subutex® and Suboxone®) on October 8, 2002, and the Drug Enforcement Administration's (DEA) rescheduling of bulk buprenorphine, as well as all approved medical products containing buprenorphine from Schedule V to Schedule III (see Federal Register of October 7, 2002 (67 FR 62354)).

The May 22, 2003, Interim Final Rule added the two FDA-approved buprenorphine addiction treatment products to the previous list of approved opioid treatment medications under 42 CFR 8.12(h)(2). Effective upon publication, the Interim Final Rule allowed OTPs to use buprenorphine and buprenorphine combination for the treatment of opioid addiction. In addition, the Interim Final Rule required OTPs to apply the same treatment standards that were finalized on January 17, 2001, for methadone and ORLAAM. These requirements included the restrictions for treatment medications dispensed for unsupervised use, e.g., ''take-home'' medication. Finally, the Interim Final Rule solicited comments on the new provisions.

The ''take-home'' provisions are intended to reduce the risk of abuse and diversion of opioid treatment medications that have abuse potential. The rules tie the amount of ''take home'' medication that a program may dispense to patient characteristics, such as their stability, responsibility and time in treatment. For example, under 42 CFR 8.12(i)(3), a patient would have to be stable in treatment for 9 months to be eligible for a 6-day supply of medication

(either methadone or buprenorphine). In addition to the time in treatment eligibility, program physicians must still evaluate and document every patient's stability for take-home medication by applying the factors set forth under 42 CFR 8.12(i)(2).

B. Buprenorphine in Office-Based Opioid Treatment—The Drug Addiction Treatment Act of 2000, (Section 3502 of the Children's Health Act of 2000, Public Law 106–310, 21 U.S.C. 823(g)(2)), ''DATA 2000'') permits qualified physicians to dispense certain opioid treatment medications for the treatment of opioid dependence. Under DATA 2000, qualifying physicians are ''certified'' to obtain waivers from the requirement to obtain approval from SAMHSA as OTPs. Qualifying physicians are permitted to dispense, including prescribe, Schedule III, IV, and V narcotic controlled drugs approved by the Food and Drug Administration specifically for maintenance or detoxification treatment without being separately registered as a narcotic treatment program by DEA (21 U.S.C. 823(g)(2)(A)).

Certified physicians are subject to certain limits. For example, certified physicians are authorized to prescribe only opioid medications that are specifically approved by FDA for dependence or addiction treatment. These medications must be controlled in Schedules III through V. This excludes the Schedule II medication methadone. Physicians must be ''qualified'' by credentialing or experience. In addition, physicians are subject to limits on how many patients they can treat at any one time. Importantly, DATA 2000 did not include restrictions on the amount of an approved drug that may be prescribed to a patient at any one time.

DATA 2000 assigned new responsibilities to both the Department of Health and Human Services (HHS) and the Department of Justice (DOJ). The DEA issued regulations to carry out the DOJ responsibilities, while HHS delegated implementation responsibilities to SAMHSA. SAMHSA has implemented the Department's new responsibilities without new rules. The DEA's final regulation removed the regulatory prohibition on prescribing narcotic treatment drugs, outlined the process for the interagency review of ''notifications'' under the new law and how the ''unique identification number'' will be assigned, and established recordkeeping requirements for certified physicians. The DEA rule did not establish new requirements or limits for dispensing or prescribing buprenorphine products (70 FR 36338, June 23, 2005).

In sum, DEA, FDA and SAMHSA actions to implement DATA 2000 and SAMHSA's May 22, 2003 Interim Final Rule distinguished how the same medications (buprenorphine and buprenorphine combination products) are dispensed in different settings (OTP versus certified physician. (Ref 1)).

C. Analysis of Comments—In response to the Interim Final Rule, SAMHSA received two comments from individuals representing hundreds of OTPs providing treatment in several States. While the comments support the Secretary's immediate action to make the new treatment medication available to OTPs expeditiously, the comments questioned the rationale for applying the treatment standards in place for methadone to the new buprenorphine products. One commenter noted that buprenorphine has the same pharmacological properties whether administered by OTPs or ''waived physicians.''

The commenter did not believe that the regulations should preclude OTPs from dispensing buprenorphine in the same manner as private physicians. They stated that it was an error to impose uniquely stringent treatment standards on those clinics best placed to administer buprenorphine products to treat addiction. Because of these dispensing restrictions, the interim final rule ''in short, will significantly limit if not completely suppress the availability of buprenorphine therapy in OTPs.''

The comments also suggested that the restriction would impact patient care. Whether used in an OTP or in a private office, buprenorphine therapy should not be subject to the dispensing restrictions developed to deal with the special risks posed by Schedule II methadone. From the patient's perspective, the critical advantage of buprenorphine is the possibility of avoiding the long-term daily attendance for dosing that is required with methadone therapy. The commenters stated that ''OTPs have substantial experience in treating a particularly challenging population of patients. Requiring Schedule II type procedures for OTP-based buprenorphine treatment—and by precluding OTPs from administering buprenorphine in the same manner that the drug is available to private physicians—risks suppression of addicts entering treatment.''

The commenters requested that SAMHSA provide OTPs with the same take-home prescribing authority which is currently in force for qualified physicians under DATA 2000. In this way, there will be no artificial difference in how OTPs prescribe buprenorphine as compared to qualified physicians under DATA 2000. The comments did not suggest changing the OTP dispensing restriction for methadone.

The Secretary agrees with the comments supporting the modification of the dispensing regime for buprenorphine in OTPs. Based on the information available, the Department believes that the experience with buprenorphine use in addiction treatment over the last several years, together with the pharmacological properties of the approved buprenorphine treatment products, distinguishes Schedule III buprenorphine products from Schedule II methadone products. These distinctions strongly support the establishment of a less restrictive distribution scheme for Schedule III buprenorphine products approved to treat opioid dependence.

D. Discussion—In contrast to 2003, there is now extensive experience with buprenorphine in the treatment of opioid dependence. Since 2002, over 16,000 physicians have sought and obtained the Federal certification to prescribe buprenorphine products. Over 73 million dosage units were distributed to pharmacies in 2007, millions of prescriptions have been issued, and hundreds of thousands of patients have been treated. Almost all the buprenorphine used in addiction treatment has come from physician prescriptions. These prescriptions have been issued without the mandatory time in treatment schedule currently in place for methadone products.

The Secretary has assessed the public health implications associated with physician prescribed buprenorphine as part of a formal ''Determinations Report.'' That report indicates that the DATA 2000 physician waiver program has expanded access to treatment and produced effective treatment outcomes without producing negative public health issues (Ref. 2). According to the DEA's Automation of Reports and Consolidated Orders System (ARCOS), the amount of buprenorphine distributed each year has increased from 3 million dosage units in 2003 to over 70 million dosage units in 2007 (Ref. 3).

While buprenorphine products are abused and diverted, according to information from published literature reports and from long-standing monitoring systems maintained by FDA, SAMHSA, and DEA, the scope and nature of abuse and diversion are considerably less than that of methadone and other Schedule II opioid

drug products. FDA, SAMHSA, and DEA will continue to monitor the abuse and diversion of buprenorphine products and intervene if needed to address increases.

The FDA Adverse Drug Monitoring System—MedWatch, is in place to receive and review adverse drug events on marketed prescription drugs. Since the buprenorphine addiction treatment products were approved in late 2002, FDA has received approximately 50 buprenorphine-associated fatal adverse events. Similar numbers have been reported by the drug manufacturer.

Another monitoring system is SAMHSA's Drug Abuse Warning Network (DAWN). DAWN is a public health surveillance system that monitors drug-related visits to hospital emergency departments (EDs). Hospital emergency department (ED) visits involving the nonmedical use (or misuse/abuse) of buprenorphine are increasing with the increased availability of buprenorphine products; however, ED visits involving the nonmedical use (or misuse/abuse) of buprenorphine are relatively rare. According to the 2006 DAWN report, out of an estimated 741,425 drug-related ED visits involving the nonmedical use of pharmaceuticals in 2006, there were an estimated 4,440 (95 percent confidence interval [CI] 823 to 8,057) visits involving buprenorphine/combinations. DAWN estimates for 2004 and 2005 could not be published for buprenorphine because the estimates for buprenorphine were too imprecise for publication. The wide confidence interval for 2006 illustrates the relative imprecision of a national estimate based on few reports (Ref. 4). In contrast, the ED visits for other opioids for 2006 are as follows: Oxycodone/combinations—64,888 visits (95 percent C.I. 49,746–80,030); Hydrocodone/combinations—57,550 visits (95 percent C.I. 43,701–71,398); Fentanyl/combinations—16,012 visits (95 percent C.I. 7,441–24,582); Hydromorphone/combinations—6,780 (95 percent C.I. 3,649–9,911); and, Methadone 45,130 (95 percent C.I. 35,870–54,389).

In contrast, DAWN estimates from 2006 revealed that methadone was one of the top three opioid analgesics (along with hydrocodone/combinations and oxycodone/combinations) associated with ED visits involving the nonmedical use of pharmaceuticals. Opioid analgesics were involved in 32 percent of visits involving nonmedical use of pharmaceuticals. According to the 2006 DAWN ED publication, methadone was associated with an estimated 45,000 ED visits involving nonmedical use. The consequences of methadone abuse, misuse, and diversion can be severe. Methadone-associated deaths [between 2001 and 2003] increased in many States including Maine, Florida, and North Carolina. Methadone-detected deaths in Maine doubled between 1999 and 2000, while North Carolina noted a 5-fold increase between 1997 and 2001. Data from the National Center for Health Statistics (NCHS), National Vital Statistics System indicate that the rate at which methadone was listed on death certificates as contributing to deaths increased almost 4-fold between 1999 and 2003 (Ref. 5).

Finally, a DAWN medical examiner report from 2005 indicates that methadone contributed to deaths more frequently than other prescribed opioid medications in 5 out of 6 States (Ref 6). DAWN–Medical Examiner (DAWN–ME) collects data on all deaths where drugs played a role, either directly (such as an overdose) or indirectly (such as a fatal car crash where drugs were involved). A drug misuse death is defined as a drug-related death caused by homicide by drugs, overmedication, all other accidental causes, and where the cause could not be determined. There are limitations with the DAWN–ME system. For example, the drugs acquired through legitimate prescriptions cannot be differentiated from diverted prescription medications or illicit drugs because information on the source is not available.

It is imperative to note, however, that following an extensive national assessment, a 2003 SAMHSA Methadone-Associated Mortality report did not associate increases in methadone distribution, diversion, morbidity and mortality with methadone administered and dispensed by OTPs. Indeed, the report indicated that Federal OTP regulations reduce the risk of methadone in-treatment mortality (Ref. 7). While the Secretary has no immediate plans to revise methadone ''take-home'' regulations, it may be appropriate to revisit the methadone dispensing restrictions under 42 CFR 8.12(i) at some point in the future.

The differences between buprenorphine and methadone are also evident in their international and domestic control status. While buprenorphine is controlled under Schedule III of the Convention on Psychotropic Substances (1971), methadone is controlled in Schedule II of the Single Convention on Narcotic Drugs, the same level of control as morphine, cocaine, hydrocodone, and oxycodone. The international control status of buprenorphine was reaffirmed in September 2006 by the World Health Organization's 34th Expert Committee on Drug Control. The Committee, after reviewing evidence ''demonstrating unique pharmacological actions of buprenorphine, which distinguish it from other opioids'' such as methadone, concluded that buprenorphine's unique spectrum of pharmacological actions, did not warrant control under the Single Convention (Ref. 8).

Domestically, buprenorphine is controlled in Schedule III of the Controlled Substances Act (CSA). Methadone is controlled domestically in Schedule II, along with cocaine, morphine, oxycodone and other potent narcotic substances. Under the CSA, Schedule III substances must be found to have less abuse potential and less potential to produce dependence when compared to Schedule II substances (21 U.S.C. 812(b)(3)). Specifically, in controlling buprenorphine in Schedule III, the DEA found, based upon a recommendation from the Department of Health and Human Services, that buprenorphine has a potential for abuse less than the drugs or other substances in Schedules I and II. These important pharmacologic differences support a different regulatory distribution scheme for buprenorphine products (Ref. 9).

Based upon the discussion above, the Secretary is proposing to eliminate the take-home dispensing schedule for buprenorphine products as set forth in Section III.

II. References

1. Food and Drug Administration, approved product labeling, Suboxone and Subutex, October 2002, *http://www.fda.gov/cder/foi/label/2002/20732lbl.pdf.*

2. Substance Abuse and Mental Health Services Administration, The Determinations Report: A Report On the Physician Waiver Program Established by the Drug Addiction Treatment Act of 2000. Submitted by the Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, U.S. Department of Health and Human Services, March 30, 2006.

3. Drug Enforcement Administration Automation of Reports and Consolidated Order System, 2006, Special Report.

4. Drug Abuse Warning Network, 2006: National Estimates of Drug-Related Emergency Department Visits, U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, *http://DAWNinfo.samhsa.gov,* 2006.

5. Fingerhut, L.A., Increases in Methadone-Related Deaths: 1999–2004,

National Center for Health Statistics, Office of Analysis and Epidemiology.

6. Substance Abuse and Mental Health Services Administration, Drug Abuse Warning Network, Opiate-Related Drug Misuse Deaths in Six States: 2003, Issue 19, 2006.

7. Center for Substance Abuse Treatment, Methadone-Associated Mortality: Report of a National Assessment, May 8–9, 2003. SAMHSA Publication No. 04–3904. Rockville, MD: Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, 2004.

8. WHO Technical Report Series, 942, WHO Expert Committee On Drug Dependence, Thirty-Fourth Report, 2006, p 6.

9. Drug Enforcement Administration, 67 FR 62354, October 7, 2002, Schedules of Controlled Substances: Rescheduling of Buprenorphine From Schedule V to Schedule III, Final rule.

III. Summary of Proposed Regulation

The opioid treatment program regulations (42 CFR part 8) establish the procedures by which the Secretary will determine whether a practitioner is qualified under Section 303(g) of the CSA (21 U.S.C. 823(g)(1)) to dispense certain therapeutic narcotic drugs in the treatment of individuals suffering from narcotic addiction. These regulations also establish the Secretary's standards regarding the appropriate quantities of narcotic drugs that may be provided for unsupervised use by individuals undergoing such treatment (21 U.S.C. 823(g)(1)(c)). (See also 42 U.S.C. 257a.)

SAMHSA is not proposing at this time to change any of the provisions in Subpart A (Accreditation) or Subpart C (Procedures for Review of Suspension or Proposed Revocation of OTP Certification and of Adverse Action Regarding Withdrawal of Approval of an Accreditation Body). Instead, SAMHSA is proposing a minor amendment to subpart B, Certification and Treatment Standards. If finalized, the rule would amend only one section of subpart B, § 8.12(i). Unsupervised or ''take-home'' use.

Under 42 CFR 8.12(i), OTPs must adhere to requirements for dispensing treatment medications for unsupervised or ''take-home'' use. These restrictions are in place to limit or reduce the potential for diversion of these medications to the illicit market. The effect of this proposed rule is to remove the restrictions for dispensing buprenorphine and buprenorphine combination products for unsupervised or ''take-home'' use while retaining those requirements for methadone products. This proposed change would be incorporated by adding the following language to 42 CFR 8.12(i)(3): ''The dispensing restrictions set forth in paragraphs (i) through (vi) do not apply to buprenorphine and buprenorphine products listed under 42 CFR section 8.12(h)(2)(iii).''

It should be noted that OTPs would still be required to assess and document each patient's responsibility and stability to handle opioid drug products for unsupervised use set forth under 42 CFR 8.12(i)(2) and 8.12(i)(3).

IV. Request for Comments

Under the rulemaking provisions of the Administrative Procedure Act (APA), an agency must provide the public with notice of certain proposed rules it wishes to promulgate (through publication in the **Federal Register**), and must afford the public an opportunity to comment on those proposed rules before they become final [5 U.S.C. 553(b)].

Instructions for submitting comments to this proposed rule are discussed above. SAMHSA will consider comments submitted during the 60-day comment period. All comments are welcome; however, information and evidence specific to this issue of buprenorphine and buprenorphine dispensing by certified OTPs will be especially useful.

V. Analysis of Economic Impacts

The Secretary has examined the impact of this proposed rule under Executive Order 12866, which directs Federal agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). This proposed rule does not establish additional regulatory requirements; it allows an activity that is otherwise prohibited. According to Executive Order 12866, a regulatory action is ''significant'' if it meets any one of a number of specified conditions, including having an annual effect on the economy of $100 million; adversely affecting in a material way a sector of the economy, competition, or jobs; or if it raises novel legal or policy issues. A detailed discussion of the Secretary's analysis is contained in the opioid treatment Final Rule published in the **Federal Register** of January 17, 2001 (66 FR 4086–4090). That document described the impact of the opioid treatment regulations, analyzed alternatives, and considered comments from small entities. In addition, a **Federal Register** notice published April 17, 2006, offered the opportunity for comments on this information collection activity.

The Secretary also finds that this proposed rule is not a significant regulatory action as defined by Executive Order 12866. The rule merely permits OTPs to dispense buprenorphine and buprenorphine combination products without adhering to the dispensing schedule established for Schedule II medications like methadone. If opioid treatment programs choose to use these products, the new medications will be used in accordance with all other standards set forth in the January 17, 2001, Final Rule (66 FR 4090). No new regulatory requirements are imposed by this proposed rule; however, some regulatory requirements will be reduced.

The Secretary anticipates that there will be an overall reduction in societal costs if treatment is expanded under this proposal. Indeed, the National Institutes of Health estimates conservatively that every $1 invested in addiction treatment programs yields a return of between $4 and $7 in reduced drug-related crime, criminal justice costs, and theft. When savings related to health care are included, total savings can exceed costs by a 12 to 1 ratio.

For the reasons outlined above, the Secretary has determined that this proposed rule will not have a significant impact upon a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605(b)). Therefore, an initial regulatory flexibility analysis is not required for this proposed Rule.

The Secretary has determined that this rule is not a major rule for the purpose of congressional review. For the purpose of congressional review, a major rule is one which is likely to cause an annual effect on the economy of $100 million; a major increase in costs or prices; significant effects on competition, employment, productivity, or innovation; or significant effects on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. This is not a major rule under the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996.

The Secretary has examined the impact of this rule under the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4). This rule does not trigger the requirement for a written statement under section 202(a) of the UMRA because it does not impose a mandate that results in an expenditure of $100 million (adjusted annually for

inflation) or more by either State, local, and tribal governments in the aggregate or by the private sector in any 1 year.

Environmental Impact

The Secretary has previously considered the environmental effects of this rule as announced in the Final Rule (66 FR 4076 at 4088). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that neither an environmental assessment nor an environmental impact statement is required.

Executive Order 13132: Federalism

The Secretary has analyzed this proposed rule in accordance with Executive Order 13132: Federalism. Executive Order 13132 requires Federal agencies to carefully examine actions to determine if they contain policies that have federalism implications or that preempt State law. As defined in the Order, ''policies that have federalism implications'' refers to regulations, legislative comments or proposed legislation, and other policy statements or actions 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.

The Secretary is publishing this proposed rule to modify treatment regulations that provide for the use of approved opioid agonist treatment medications in the treatment of opiate addiction. The Narcotic Addict Treatment Act (NATA, Pub. L. 93–281) modified the Controlled Substances Act (CSA) to establish the basis for the Federal control of narcotic addiction treatment by the Attorney General and the Secretary. Because enforcement of these Sections of the CSA is a Federal responsibility, there should be little, if any, impact from this rule on the distribution of power and responsibilities among the various levels of government. In addition, this proposed rule does not preempt State law. Accordingly, the Secretary has determined that this proposed rule does not contain policies that have federalism implications or that preempt State law.

Paperwork Reduction Act of 1995

This proposed rule modifies 42 CFR 8.12(i) by reducing regulatory dispensing requirements for buprenorphine and buprenorphine combination products that may be used in SAMHSA-certified opioid treatment programs. The proposed rule establishes no new reporting or recordkeeping requirements beyond those discussed in the January 17, 2001, Final Rule (66 FR 4076 at 4088). On January 10, 2007, the Office of Management and Budget approved the information collection requirements of the Final Rule under control number 0930–0206.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175 (65 FR 67249, November 6, 2000) requires us to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' as defined in the Executive Order, to include regulations that have ''substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.'' This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, 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 in Executive Order 13175.

Dated: May 1, 2009.

Eric B. Broderick,

Acting Administrator, SAMHSA, Assistant Surgeon General.

Dated: May 13, 2009.

Kathleen Sebelius,

Secretary, Department of Health and Human Services.

List of Subjects in 42 CFR Part 8

Health professions, Levo-Alpha-Acetyl-Methadol (LAAM), Methadone, Reporting and recordkeeping requirements.

For the reasons set forth above, part 8 of Title 42 of the Code of Federal Regulations is proposed to be amended as follows:

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

Authority: 21 U.S.C. 823; 42 U.S.C. 257a, 290aa(d), 290dd–2, 300x–23, 300x–27(a), 300y–11.

2. Section 8.12(i)(3) introductory text is revised to read as follows:

§ 8.12 Federal opioid treatment standards.

* * * * *

(i) * * *

(3) Such determinations and the basis for such determinations consistent with the criteria outlined in paragraph (i)(2) of this section shall be documented in the patient's medical record. If it is determined that a patient is responsible in handling opioid drugs, the dispensing restrictions set forth in paragraphs (i)(3)(i) through (vi) of this section apply. The dispensing restrictions set forth in paragraphs (i)(3)(i) through (vi) of this section do not apply to buprenorphine and buprenorphine products listed under 42 CFR 8.12(h)(2)(iii).

* * * * *

[FR Doc. E9–14286 Filed 6–18–09; 8:45 am]

BILLING CODE 4160–20–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300 and 665

[Docket No. 080225267–9319–02]

RIN 0648–AW49

International Fisheries Regulations; Fisheries in the Western Pacific; Pelagic Fisheries; Hawaii-based Shallow-set Longline Fishery

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

ACTION: Proposed rule; request for comments.

SUMMARY: This proposed rule would remove the annual limit on the number of fishing gear deployments (sets) for the Hawaii-based pelagic longline fishery. The rule would also increase the current limit on incidental interactions that occur annually between loggerhead sea turtles and shallow-set longline fishing. The proposed rule is intended to increase opportunities for the shallow-set fishery to sustainably harvest swordfish and other fish species, without jeopardizing the continued existence of sea turtles and other protected resources. This proposed rule would also make several administrative clarifications to the regulations.

DATES: Comments on the proposed rule must be received by August 3, 2009.

ADDRESSES: Comments on this proposed rule, identified by 0648–AW49, may be sent to either of the following addresses:

• Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal *www.regulations.gov*; or

• Mail: William L. Robinson, Regional Administrator, NMFS, Pacific Islands Region (PIR), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700.

Instructions: All comments received are a part of the public record and will generally be posted to *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.) submitted voluntarily by the sender may be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected information. NMFS will accept anonymous comments (enter ''N/A'' in the required name and organization fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word or Excel, WordPerfect, or Adobe PDF file formats only.

Copies of the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region (Pelagics FMP) and Amendment 18, including a final supplemental environmental impact statement (SEIS), are available from *www.regulations.gov*, and the Western Pacific Fishery Management Council (Council), 1164 Bishop St., Suite 1400, Honolulu, HI 96813, tel 808–522–8220, fax 808–522–8226, *www.wpcouncil.org*.

FOR FURTHER INFORMATION CONTACT: Adam Bailey, Sustainable Fisheries Division, NMFS PIR, 808–944–2248.

SUPPLEMENTARY INFORMATION:

Electronic Access

This proposed rule is also accessible at *www.gpoaccess.gov/fr*.

Background

Pelagic fisheries in the U.S. western Pacific are managed under the Pelagics FMP, developed by the Council and approved and implemented by NMFS. The Council has submitted Amendment 18 and draft regulations to NMFS for review under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). This proposed rule would implement the management provisions recommended in Amendment 18. This proposed rule would also make housekeeping changes to the pelagic fishing regulations, not related to Amendment 18.

The Hawaii-based shallow-set longline fishery began in late 2004 to test the effectiveness in the Pacific of a hook-and-bait combination that was found to dramatically reduce interactions with sea turtles when tested in the Atlantic pelagic longline fishery. A combination of circle hooks and mackerel-type bait was found to reduce interactions with leatherback and loggerhead sea turtles by 67 and 92 percent, respectively, in the Atlantic. A final rule, published and effective on April 2, 2004 (69 FR 17329), established a limited ''model'' Hawaii-based shallow-set swordfish fishery requiring the use of circle hooks and mackerel-type bait. To test the effectiveness of the gear combination and measure its impact on the environment, fishing effort in the model Hawaii fishery was limited to 2,120 sets, roughly 50 percent of the 1994–99 annual average number of sets. Those sets were distributed equally among permit holders who applied each year to participate in the fishery. As an additional safeguard, a limit was implemented on the number of unintended interactions with sea turtles that could occur in the shallow-set fishery. The fishery would be closed for the remainder of the calendar year if either interaction limit was reached.

Under the requirements implemented by that 2004 final rule, vessel operators in the Hawaii-based shallow-set fishery must currently use large circle hooks and mackerel-type bait. The fishery operates under a set certificate program that ensures that the fleet does not make more than a total of 2,120 shallow-sets per year. The fleet may not interact with (hook or entangle) more than 17 loggerhead sea turtles or 16 leatherback sea turtles each year. NMFS requires every vessel to carry an observer when shallow setting.

The current sea turtle interaction limits do not represent the upper limit of interactions that would avoid jeopardizing the continued existence of sea turtles, but instead are the annual number of sea turtle interactions anticipated to occur in this fishery, as calculated by multiplying expected fishing effort by interaction rates derived from studies using circle hooks and mackerel bait in U.S. longline fisheries in the Atlantic.

The use of large circle hooks and mackerel-type bait in Hawaii's shallow-set longline fishery has reduced sea turtle interaction rates by approximately 90 percent for loggerheads and 83 percent for leatherbacks, compared to the previous period 1994–2002 when the fishery was operating without these requirements. The fishery has been closed once, in 2006, as a result of reaching an interaction limit. See *www.fpir.noaa.gov/SFD/SFD_turtleint.html* for a history of shallow-set fishery interactions with loggerhead and leatherback sea turtles. Because this gear combination has proven to be highly effective in reducing sea turtle interaction rates, the Council examined and considered a range of management alternatives that would allow increased shallow-set fishing effort. An increase in fishing effort would be associated with an increase in the allowable associated sea turtle interaction limits. The shallow-set certificate program used to govern the effort limit would be removed. This proposed rule intends to optimize the harvest of swordfish and other fish, without jeopardizing the continued existence and recovery of threatened and endangered sea turtles and other protected species. The proposed rule is consistent with the Magnuson-Stevens Fishery Conservation and Management Act goals to achieve optimum yield from the shallow-set fishery, while minimizing bycatch and associated mortality.

A range of management alternatives was identified during the development of this proposed rule, as described in the summary of the SEIS in the Classification section below. Under all analyzed management alternatives, other measures that are currently applicable to the fishery would remain unchanged, including, but not limited to, limited access permits, vessel and gear marking requirements, vessel length restrictions, Federal catch and effort logbooks, 100–percent observer coverage, large longline restricted areas around the Hawaiian Archipelago, vessel monitoring system (VMS), annual protected species workshops, and the use of sea turtle, seabird, and marine mammal handling and mitigation gear and techniques.

This proposed rule would remove the annual limits on shallow-set fishing effort and the requirements of the shallow-set certificate program found at 50 CFR 665.33, the related prohibitions at 50 CFR 665.22, and the definition of a shallow-set certificate found at 50 CFR 665.12. The annual limits for sea turtle interactions would be revised in 50 CFR 665.33. Also in that section, the Regional Administrator would be required to publish an annual notification in the **Federal Register** of the applicable annual sea turtle interaction limits, and if an interaction limit is exceeded in any one calendar year, the annual limit for that sea turtle species would be adjusted downward the following year by the number of interactions by which the limit was exceeded.

In addition to Amendment 18's recommended modifications to the shallow-set effort and turtle interaction measures, this proposed rule would make several technical clarifications to the longline regulations, unrelated to Amendment 18. First, this proposed rule would clarify the technical specifications regarding required circle

hooks. In a final rule published on November 15, 2005, NMFS implemented a requirement for Hawaii-based shallow-set longline fishermen to use circle hooks, size 18/0 or larger with an offset of 10 degrees (70 FR 69282). The wording of this requirement was intended to mirror the requirement for Atlantic longline fishing, which require the use of circle hooks with an offset *not to exceed* 10 degrees (69 FR 40734; July 6, 2004). The November 2005 final rule for the western Pacific shallow-set fishery inadvertently omitted the phrase ''not to exceed.'' This proposed rule would correct the error. The result would be that shallow-set longline fishermen could use hooks with a range of offset from zero to 10 degrees.

The second proposed technical change to longline regulations would clarify the requirement to carry line clippers, including the design specifications, on vessels registered for use under a Hawaii longline limited access permit. On March 28, 2000, NMFS published a final rule that implemented several measures designed to mitigate injuries to sea turtles by the Hawaii longline pelagic fishery, including requirements to carry and use line clippers, dip nets, and dehookers (65 FR 16347). In a subsequent final rule relating to sea turtle mitigation measures (70 FR 69282, November 15, 2005), the requirements in 50 CFR 665.32 specifically relating to line clippers were inadvertently omitted. This proposed rule would correct the error. The corrected regulation would require fishermen to carry on board their vessels and use line cutters meeting NMFS design specifications. The proposed rule would also redesignate several paragraphs in 50 CFR 665.32 for organizational clarity.

In the third technical clarification, this proposed rule would remove two regulations that have been superseded by more stringent regulations. In 50 CFR 665.22, paragraph (gg) prohibits shallow-set longline fishing from a vessel registered for use under a Hawaii longline limited access permit north of the Equator with hooks other than circle hooks. That paragraph was superseded by paragraph (jj), which prohibits such fishing from a vessel registered under *any* western Pacific longline permit. Similarly, paragraph (hh) prohibits shallow-set longline fishing from a vessel registered for use under a Hawaii longline limited access permit north of the Equator with bait other than mackerel-type bait. That paragraph was superseded by paragraph (kk), which prohibits such fishing from a vessel registered for use under any western Pacific longline permit. Thus, paragraphs (gg) and (hh) would be removed.

Finally, a technical clarification would be made to the high seas fishing regulations to correct a reference to western Pacific domestic fishing regulations. In 50 CFR 300, paragraph (1)(v) incorrectly refers to Pacific longline reporting requirements at 50 CFR 660.14. This reference would be corrected to refer to the requirements at 50 CFR 665.14.

Public comments on this proposed rule must be received by close of business on August 3, 2009, not postmarked or otherwise transmitted by that date.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson-Stevens Act, the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Pelagics FMP, other provisions of the Magnuson-Stevens Act, and other applicable laws, subject to further consideration after public comment.

A final SEIS is included with Amendment 18. A notice of availability of the draft SEIS was published on August 22, 2008 (73 FR 49667). To reduce the complexity of the SEIS analyses, the proposal was divided into three topic areas, each with its own range of alternatives as summarized below.

Topic 1: Shallow-set Longline Fishing Effort Limits

The fishery is currently limited to 2,120 shallow sets per year, which is half the average annual fishing effort during 1994–99. The existing annual sea turtle interaction limits of 17 loggerhead sea turtles and 16 leatherback sea turtles were determined based on experimental (Atlantic Ocean) interaction rates multiplied by the 2,120 set limit. Under Alternatives 1A–1E below, the annual sea turtle interaction limits for the fishery were similarly predicted using observed Pacific Ocean sea turtle interaction rates multiplied by each alternative's effort limit. In the case of Alternative 1F (remove effort limit), revised sea turtle interaction limits were recommended by the Council, taking into account the potential for reasonable increases in fishing effort, as well as likely impacts on sea turtle populations.

Alternative 1A: No action; continue the current annual set limit. Under this alternative, the maximum annual limit on the number of shallow-sets would remain at 2,120.

Alternative 1B: Allow up to 3,000 sets per year. This effort limit was chosen as a middle-ground effort alternative in-between the current set limit and the average annual effort during 1994–99 (approximately 4,240 sets).

Alternative 1C: Allow up to 4,240 shallow sets per year. This effort limit represents the average number of annual sets during 1994–99, or double the current set limit of 2,120.

Alternative 1D: Allow up to 5,500 shallow sets per year. This effort limit is nearly the annual maximum number of sets for any one year from 1994–99.

Alternative 1E: Set effort level commensurate with current conditions and the maximum sustainable yield (MSY) of North Pacific swordfish stock (about 9,925 sets per year). This effort limit would take into account catches by other longline fleets and the portion of the total swordfish catch already made by the Hawaii fleet. Current domestic and foreign swordfish landings in the North Pacific amount to about 14,500 mt, which, according to a recent stock assessment, amounts to about 60 percent of an estimated MSY of 22,284 mt. Given that MSY and a current swordfish catch by the Hawaii-based fishery of between 850 to 1,637 mt, the amount of effort to catch the remaining available 7,784 mt of additional swordfish would be about 9,925 sets per year. The effort limit under this alternative would be adjusted over time, as appropriate.

Alternative 1F (preferred): Remove fishing effort limits, increase the annual sea turtle interaction limit to 46 interactions with loggerhead sea turtles, and retain the current limit of 16 interactions with leatherback sea turtles. This alternative would also retain all other shallow-set fishery management measures.

Topic 2: Fishery Participation

Shallow-set fishing effort is currently administered through a set certificate program. The 2,120 set certificates are allocated equally among permit holders who indicate that they wish to receive them. A set certificate must be attached to each daily fishing log for shallow-set longline fishing. The set certificates may be sold, traded, or otherwise exchanged among other permit holders in the Hawaii-based longline fleet.

Alternative 2A: No action; continue the set certificate program. For each shallow set made north of the Equator, vessel operators would continue to be required to possess and submit one valid shallow-set certificate for each shallow set made. The number of certificates could increase under Topic 1, Alternatives 1B–1E.

Alternative 2B: Discontinue the set certificate program (preferred). Shallow-set certificates would no longer be issued. For those management

alternatives in Topic 1 that include effort limits, NMFS would account for all shallow sets on a fleet-wide basis through routine fishery monitoring and observer placement, and the fishery would close for the remainder of the year, if and when an annual set limit was reached.

Topic 3: Time-Area Closures

Time-area closures were considered by the Council as a way to increase annual fishery profits through potential reductions in the number of sea turtle interactions that may occur during January through March. Interaction rates for loggerhead sea turtles have typically been highest during this period, and it has been hypothesized that, in areas where swordfish and loggerhead sea turtle habitats may overlap, reducing fishing effort could increase fishery profits by reducing the risk of exceeding a sea turtle interaction limit very early in the year, which would close the fishery when there were still many more shallow sets allowed to be made.

Alternative 3A: No action; do not implement time-area closures (preferred). Fishermen would continue to strive to minimize sea turtle interactions under the existing sea turtle handling and mitigation requirements and guidance.

Alternative 3B: Implement a January time-area closure. The area closure would be located between 175° W and 145° W longitude and encompass the sea surface temperature band of 17.5° to 18.5° C. The latitude of this temperature band varies over time, but in January it is generally located near 31° to 32° N. Research has suggested that the area between sea surface temperatures of 17.5° to 18.5° C may be an area of high loggerhead sea turtle concentrations, based on historical and contemporary distribution and foraging studies, and observed loggerhead sea turtle interactions with the fishery. The month of January was selected because it may be that the number of loggerhead interactions during January is pivotal to whether or not the fishery will reach its annual sea turtle interaction limit before all allowable shallow sets are deployed. For example, in 2006, the fishery interacted with eight loggerheads in January and the fishery reached the limit of 17 in mid-March. In 2007, the fishery did not interact with any loggerheads during January, but had interacted with 15 loggerheads by the end of the first quarter, and still did not reach the annual sea turtle interaction limit.

Alternative 3C: Implement in-season time-area closures. Under Alternative 3C, the sea surface temperature-based area closure described for Alternative 3B would be implemented only in those years in which 75 percent of the annual loggerhead turtle limit was reached during the first quarter, and the closure would remain in effect for the remainder of the first quarter. As with Alternative 3B, this alternative is being considered as a way to increase annual fishery profits through reductions in the number of turtle interactions that occur in the first quarter of each year. This alternative differs from 3B in that its implementation would be contingent on relatively high numbers of sea turtle interactions during the first quarter.

Under the preferred alternatives, Amendment 18 and this proposed rule would remove the effort limit. The Loggerhead sea turtle interaction limit would be increased to 46, and the leatherback sea turtle interaction limit would remain unchanged at 16. The set certificate program would be eliminated. No time/area closures would be implemented. Under these alternatives, shallow-set fishing effort would not be limited, and could increase to historic levels of 4,000 to 5,000 sets per year (3.4 to 4.2 million hooks/yr). Some increased participation in the shallow-set fishery is anticipated with fishermen from the Hawaii-based deep-set tuna fishery moving into the fishery as a result of quotas being established for bigeye tuna. Entry into the Hawaii longline fishery, including both shallow- and deep-set techniques, would remain limited to 164 vessels.

Based on the information in the draft SEIS, as compared to the no-action alternative, implementing the preferred alternatives would not have significant adverse impacts on target (swordfish) stocks because harvests would not exceed MSY. The preferred alternatives are not expected to significantly alter fishing operations, and catch and discard rates of non-target fish species would remain at an estimated 6–7 percent of the fishery's total annual catch. Resulting fishing mortality of non-target fish species would be expected to be a minor fraction of Pacific-wide catches and well below known MSY levels.

Implementing the preferred alternatives would have no adverse impacts to essential fish habitat or habitat areas of particular concern. The preferred alternatives are expected to affect listed marine mammals, but are not likely to adversely affect Hawaiian monk seals, and blue, fin, sei, sperm, and North Pacific Right whales. The preferred alternatives may affect, and are likely to adversely affect, humpback whales, and loggerhead, leatherback, olive ridley, green, and hawksbill sea turtles. Under the preferred alternatives, other marine mammal interactions are expected to continue to be relatively low. The preferred alternatives are consistent with the October 2008 Biological Opinion's Reasonable and Prudent Measures and Terms and Conditions.

The fishery will likely result in interactions with Laysan and black-footed albatrosses, but the fishery is not expected to result in a significant impact on any albatross populations, including the endangered short-tailed albatross. No significant cumulative impacts or environmental justice issues were identified.

The complete analysis of the alternatives is contained in Amendment 18 and final SEIS, and is not repeated here. Copies of the environmental analytical documents are available from *www.regulations.gov* and the Council (see **ADDRESSES**).

An initial regulatory flexibility analysis (IRFA) was prepared, as required by section 603 of the Regulatory Flexibility Act (RFA). The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained at the beginning of this section in the preamble and in the SUMMARY section of the proposed rule. A summary of the IRFA follows:

This rule does not duplicate, overlap, or conflict with other Federal rules. There are no disproportionate economic impacts from this rule based on home port, gear type, or relative vessel size. There are no recordkeeping, reporting, or other compliance costs associated with this rulemaking. In the absence of relevant cost data, gross revenue is used as proxy for profitability.

Description and estimate of the number of small entities to which the rule applies

There are approximately 30 active Hawaii-based shallow-set swordfish longline vessels, and an indeterminate number of non-active permit holders that may be affected by this rulemaking. All are considered to be small entities (fish-harvesting business) under the definition provided by the Small Business Administration (SBA) as follows: independently owned and operated, not dominant in its field of operation, and having annual receipts not in excess of $4.0 million. Between 2005 and 2007, 29 to 37 vessels participated in the shallow-set longline fishery, and the average revenue earned by the vessels was $225,227. In addition, it is believed that the majority of participants are also active in the deep-set longline fishery during the course of a year. Thus, their shallow-set revenues represent one portion of their total revenue. In 2007, the overall average (combined deep-set and shallow-set

longline fisheries) ex-vessel revenue was $62.6 million realized by 129 active vessels. On a per-vessel basis, this yields an average ex-vessel revenue of $486,039 per vessel, still far below the $4.0 million threshold.

Economic Impacts

Preferred Alternative 1F would be expected to have no adverse economic impact on the 30 individual vessels comprising the 2008 fishery. In 2007, 29 vessels made only 1,497 sets. By interpolating this number, the 30 vessels fishing in 2008 are expected to make approximately 1,549 sets. Since the fishery had reopened in 2004, it has never approached the current cap of 2,120 sets. Therefore, this rule would lift a constraint that has not been historically tested by the present participants in the fishery. The elimination of the cap, therefore, would be expected to have no economic impact on the 30 participants in the fishery in 2009. In the long term, removal of the set limit is expected to allow for the entry of new vessels into the fishery, increasing available rents to the fishery as a whole. This is discussed at length in the Regulatory Impact Review (see **ADDRESSES**).

Because the fishery was closed one year as a result of reaching the present loggerhead interaction limit of 17, the increase in allowable turtle interactions for loggerheads to 46 would theoretically translate to a potential increase in gross revenues and vessel profitability that could be measured by comparing the total revenues associated with the old interaction cap and the new interaction cap. The continuation in allowable leatherback interactions, however, would theoretically have no economic impact to the fishery in the short run since, historically, the leatherback cap of 16 has not been reached. However, data on the relationship between turtle interactions and catch are uncertain because of the newness of the managed fishery and the lack of data points. Therefore, those economic impacts would be indeterminate in the short term.

Preferred Alternative 2B, the removal of the requirement for set certificates, will have a minimal yet positive impact on individual vessel owners that would have needed additional certificates to prosecute the fishery. The gross revenue derived from a set averages approximately $5,000, and the sale of set certificates by those owning a limited access permit has been reported by industry to be between $50 and $100, or 2–3 percent of gross revenue per set. This would reflect a cost savings to the vessel and an enhancement of profitability. Alternatively, those that have historically sold their certificates in lieu of fishing could lose $50 to $100 dollars per set per year. The private sale of certificates has not been tracked by NMFS due to privacy considerations and the lack of any legal requirements to do so. However, if opportunities outside of fishing for swordfish are assumed to be equal to or exceed profits that could be obtained by using their certificates to fish, the adverse impact to these permit holders would be three percent or less.

Preferred Alternative 3A (no action) will have no impact on the fishery.

There are no significant alternatives to this rulemaking that would have a less adverse or more beneficial economic impact than the preferred. All other alternatives considered regarding number of sets allowed, including the no-action alternative, are expected to have no adverse economic impact to the present participants in the fishery. The no-action alternative for elimination of set certificates would have no economic impact with regard to the present fishery and the permit holders selling certificates. Alternatives that would require the fishery to implement time/area closures would have an indeterminate economic impact on the fishery because the trade-offs between catch and turtle interactions that could close the fishery cannot be estimated with limited existing data. However, there are early indications that time/area closures would not have a substantial impact on turtle interactions or profitability of fishing operations.

A formal section 7 consultation under the Endangered Species Act was conducted for Amendment 18 on the effects of the proposed action on ESA-listed marine species. In a Biological Opinion dated October 15, 2008, NMFS determined that fishing activities under Amendment 18 and its implementing regulations may affect, but are not likely to adversely affect, seven ESA-listed species (Hawaiian monk seal, and blue, fin, sei, sperm, and North Pacific Right whales). NMFS also determined that the proposed action may affect, and is likely to adversely affect, six other ESA-listed marine species that occur in the action area (humpback whale, and loggerhead, leatherback, olive ridley, green, and hawksbill sea turtles). This proposed rule is consistent with the October 2008 Biological Opinion's Reasonable and Prudent Measures and Terms and Conditions.

Additionally, an informal consultation was conducted under section 7 of the ESA with the U.S. Fish and Wildlife Service (USFWS) on the effects of the proposed rule on the endangered short-tailed albatross. The USFWS concurred with the NMFS determination that the proposed action is not expected to result in a significant impact on short-tailed albatross during 2009.

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects

50 CFR Part 300

Administrative practice and procedure, International fishing and related activities.

50 CFR Part 665

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaii, Hawaiian Natives, Northern Mariana Islands, Pacific remote island areas, Reporting and recordkeeping requirements.

Dated: June 16, 2009.

Samuel D. Rauch III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR chapters III and VI are proposed to be amended as follows:

CHAPTER III

PART 300—INTERNATIONAL FISHERIES REGULATIONS

1. The authority citation for 50 CFR part 300, subpart B, continues to read as follows:

Authority: 16 U.S.C. 5501 *et seq.*

2. In § 300.17, revise paragraph (b)(1)(v) to read as follows:

§ 300.17 Reporting.

* * * * *

(b) * * *

(1) * * *

(v) Pacific Pelagic Longline — Longline Logbook (§ 665.14(a) of this title);

* * * * *

CHAPTER VI

PART 665—FISHERIES IN THE WESTERN PACIFIC

3. The authority citation for 50 CFR part 665 continues to read as follows:

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

§ 665.12 [Amended]

4. In § 665.12, remove the definition of ''Shallow-set certificate.''

5. In § 665.22, remove and reserve paragraphs (bb), (gg), and (hh), and revise paragraph (jj) to read as follows:

§ 665.22 Prohibitions.

* * * * *

(jj) Engage in shallow-setting from a vessel registered for use under any longline permit issued under § 665.21 north of the Equator (0° lat.) with hooks other than circle hooks sized 18/0 or larger, with an offset not to exceed 10 degrees, in violation of § 665.33(f).

* * * * *

6. In § 665.32,

a. Revise paragraphs (a)(1) and (a)(2);

b. Redesignate paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7), respectively;

c. Add new paragraph (a)(5);

d. Revise introductory text to newly-redesignated paragraphs (a)(7)(ii) and (a)(7)(iii);

e. Add new paragraph (a)(7)(iii)(C);

f. In newly-redesignated paragraph (a)(7), redesignate paragraphs (a)(7)(iv), (a)(7)(vii), (a)(7)(viii), (a)(7)(ix), and (a)(7)(x) as paragraphs (a)(8), (a)(9), (a)(10), (a)(11), and (a)(12), respectively; and

g. In newly-redesignated paragraph (a)(7), redesignate paragraph (a)(7)(v) as paragraph (a)(7)(iv), and redesignate paragraph (a)(7)(vi) as paragraph (a)(7)(v).

The revisions and additions read as follows:

§ 665.32 Sea turtle take mitigation measures.

(a) * * *

(1) *Hawaii longline limited access permits.* Any owner or operator of a vessel registered for use under a Hawaii longline limited access permit must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting minimum design and performance standards specified in paragraph (a)(7) of this section.

(2) *Other longline vessels with freeboards of more than 3 ft (0.91 m).* Any owner or operator of a longline vessel with a permit issued under § 665.21 other than a Hawaii limited access longline permit and that has a freeboard of more than 3 ft (0.91 m) must carry aboard the vessel line clippers meeting the minimum design standards specified in paragraph (a)(5) of this section, dip nets meeting the minimum design standards specified in paragraph (a)(6) of this section, and dehookers meeting the minimum design and performance standards specified in paragraph (a)(7) of this section.

* * * * *

(5) *Line clippers.* Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (see Figure 1 to this section). The minimum design standards are as follows:

(i) *A protected cutting blade.* The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) *Cutting blade edge.* The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) *An extended reach handle for the cutting blade.* The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) *Secure fastener.* The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

* * * * *

(7) * * *

(ii) *Long-handled dehooker for external hooks.* This item is intended to be used to remove externally-hooked hooks from sea turtles that cannot be brought aboard. The long-handled dehooker for ingested hooks described in paragraph (a)(7)(i) of this section meets this requirement. The minimum design and performance standards are as follows: * * *

* * * * *

(iii) *Long-handled device to pull an ''inverted V''.* This item is intended to be used to pull an ''inverted V'' in the fishing line when disentangling and dehooking entangled sea turtles. One long handled device to pull an ''inverted V'' is required on the vessel. The minimum design and performance standards are as follows: * * *

* * * * *

(C) The long-handled dehookers described in paragraphs (a)(7)(i) and (ii) of this section meet this requirement.

* * * * *

7. In § 665.33, remove and reserve paragraphs (a), (c), and (e), and revise paragraphs (b) and (f) to read as follows:

§ 665.33 Western Pacific longline fishing restrictions.

* * * * *

(b) *Limits on sea turtle interactions.* (1) Maximum annual limits are established on the number of physical interactions that occur each calendar year between leatherback and loggerhead sea turtles and vessels registered for use under Hawaii longline limited access permits while shallow-setting.

(i) The annual limit for leatherback sea turtles (*Dermochelys coriacea*) is 16, and the annual limit for loggerhead sea turtles (*Caretta caretta*) is 46.

(ii) If any annual sea turtle interaction limit in paragraph (b)(i) of this section is exceeded in a calendar year, the annual limit for that sea turtle species will be adjusted downward the following year by the number of interactions by which the limit was exceeded.

(iii) No later than January 31 of each year the Regional Administrator will publish a notice in the **Federal Register** of the applicable annual sea turtle interaction limits established pursuant to paragraphs (b)(i) and (b)(ii) of this section.

* * * * *

(f) Any owner or operator of a vessel registered for use under any longline permit issued under § 665.21 must use only circle hooks sized 18/0 or larger, with an offset not to exceed 10 degrees, when shallow-setting north of the Equator (0° lat.). As used in this paragraph, an offset circle hook sized 18/0 or larger is one with an outer diameter at its widest point no smaller than 1.97 inches (50 mm) when measured with the eye of the hook on the vertical axis (y-axis) and perpendicular to the horizontal axis (x-axis). As used in this paragraph, the allowable offset is measured from the barbed end of the hook, and is relative to the parallel plane of the eyed-end, or shank, of the hook when laid on its side.

* * * * *

[FR Doc. E9–14487 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 74, No. 117

Friday, June 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

Office of the Assistant Secretary for Civil Rights; Notice of Intent To Seek Approval of a New Information Collection; Correction

AGENCY: Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture.

ACTION: Notice; correction.

SUMMARY: The Office of the Assistant Secretary for Civil Rights, U.S. Department of Agriculture published a document in the **Federal Register** of May 13, 2009, concerning request for comments on the notice of intent to seek approval of a new information collection. The published document requires clarification on what demographic information is being collected from the public and the method used to collect that data. The collection of information has been narrowed to focus only on race, ethnicity, and gender and will not include national origin, age, or disability. Further, the information collection process will not include a tear-off form as stated in the May 13, 2009, document.

DATES: We will consider comments that we receive by July 31, 2009.

FOR FURTHER INFORMATION CONTACT: Winona Scott, Acting Director, Planning, Performance and Accountability Division, phone (202) 401–3648.

In the **Federal Register** of May 13, 2009, in FR Doc E9 –11109, on page 22509, make the following corrections:

In the first column, correct paragraph one, line 11 to read:

''* * * consolidating the race, ethnicity and sex data for agencies within the * * *''

SUPPLEMENTARY INFORMATION:

Correction

In the second column, correct paragraph four, to read:

The goal of this data collection is to obtain information from agricultural landowners and producers, in particular, socially disadvantaged farmers and ranchers that will be used to improve the operation of this program, to help USDA design additional opportunities for program participation, and to monitor enforcement of laws that require equal access to this program for eligible persons.

In the second column, delete paragraphs five and six.

In the third column, delete paragraph one.

In the third column, correct paragraph five, line one to read:

Abstract: The purpose of the collection is to enable the agency heads to report annually to the Secretary of Agriculture on the collection of race, ethnicity and sex data for all agricultural producers and landowners.

In the third column, correct paragraph six, line three to read:

''* * * estimated burden is 2 minutes per * * *''

In the third column, correct paragraph nine, line two to read:

Respondents: 466,666 hours.

Dated: June 15, 2009.

Joe Leonard, Jr.,

Assistant Secretary for Civil Rights.

[FR Doc. E9–14444 Filed 6–18–09; 8:45 am]

BILLING CODE 3410–98–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2009–0027]

National Animal Identification System; Public Meeting

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: This is a notice to inform the public of an addition to the schedule of upcoming meetings to discuss stakeholder concerns related to the implementation of the National Animal Identification System. The additional meeting is being organized by the Animal and Plant Health Inspection Service.

DATES: The meeting will be held on June 30, 2009, from 9 a.m. to 4 p.m.

ADDRESSES: The public meeting will be held at the Embassy Suites Omaha—La Vista Hotel & Conference Center, 12520 Westport Parkway, La Vista, NE.

FOR FURTHER INFORMATION CONTACT: Dr. Adam Grow, Director, Surveillance and Identification Programs, National Center for Animal Health Programs, VS, APHIS, 4700 River Road Unit 200, Riverdale, MD 20737; (301) 734–3752.

SUPPLEMENTARY INFORMATION: As part of its ongoing efforts to safeguard animal health, the U.S. Department of Agriculture (USDA) initiated implementation of a National Animal Identification System (NAIS) in 2004. The NAIS is a cooperative State-Federal-industry program administered by USDA's Animal and Plant Health Inspection Service (APHIS). The purpose of the NAIS is to provide a streamlined information system that will help producers and animal health officials respond quickly and effectively to animal disease events in the United States.

The ultimate long-term goal of the NAIS is to provide State and Federal officials with the capability to identify all animals and premises that have had direct contact with a disease of concern within 48 hours after discovery. Meeting that goal requires a comprehensive animal-disease traceability infrastructure. An NAIS User Guide and a Business Plan, both available on our Web site at *http://animalid.aphis.usda.gov/nais/animal_id/index.shtml,* provide detailed information about our plans for implementing the system.

Despite concerted efforts, APHIS has not been able to fully implement the NAIS. Many of the same issues that producers originally had with the system, such as the cost and impact on small farmers, privacy and confidentiality, and liability, continue to cause concern.

In order to provide individuals and organizations an opportunity to discuss their concerns regarding the NAIS and offer potential solutions, we have held several public meetings and plan to hold several more, and we are soliciting comments via our Web site. This notice is to inform the public that we are

adding a meeting to the schedule. The additional meeting will be held on June 30, 2009, in Omaha, NE.

Our goal is to gather feedback and input from a wide range of stakeholders to assist us in making an informed decision regarding both the future of the NAIS and the objectives and direction for animal identification and traceability. We would particularly welcome feedback on the following topics:

- *Cost.* What are your concerns about the cost of the NAIS? What steps would you suggest APHIS use to address cost?
- *Impact on small farmers.* What are your concerns about the effect of the NAIS on small farmers? What approaches would you suggest APHIS take to address the potential impact on small farmers?
- *Privacy and confidentiality.* What are your concerns regarding how the NAIS will affect your operation's privacy and/or the confidentiality of your operation? What steps or tactics would you suggest APHIS use to address privacy and confidentiality issues?
- *Liability.* What are your concerns about your operation's liability under the NAIS? What would you suggest APHIS consider to address liability concerns?
- *Premises registration.* Do you have any suggestions on how to make premises registration, or the identification of farm or ranch locations, easier for stakeholders? How should we address your concerns regarding premises registration?
- *Animal identification.* Do you have any suggestions on how to make animal identification practical and useful to stakeholders while simultaneously meeting the needs of animal health officials who must conduct disease tracebacks?
- *Animal tracing.* Do you have any suggestions on how to make the animal tracing component practical, in particular the reporting of animal movements to other premises, while meeting the needs of animal health officials who must conduct disease tracebacks?

The meeting schedule is tentative as of the date of this publication. Please check our Web site at *http://www.usda.gov/nais/feedback* for the most up-to-date meeting information. The list of discussion topics is also available on the Web site. On-site registration will begin at 8 a.m. on the day of each meeting. All persons attending must register prior to the meetings.

Although preregistration is not required, participants are asked to preregister by sending APHIS an e-mail at *NAISSessions@aphis.usda.gov* or calling 301–734–0799. In the subject line of the e-mail, indicate your name (or organization name) and the location of the meeting you plan to attend. If you wish to present comments during one of the meetings, please include your name (or organization name) and address in the body of the message. Members of the public who are not able to attend may also submit and view comments via the Federal eRulemaking Portal at *http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS–2009–0027.* Additional information regarding the meetings may be obtained from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Done in Washington, DC, this 16th day of June 2009.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E9–14481 Filed 6–18–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eastern Washington Cascades Provincial Advisory Committee and the Yakima Provincial Advisory Committee will meet on July 1, 2009 at the Okanogan-Wenatchee National Forest Headquarters office, 215 Melody Lane, Wenatchee, WA. During this meeting information will be shared about the Forest's Travel Management plan and process. All Eastern Washington Cascades and Yakima Province Advisory Committee meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Becki Heath, Designated Federal Official, USDA, Okanogan-Wenatchee National Forest, 215 Melody Lane, Wenatchee, Washington 98801, 509–664–9200.

Dated: June 15, 2009.

Rebecca Lockett Heath,

Designated Federal Official, Okanogan-Wenatchee National Forest.

[FR Doc. E9–14407 Filed 6–18–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

National Urban and Community Forestry Advisory Council

AGENCY: Forest Service, USDA.

ACTION: Notice of closed virtual meeting.

SUMMARY: The National Urban and Community Forestry Advisory Council will meet through a Web cast, July 21–22, 2009. The purpose of the meeting is to discuss general Council business.

DATES: The meeting will be held on July 21 and 22, 2009, 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held through a Webinar. Written comments concerning this meeting should be addressed to Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151. Comments may also be sent via e-mail to *nucfac_ucf_proposals@fs.fed.us,* or via facsimile to 202–690–5792.

All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at 201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151.

FOR FURTHER INFORMATION CONTACT: Nancy Stremple, Executive Staff to National Urban and Community Forestry Advisory Council, phone 202–205–1054.

Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The meeting is closed to the public. Council discussion is limited to Forest Service staff and Council members; however, persons who wish to bring urban and community forestry matters to the attention of the Council may file written statements with the Council staff (201 14th St., SW., Yates Building (1 Central) MS–1151, Washington, DC 20250–1151, e-mail: *nstremple@fs.fed.us*) before or after the meeting.

Dated: June 12, 2009.

Robin L. Thompson,

Associate Deputy Chief, State & Private Forestry.

[FR Doc. E9–14375 Filed 6–18–09; 8:45 am]

BILLING CODE 3410–11–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Missouri 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 planning meeting of the Missouri Advisory Committee to the Commission will convene by conference call at 2 p.m. and adjourn at approximately 3 p.m. on Tuesday, July 7, 2009. The purpose of this meeting is to discuss the SAC's civil rights project, ''Equal Educational Opportunities in Urban Public School Settings and Education Reform in Missouri….Kansas City and St. Louis Public School Districts.''

This meeting is available to the public through the following toll-free call-in number: (866) 364–7584, conference call access code number 13243135. Any interested member of the public may call this number and listen to the meeting. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and contact name Farella E. Robinson.

To ensure that the Commission secures an appropriate number of lines for the public, persons are asked to register by contacting Corrine Sanders of the Central Regional Office and TTY/TDD telephone number, by 4 p.m. on July 1, 2009. Members of the public are entitled to submit written comments. The address is U.S. Commission on Civil Rights, 400 State Avenue, Suite 908, Kansas City, Kansas 66101. Comments may be e-mailed to *frobinson@usccr.gov*. Records generated by this meeting may be inspected and reproduced at the Central 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 Central 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, June 15, 2009.

Martin Dannenfelser,

Staff Director.

[FR Doc. E9–14361 Filed 6–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Census Coverage Measurement Person Interview and Reinterview Operations

AGENCY: U.S. Census Bureau.

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, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before August 18, 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(s) and instructions should be directed to Gia F Donnalley, U.S. Census Bureau, 4600 Silver Hill Road, Room 4K067, Washington, DC 20233, 301–763–4370 (or via the Internet at *Gia.F.Donnalley@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The 2010 Census Coverage Measurement (CCM) Person Interview and Reinterview Operations will be conducted in the U.S. (excluding remote Alaska) and in Puerto Rico in select CCM sampled areas. The primary sampling unit is a block cluster, which consists of one or more geographically contiguous census blocks. As in the past, the CCM operations and activities will be conducted independent of and not influence the 2010 Census operations.

CCM will be conducted to provide estimates of both net coverage error and coverage error components for omissions and erroneous enumerations for housing units and persons in housing units (see Definition of Terms) in order to gather information necessary to improve future censuses. The data collection and matching methodologies for previous coverage measurement programs were designed only to measure net coverage error, which measures the net difference between omissions and erroneous enumerations.

The 2010 CCM sample is a multi-phase probability sample of housing units comprising a number of distinct processes, ranging from forming block clusters, selecting the block clusters where the CCM survey will be conducted, to eventually selecting addresses for interviewing. Two samples will be selected to measure census coverage of housing units and household population: The population sample or P Sample; and the enumeration sample or E sample. These two samples have traditionally defined the samples for dual system estimation, a statistical technique for measuring net coverage error. The P Sample is a sample of housing units and persons obtained and independently enumerated from the census for a sample of block clusters, while the E Sample is a sample of census housing units and enumerations in the same block clusters as the P sample.

The independent list of housing units is obtained during the CCM Independent Listing Operation, the results of which will be matched to census housing units in the sample block clusters and surrounding blocks. After the CCM Independent Listing and matching operations have taken place, some cases with discrepancies between the CCM Independent Listing and the Census will be identified to receive the CCM Housing Unit Followup interview. The results of this interview will again be matched to the list of census housing units. The results of the housing unit matching operations will be used to determine which CCM and Census addresses will be eligible to go to the CCM Person Interview (PI) Operation. After data collected from the CCM PI is matched to data collected by the Census, some cases with discrepancies between the CCM PI and Census will be sent for another CCM interview called the CCM Person Followup Operation. A separate **Federal Register** Notice has already been issued for the CCM Independent Listing and CCM Housing Unit Followup operations. A **Federal Register** Notice will be issued later for the CCM Person Followup Operation.

For each sample block cluster, we will conduct a CCM PI for selected housing units. During CCM PI, interviewers will

use a computer-assisted data collection instrument on a laptop to obtain information about the current residents of the sample housing unit including those who may have moved into the selected housing unit since Census Day (April 1, 2010). The interviewer will also attempt to collect data on certain persons who moved out of the sample housing unit between Census Day and the CCM PI interview. We will include nonmatched Census addresses in the CCM PI so we can ascertain their Census enumeration status earlier than if they were included in the Person Followup operation that is conducted later in the CCM processing.

The CCM PI operation will collect the information listed below only for persons in housing units (PI is not conducted in businesses or Group Quarters). The automated CCM PI instrument will collect the following information for the housing units included in this operation:

1. Roster of people living at the housing unit at the time of the CCM PI Interview.
2. Census Day address information for people who moved into the sample address since Census Day.
3. Other addresses where a person may have been counted on Census Day.
4. Information to determine where each person should be counted on Census Day (according to Census residence rules). For example, interviewers will probe for persons who might have been left off the household roster; ask additional questions about persons who moved from another address on Census Day to the sample address; collect additional information for persons with multiple addresses.
5. Demographic information for each person in the household on Interview Day or Census Day, including name, date of birth, age, Hispanic Origin, race, and relationship.
6. Name and above information for any person who has moved out of the sample address since Census Day (if known).

The CCM Person Interview Reinterview (PI RI) is a quality control operation that will be conducted on 10 percent of the PI cases. The purpose of the PI RI is to confirm that the CCM PI interviewer conducted a CCM PI interview with a household member or a proxy respondent and to conduct the complete CCM PI interview as needed if the original interview seems questionable.

II. Method of Collection

The CCM Person Interview and Reinterview operations will be conducted using a computer-assisted data collection instrument on a laptop. The CCM PI will be conducted through personal interviews while the CCM PI RI will be conducted by telephone and person interviews. The CCM PI and PI RI operations will occur starting August 14, 2010 through October 9, 2010.

Definition of Terms

Components of Coverage Error—The two components of census coverage error are census omissions (missed persons or housing units) and erroneous enumerations (persons or housing units enumerated in the census that should not have been). Examples of erroneous enumerations are persons or housing units enumerated in the census that should not have been enumerated at all, persons or housing units enumerated in an incorrect location, and persons or housing units enumerated more than once (duplicates).

Net Coverage Error—Net Coverage Error is a measure of the difference between census omissions and erroneous enumerations. A positive net error indicates an undercount, while a negative net error indicates an overcount.

For more information about the Census 2010 Coverage Measurement Program, please visit the following page of the Census Bureau's Web site: *http://www.census.gov/cac/www/pdf/coverage-measurement-program.pdf.*

III. Data

OMB Control Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or Households.
Estimated Number of Respondents: 362,250 sample addresses for PI and 36,225 sample addresses for PI RI.
Estimated Time per Response: 15 minutes.
Estimated Total Annual Burden Hours: 99,619 hours.
Estimated Total Annual Cost: No cost to the respondents except for their time to respond.
Respondent's Obligation: Mandatory.
Legal Authority: Title 13, U.S. Code, Sections 141, 193, and 221.

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: June 16, 2009.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–14479 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–939

Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: June 19, 2009.

SUMMARY: The Department of Commerce (''Department'') has determined that certain tow behind lawn groomers and certain parts thereof (''lawn groomers'') from the People's Republic of China (''PRC'') are being, or is likely to be, sold in the United States at less than fair value (''LTFV'') as provided in section 735 of the Tariff Act of 1930, as amended (the ''Act''). The final dumping margins for this investigation are listed in the ''Final Determination Margins'' section below. The period covered by the investigation is October 1, 2007, through March 31, 2008.

FOR FURTHER INFORMATION CONTACT: Karine Gziryan, Thomas Martin or Zhulieta Willbrand, AD/CVD Operations, Office 4, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4081, (202) 482–3936, and (202) 482- 3147 respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department published its preliminary determination of sales at LTFV on January 28, 2009. *See Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary*

Determination of Sales at Less Than Fair Value and Postponement of Final Determination, 74 FR 4929 (January 28, 2009) (''*Preliminary Determination*''). On February 19, 2009, Jiashan Superpower Tools Co., Ltd. (''Superpower''), informed the Department that it would not participate in the verification of its information and withdrew from the investigation. *See* Letter to Secretary of Commerce, ''Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China; A–570–939; Notice by Jiashan Superpower Tools Co., Ltd.,'' dated February 19, 2009. On March 2, 2009, Princeway Furniture (Dong Guan) Co., Ltd. (''Princeway'') also informed the Department that it would not participate in the verification of its information and withdrew from the investigation, and Princeway requested that the Department remove all of its submissions from the administrative record, certify the destruction of the submissions, and certify the destruction of Princeway's submissions that are in the possession of interested parties to the proceeding. See Letter to Secretary of Commerce, ''Lawn Groomers from China'' dated March 2, 2009. On March 6, 2009, Superpower also requested that the Department remove all of its business proprietary submissions from the administrative record. *See* Letter to Secretary of Commerce, ''Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China; A–570–939; Withdrawal of Confidential Business Proprietary Information by Jiashan Superpower Tools Co., Ltd.,'' dated February 19, 2009. On March 6, 2009, Agri–Fab, Inc. (''Petitioner'') requested that the Department amend the *Preliminary Determination* with regards to Princeway. *See* Letter to Secretary of Commerce, ''Tow Behind Lawn Groomers and Parts Thereof from the People's Republic of China, Request to Reconsider and Amend Preliminary Determination of Sales at Less Than Fair Value for Princeway'' dated March 6, 2009.

On March 12, 2009, Petitioner filed its case brief. After requesting an extension, Superpower filed a case brief on March 17, 2009. On March 18, 2009, Petitioner filed its rebuttal brief. Neither Princeway nor Superpower filed a rebuttal brief. No party requested a hearing.

Scope of the Investigation

The scope of this investigation covers certain non–motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this investigation, even if the lawn groomer is designed to perform additional non–subject functions (*e.g.*, mowing).

All lawn groomers are designed to incorporate a hitch, of any configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this investigation. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigation.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.*, dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.*, a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (''broadcast spreader''), a rotating agitator that allows the media to be released at a consistent rate (''drop spreader''), or any other configuration.

Lawn dethatchers with a net fully assembled weight (*i.e.*, without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigation. Other lawn groomers–sweepers, aerators, and spreaders–with a net fully assembled weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigation.

Also included in the scope of the investigation are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units–when imported with one or more lawn grooming modules–with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigation. Modular unit chasses, imported without a lawn grooming module and with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigation. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.*, sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this investigation. For purposes of this investigation, ''unassembled lawn groomers'' consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components'':

1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
2) a sweeper brush;
3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
4) a spreader hopper;
5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
6) dethatcher tines;
7) aerator spikes, plugs, or other aerating component; or
8) a hitch, defined as a complete hitch assembly comprising of at least the

following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

The major components or parts of lawn groomers that are individually covered by this investigation under the term ''certain parts thereof'' are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (*e.g.*, churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers–sweepers, aerators, and spreaders–with a net fully assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (*e.g.*, ''drum-style'' spike aerators).

The lawn groomers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (''HTSUS'') statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this investigation.

Scope Comments

On December 30, 2008, and on January 7, 2009, Brinly–Hardy Company (''Brinly–Hardy''), a domestic producer of the merchandise under consideration, submitted comments on the scope of the investigation. Specifically, Brinly–Hardy requested that the scope be revised to define one of the eight listed ''major components,'' specifically a hitch, as a complete hitch assembly, with all necessary components. Brinly–Hardy requested that individual components such as tubing, hitch plates or pins, not be covered by the scope.

On January 12, 2009, Petitioner submitted comments in response to Brinly–Hardy's request. Petitioner agreed that a hitch should be defined, but stated that a hitch should be defined as consisting of its own major components, *i.e.*, tubing and a hitch plate, rather than all necessary components. Petitioner stated that the absence of minor components such as a hitch pin or fasteners is not intended to remove a hitch assembly from the definition of a hitch.

We have received no further comments on the scope of the investigation. Thus, we are making a final determination that hitches are defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. The revised scope language is included in the ''Scope of the Investigation'' section, above. *See* also ''Issues and Decision Memorandum for the Final Determination in the Antidumping Duty Investigation of Certain Tow Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China,'' dated concurrently with this notice, which is hereby adopted by this notice (''Issues and Decision Memorandum'') at Comment 4.

Analysis of Comments Received

All of the issues that were raised in the case and rebuttal briefs that were submitted in this investigation, and to which we have responded, are addressed in the Issues and Decision Memorandum. Appendix I to this notice contains a list of the issues that are addressed in the Issues and Decision Memorandum. The Issues and Decision Memorandum, which is a public document, is on file in the Central Records Unit, at the main Commerce Building, Room 1117, and is accessible on the Web at http://ia.ita.doc.gov/frn. The paper copy and electronic version of the memorandum are identical in content.

Changes Since the Preliminary Determination

We have made the following changes to our calculations in the *Preliminary Determination*:

1. We considered Princeway and Superpower to be part of the PRC–wide entity because, as a result of their withdrawal from the investigation and refusal to allow the Department to verify their respective submitted information, both entities failed to demonstrate their qualification for a separate rate. *See* Issues and Decision Memorandum at Comment 2.
2. For the final determination we continue to assign an AFA rate to the PRC–wide entity, which now includes Princeway and Superpower. As AFA, we have assigned the PRC–wide entity a CONNUM–specific dumping margin, *i.e.*, 386.28 percent, calculated for Superpower in the *Preliminary Determination*. *See* Issues and Decision Memorandum at Comment 2.
3. We have assigned the separate rate companies a dumping margin equal to the initiation margin. *See* Issues and Decision Memorandum at Comment 3.
4. We made a clarification to the scope language concerning the definition of hitch. *See* Issues and Decision Memorandum at Comment 4.

Adverse Facts Available

As noted in the ''Background'' section above, Superpower and Princeway withdrew from the investigation and refused to allow the Department to verify the information they had submitted in this proceeding. As a result both entities failed to demonstrate eligibility for a separate rate and thus are considered part of the PRC–wide entity.

Section 776(a)(2)(C) and (D) of the Act provides that, if an interested party significantly impedes a proceeding, or provides information that cannot be verified, the Department shall use facts otherwise available in reaching the applicable determination.

Section 776(b) of the Act authorizes the Department to use an adverse inference with respect to an interested party if the Department finds that the party failed to cooperate by not acting to the best of its ability to comply with a request for information. As the PRC–wide entity, which includes both Superpower and Princeway, failed to cooperate by not acting to the best of its ability to comply with a request for

information an adverse inference is warranted under section 776(b) of the Act.

In our *Preliminary Determination*, we calculated antidumping duty margins for both Princeway and Superpower based on their submitted information. *See Preliminary Determination*. On February 19, 2009, Superpower withdrew from the investigation. Also, on March 2, 2009, Princeway withdrew from the investigation. Thus, both Princeway and Superpower withdrew from the investigation before the Department had an opportunity to verify their respective submitted information. Therefore, because both Princeway and Superpower withdrew from the investigation and failed to allow the Department to verify their information, we find that neither has demonstrated their eligibility for separate–rate status in this investigation and, thus, both are considered part of the PRC–wide entity. *See* Section 776(a)(2)(D) of the Act. Additionally, we find that due to their failure to act to the best of their ability in responding to the Department's requests for information, Princeway and Superpower, as part of the PRC–wide entity, significantly impeded the Department's proceeding. *See* Section 776(a)(2)(C) and (D) of the Act. Further, we have determined that when selecting from among facts available, an adverse inference is warranted for the PRC–wide entity pursuant to section 776(b) of the Act.

The PRC–Wide Rate

Because we begin with the presumption that all companies within a non–market economy (''NME'') country are subject to government control and because only the companies listed under the ''Final Determination Margins'' section, below, have overcome that presumption, we are applying a single antidumping rate (*i.e.*, the PRC–wide rate) to all other exporters of subject merchandise from the PRC. These other companies did not demonstrate entitlement to a separate rate. *See*, *e.g.*, *Synthetic Indigo From the People's Republic of China; Notice of Final Determination of Sales at Less Than Fair Value*, 65 FR 25706, 25707 (May 3, 2000). The PRC–wide rate applies to all entries of subject merchandise except for entries from the companies eligible for separate rate status.

In the *Preliminary Determination*, the Department found that certain companies did not respond to our requests for information. *See Preliminary Determination*, 74 FR at 4932. We treated these PRC producers/exporters as part of the PRC–wide entity because they did not demonstrate that they operate free of government control over their export activities. *Id*. No additional information was placed on the record with respect to any of these companies after the *Preliminary Determination*. Moreover, for the reasons noted above, we also consider Superpower and Princeway to be part of the PRC–wide entity.

As noted above, section 776(a)(2) of the Act provides that, if an interested party or any other person withholds information that has been requested by the administering authority, significantly impedes a proceeding under this title, or provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination. Because the PRC–wide entity did not respond to our requests for information and because companies within the PRC–wide entity withheld information requested by the Department, and Superpower and Princeway, which are part of the PRC–wide entity, did not allow their information to be verified, pursuant to sections 776(a)(2)(A), (C), and (D) of the Act, we determine, as in the *Preliminary Determination*, that the use of facts otherwise available is appropriate to determine the PRC–wide rate.

Section 776(b) of the Act provides that, in selecting from among the facts otherwise available, the Department may employ an adverse inference if an interested party fails to cooperate by not acting to the best of its ability to comply with requests for information. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold–Rolled Flat–Rolled Carbon–Quality Steel Products From the Russian Federation*, 65 FR 5510, 5518 (February 4, 2000). *See also* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103–316, Vol. 1 (1994), at 870. We determine that, because the PRC–wide entity did not respond to our requests for information, and Superpower and Princeway, which are part of that entity, prevented the Department from verifying its information, the PRC–wide entity has failed to cooperate to the best of its ability. Therefore, we have determined that, in selecting a dumping margin from among the facts otherwise available, an adverse inference is appropriate for the PRC–wide entity.

With respect to adverse facts available (''AFA''), for the final determination, we have assigned the PRC–wide entity a CONNUM–specific dumping margin, *i.e.*, 386.28 percent, calculated for Superpower in the *Preliminary Determination*. *See* Issues and Decision Memorandum at Comment 2. No corroboration of this rate is necessary because we are relying on information obtained in the course of this investigation, rather than secondary information. *See* 19 CFR 351.308(c) and section 776(b) of the Act; *see also Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light–Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008), and accompanying Issues and Decision Memorandum at 1. In selecting a facts–available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts–available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of the respondents' customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin on an individual model which fell within the mainstream of Superpower's transactions (*i.e.*, a model that reflects sales of products that are representative of the broader range of sales used to determine U.S. price).

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and, thus, should be assigned a single antidumping duty deposit rate. It is the Department's policy to assign all exporters of merchandise subject to an investigation in an NME country this single rate unless an exporter can demonstrate that it is sufficiently independent so as to be entitled to a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sparklers From the People's Republic of China*, 56 FR 20588 (May 6, 1991), as amplified by *Notice of Final Determination of Sales at Less Than Fair Value: Silicon Carbide From the People's Republic of China*, 59 FR 22585 (May 2, 1994); *see also* 19 CFR 351.107(d).

In the *Preliminary Determination*, the Department granted separate–rate status to Superpower, Princeway, Qingdao Huatian Truck Co., Ltd. (''Huatian''), and Nantong D & B Machinery Co., Ltd. (''Nantong''). As discussed above, the Department has determined to treat

Superpower and Princeway as part of the PRC–wide entity. We note that the information that Superpower and Princeway provided to the Department to demonstrate the absence of *de facto* and *de jure* control could not be verified due to their failure to cooperate. Consequently we have not granted Superpower and Princeway separate rates.

In the *Preliminary Determination*, we found that Huatian and Nantong demonstrated their eligibility for separate–rate status. *See Preliminary Determination*, 74 FR at 4931. Since the publication of the *Preliminary Determination*, no parties commented on the separate rate determinations. We continue to find that the evidence placed on the record of this investigation by Huatian and Nantong demonstrates both a *de jure* and *de facto* absence of government control with respect to their exports of the merchandise under investigation. Thus, we continue to find that Huatian and Nantong are eligible for separate–rate status.

Normally the dumping margin for separate rate companies is determined based on the estimated weighted–average dumping margins established for exporters and producers individually investigated, excluding *de minimis* margins or margins based entirely on AFA. *See* Section 735(c)(5)(A) of the Act. In the *Preliminary Determination*, we assigned Huatian and Nantong the dumping margin established equal to a simple average of the dumping margins calculated for the two mandatory respondents, *i.e.*, Superpower and Princeway. *See Preliminary Determination*, 74 FR at 4931 and 4935. Since both Superpower and Princeway are no longer receiving a separate rate, this methodology is not appropriate. In cases where the estimated weighted–average dumping margins for all individually investigated respondents are zero, *de minimis*, or based entirely on AFA, the Department may use any reasonable method to assign a rate to the separate rate companies. *See* Section 735(c)(5)(B) of the Act. In this case, where there are no mandatory respondents receiving a calculated rate and the PRC–wide entity's rate is based upon total AFA, we find that applying the rate alleged in the petition, incorporating revisions made in Petitioner's supplemental responses, to Huatian and Nantong is both reasonable and reliable for purposes of establishing a separate rate. *See Final Determination of Sales at Less Than Fair Value: Sodium Hexametaphosphate From the People's Republic of China*, 73 FR 6479 (February 4, 2008) and the accompanying Issues and Decision Memorandum at Comment 2. Therefore, the Department will assign a separate rate to Huatian and Nantong using the initiation rate of 154.72 percent, pursuant to its practice.

The initiation margin assigned to Huatian and Nantong is based on secondary information. According to section 776 (c) of the Act, when the Department relies on secondary information, it shall, to the extent practicable, corroborate that information. During our pre–initiation analysis of the petition, we examined the information used in the petition as the basis of export price and normal value (''NV'') and, where appropriate, revised the calculations used to derive the petition dumping margins in determining the initiation dumping margins. Also, during our pre–initiation analysis, we examined information from various independent sources provided either in the petition or, based on our requests, in supplements to the petition, which corroborated various elements of the export price and NV information. For the final determination, we compared the average of the initiation margins to Superpower's CONNUM–specific margins and found that the initiation margin falls within these margins. No other information was available for corroboration purposes. Based on the foregoing, we have concluded that the initiation dumping margin is reliable and has probative value and, therefore, we consider this average dumping margin to be corroborated, to the extent practicable.

While Agri–Fab,Inc. argued in its case brief that Huatian and Nantong should receive the PRC–wide rate based on the actual rate calculated for Superpower, we have assigned the separate–rate companies the dumping margin of 154.72 percent alleged and revised in the petition. *See* Issues and Decision Memorandum at Comment 3.

Combination Rates

In the Initiation Notice, the Department stated that it would calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. See Certain Tow Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Initiation of Antidumping Duty Investigation, 73 FR 42315 (July 21, 2008) (''Initiation Notice'').

This practice is described in *Policy Bulletin 05.1*:

> {w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non–investigated firms receiving the weighted–average of the individually calculated rates. This practice is referred to as the application of ''combination rates'' because such rates apply to specific combinations of exporters and one or more producers. The cash–deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

See Policy Bulletin 05.1, ''Separate Rates Practice and Application of Combination Rates in Antidumping Investigations Involving Non–Market Economy Countries'' available on the Import Administration's website at *http://ia.ita.doc.gov/policy/index.html*. For the final determination, we continue to apply this practice.

Final Determination Margins

We determine that the following weighted–average dumping margins exist for the period October 1, 2007, through March 31, 2008:

LAWN GROOMERS FROM THE PRC

Exporter and Producer	Weighted–Average Margin (Percent)
Nantong D & B Machinery Co., Ltd.[1]	154.72
Qingdao Huatian Truck Co., Ltd., a.k.a. Qingdao Huatian Hand Truck Co., Ltd.[2]	154.72
PRC–wide Entity (including Superpower and Princeway)	386.28

[1] Nantong D & B Machinery Co., Ltd. exports and manufactures subject merchandise.
[2] Qingdao Huatian Truck Co., Ltd. exports and manufactures subject merchandise.

Disclosure

We will disclose to parties the calculations performed within five days of the date of public announcement of this determination in accordance with 19 CFR 351.224(b). For merchandise under consideration from the exporter

producer combinations listed in the table above that have been granted separate rates, we have assigned the initiation rate. Therefore, for merchandise under consideration from these exporter producer combinations, entered, or withdrawn from warehouse, for consumption on or after the publication date of this final determination, we will instruct CBP to require an antidumping cash deposit or the posting of a bond for each entry equal to 154.72 percent, as indicated above. The cash deposit rate for Superpower, Princeway, and other exporter–producer combinations is 386.28 percent, as indicated above.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing U.S Customs and Border Protection (''CBP'') to continue to suspend liquidation of all imports of subject merchandise as described in the ''Scope of the Investigation'' section, that are entered or withdrawn from warehouse, for consumption on or after January 28, 2009, which is the date of publication of the *Preliminary Determination* in the **Federal Register**. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted–average dumping margin amount by which the NV exceeds U.S. price, as follows: (1) the rate for the exporter/producer combination listed in the chart above will be the rate we have determined in this final determination; (2) for all PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the PRC–wide entity rate; and (3) for all non–PRC exporters of subject merchandise which have not received their own rate, the cash–deposit rate will be the rate applicable to the PRC exporter/producer combination that supplied that non–PRC exporter. These suspension–of-liquidation instructions will remain in effect until further notice.

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (''ITC'') of our final determination of sales at LTFV. As our final determination is affirmative, in accordance with section 735(b)(2) of the Act, the ITC will determine whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise within 45 days of this final determination. If the ITC determines that material injury or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess upon further instruction by the Department antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding APO

This notice also serves as a reminder to the parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation. This determination and notice are issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: June 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

Parties' Comments

Comment 1: Whether to retain Superpower's Business Proprietary Information (''BPI'') data

Comment 2: Whether to assign the PRC–wide rate as total adverse facts available to both mandatory respondents

Comment 3: Whether to assign the PRC–wide rate to the separate rate respondents

Comment 4: Whether to clarify the scope language for hitches

Comment 5: Whether to amend the preliminary determination for Princeway

[FR Doc. E9–14470 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–894

Certain Tissue Paper Products from the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

FINAL DETERMINATION We determine that certain tissue paper products exported to the United States from Thailand by Sunlake Décor Co., Ltd. (Sunlake)[1] are made from jumbo rolls and/or cut sheets of tissue paper produced in the People's Republic of China (PRC), and are circumventing the antidumping duty order on certain tissue paper products from the PRC, as provided in section 781(b) of the Tariff Act of 1930, as amended (the Act). *See Notice of Amended Final Determination of Sales at Less than Fair Value and Antidumping Duty Order: Certain Tissue Paper Products from the People's Republic of China*, 70 FR 16223 (March 30, 2005) (*Order*).

EFFECTIVE DATE: June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Gemal Brangman or Brian Smith, 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) 482–3773 or (202) 482–1776, respectively.

SUPPLEMENTARY INFORMATION:

Background

On April 30, 2009, the Department of Commerce (the Department) issued its affirmative preliminary determination that certain tissue paper products produced in, and exported from, Thailand by Sunlake using PRC–origin jumbo rolls and/or cut sheets of tissue paper are circumventing the antidumping duty order on tissue paper from the PRC, as provided in section 781(b) of the Act. *See Certain Tissue Paper from the People's Republic of China: Affirmative Preliminary Determination of Circumvention of the Antidumping Duty Order*, 74 FR 20915 (May 6, 2009) (*Preliminary Determination*).

On May 1, 2009, the Department notified the U.S. International Trade Commission (ITC) of its affirmative preliminary determination of

[1] Sunlake is a company located in Thailand.

circumvention of the antidumping duty order on certain tissue paper products from the PRC by Sunlake, in accordance with section 781(e) of the Act. On May 27, 2009, the ITC notified the Department that it would not be requesting consultations concerning the Department's preliminary circumvention finding, pursuant to section 781(e) of the Act and 19 CFR 351.225(f)(7)(i)(B).

After receipt of notification from the ITC and consistent with the *Preliminary Determination*, on May 29, 2009, we instructed U.S. Customs and Border Protection (CBP) to suspend liquidation and to require a cash deposit of estimated duties, at the rate of 112.64 percent, on all unliquidated entries of certain tissue paper products produced in and exported from Thailand by Sunlake that were entered or withdrawn from warehouse, for consumption on or after October 21, 2008, the date of initiation of the circumvention inquiry.

We invited interested parties to comment on the *Preliminary Determination*. Comments were due June 5, 2009; however, no interested party submitted comments. We have conducted this inquiry in accordance with section 781(b) of the Act.

Scope of the Antidumping Duty Order

The tissue paper products subject to this order are cut–to-length sheets of tissue paper having a basis weight not exceeding 29 grams per square meter. Tissue paper products subject to this order may or may not be bleached, dye–colored, surface–colored, glazed, surface decorated or printed, sequined, crinkled, embossed, and/or die cut. The tissue paper subject to this order is in the form of cut–to-length sheets of tissue paper with a width equal to or greater than one–half (0.5) inch. Subject tissue paper may be flat or folded, and may be packaged by banding or wrapping with paper or film, by placing in plastic or film bags, and/or by placing in boxes for distribution and use by the ultimate consumer. Packages of tissue paper subject to this order may consist solely of tissue paper of one color and/or style, or may contain multiple colors and/or styles.

The merchandise subject to this order does not have specific classification numbers assigned to them under the Harmonized Tariff Schedule of the United States (HTSUS). Subject merchandise may be under one or more of several different subheadings, including: 4802.30; 4802.54; 4802.61; 4802.62; 4802.69; 4804.31.1000; 4804.31.2000; 4804.31.4020; 4804.31.4040; 4804.31.6000; 4804.39; 4805.91.1090; 4805.91.5000; 4805.91.7000; 4806.40; 4808.30; 4808.90; 4811.90; 4823.90; 4820.50.00; 4802.90.00; 4805.91.90; 9505.90.40. The tariff classifications are provided for convenience and customs purposes; however, the written description of the scope of this order is dispositive.[2]

Excluded from the scope of this order are the following tissue paper products: (1) tissue paper products that are coated in wax, paraffin, or polymers, of a kind used in floral and food service applications; (2) tissue paper products that have been perforated, embossed, or die–cut to the shape of a toilet seat, *i.e.*, disposable sanitary covers for toilet seats; (3) toilet or facial tissue stock, towel or napkin stock, paper of a kind used for household or sanitary purposes, cellulose wadding, and webs of cellulose fibers (HTSUS 4803.00.20.00 and 4803.00.40.00).

Scope of the Circumvention Inquiry

The products covered by this inquiry are tissue paper products, as described above in the ''Scope of the Antidumping Duty Order'' section, which are produced in Thailand from PRC–origin jumbo rolls and/or cut sheets of tissue paper, and exported to the United States from Thailand by Sunlake.

Statutory Provisions Regarding Circumvention

Section 781(b) of the Act provides that the Department may find circumvention of an antidumping duty order when merchandise of the same class or kind subject to the order is completed or assembled in a foreign country other than the country to which the order applies. In conducting circumvention inquiries under section 781(b) of the Act, the Department relies upon the following criteria: (A) merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is subject to an antidumping duty order; (B) before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which is subject to the order or produced in the foreign country that is subject to the order; (C) the process of assembly or completion in the foreign country referred to in (B) is minor or insignificant; (D) the value of the merchandise produced in the foreign country to which the antidumping duty order applies is a significant portion of the total value of the merchandise exported to the United States; and (E) the administering authority determines that action is appropriate to prevent evasion of such order.

The Department's questionnaire issued to Sunlake was designed to elicit information for purposes of conducting both qualitative and quantitative analyses in accordance with the criteria enumerated in section 781(b) of the Act, as outlined above. This approach is consistent with our analyses in prior circumvention inquiries. *See*, *e.g.*, *Certain Tissue Paper Products From the People's Republic of China: Affirmative Final Determination of Circumvention of the Antidumping Duty Order*, 73 FR 57591 (October 3, 2008); and *Circumvention and Scope Inquiries on the Antidumping Duty Order on Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Partial Affirmative Final Determination of Circumvention of the Antidumping Duty Order, Partial Final Termination of Circumvention Inquiry and Final Rescission of Scope Inquiry*, 71 FR 38608 (July 7, 2006). Sunlake failed to provide any of the information requested in the Department's questionnaire.

Final Determination

Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested, subject to sections 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, the Department shall, subject to section 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Furthermore, section 776(b) of the Act provides that, if the Department finds that an interested party ''has failed to cooperate by not acting to the best of its ability to comply with a request for information,'' the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate ''to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.'' *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H. Rep. No. 103–316, Vol. 1, at 870 (1994). Furthermore, ''affirmative evidence of bad faith on the part of a respondent is not required before the Department may

[2] On January 30, 2007, at the direction of CBP, the Department added the following HTSUS classifications to the AD/CVD module for tissue paper: 4802.54.3100, 4802.54.6100, and 4823.90.6700. However, we note that the six-digit classifications for these numbers were already listed in the scope.

make an adverse inference.'' *See Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27340 (May 19, 1997). *See also Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003).

As discussed in detail in the *Preliminary Determination*, 74 FR at 20916–20918, Sunlake refused to respond to the Department's questionnaire despite being given ample opportunity to do so by the Department. Thus, pursuant to sections 776(a)(2)(A), (B), and (C) of the Act, the Department found that the use of facts available was appropriate for Sunlake in this circumvention proceeding. Furthermore, the Department found that Sunlake had not acted to the best of its ability in this circumvention proceeding within the meaning of section 776(b) of the Act. Accordingly, we preliminarily applied adverse facts available (AFA) to Sunlake. Specifically, we preliminarily considered all of Sunlake's exports of tissue paper products from Thailand to be of PRC origin and concluded that Sunlake is circumventing the *Order*. We also assigned Sunlake a margin of 112.64 percent, which is the highest corroborated rate on the record in any completed segment of the tissue paper proceeding.

No party filed comments objecting to the Department's *Preliminary Determination* and no further information has come to the Department's attention warranting reconsideration of that determination. Therefore, we continue to find that the application of facts available is necessary pursuant to section 776(a) of the Act, and that Sunlake has failed to act to the best of its ability in this circumvention proceeding, warranting the use of an adverse inference under section 776(b) of the Act. Thus, as AFA, we continue to determine that all of Sunlake's exports of tissue paper products from Thailand to the United States are, in fact, of PRC origin, and that Sunlake is circumventing the *Order*.

Accordingly, for this final determination, we are applying to Sunlake a margin of 112.64 percent, as AFA. This margin is the highest rate on the record in any completed segment of this proceeding (*i.e.*, the LTFV investigation, and the first and second administrative reviews) and it has been corroborated in accordance with section 776(c) of the Act, as discussed in detail in the *Preliminary Determination*, 74 FR at 20918.

Suspension of Liquidation and Cash Deposit Requirement

In accordance with section 19 CFR 351.225(l), the Department will direct CBP to continue to suspend liquidation and to require a cash deposit of estimated duties, at the rate of 112.64 percent, on all unliquidated entries of certain tissue paper products produced in and exported from Thailand by Sunlake that were entered, or withdrawn from warehouse, for consumption on or after October 21, 2008, the date of initiation of the circumvention inquiry.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with section 351.305 of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and terms of an APO is a violation which is subject to sanction.

This affirmative final circumvention determination is published in accordance with section 781(b) of the Act and 19 CFR 351.225.

Dated: June 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

[FR Doc. E9–14359 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Final Results and Partial Rescission of the 13th Antidumping Duty Administrative Review and New Shipper Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) is conducting the administrative review (AR) and new shipper reviews (NSRs) of the antidumping duty order on fresh garlic from the People's Republic of China (PRC) covering the period of review (POR) of November 1, 2006 through October 31, 2007. As discussed below, we determine that sales have been made in the United States at prices below normal value (NV) with respect to certain exporters who participated fully and are entitled to a separate rate in the AR or NSRs. In addition, we are rescinding the NSRs for two companies. Finally, the Department is rescinding the antidumping duty AR of companies that timely certified that they had no shipments of subject merchandise to the United States during the POR. We intend to instruct U.S. Customs and Border Protection (CBP) to assess antidumping duties on entries of subject merchandise during the POR for which importer-specific assessment rates are above *de minimis.*

DATES: *Effective Date:* June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Scott Lindsay, Nicholas Czajkowski, or Summer Avery, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–0780, (202) 482–1395, and (202) 482–4052, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 2008, the Department published in the **Federal Register** the preliminary results of the AR and NSRs of the antidumping duty order on fresh garlic from the PRC. *See Fresh Garlic from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative and New Shipper Reviews and Intent to Rescind, in Part, the Antidumping Duty Administrative and New Shipper Reviews,* 73 FR 74462 (December 8, 2008) (*Preliminary Results*). Since the *Preliminary Results,* the following events have occurred.

Shandong Chenhe International Trading Co., Ltd. (Chenhe) filed letters on December 12 and December 31, requesting that the Department rescind this AR with respect to Chenhe and remove it from the list of companies subject to the PRC-wide rate, as determined in the *Preliminary Results.* On December 15, Shenzhen Greening Trading Co., Ltd. (Greening) also filed a letter seeking removal from the list of companies subject to the PRC-wide rate and revised publication of the *Preliminary Results.* On December 18, the Department notified parties that case briefs would be due seven days after the last verification report was issued. On December 19 and 23, the Fresh Garlic Producers Association (FGPA) and its individual members (Christopher Ranch LLC, the Garlic Company, Valley Garlic, and Vessey and Company, Inc.) (collectively, Petitioners), filed letters in

response to those filed by Chenhe and Greening. On January 14, 2009, Petitioners filed additional surrogate value information.

On February 26, the Department extended the time limit for completion of the final results of this administrative review by 60 days. *See Fresh Garlic from the People's Republic of China: Extension of Time Limits for Final Results of the Antidumping Duty Administrative Review and New Shipper Reviews,* 74 FR 8774 (February 26, 2009).

On March 18, the Department issued a memorandum proposing, and inviting interested parties to comment in their case briefs on, revised assessment and cash deposit methodologies with respect to the separate rate companies and PRC-wide entity in these reviews. *See* Letter to All Interested Parties Re: The 2006/2007 Administrative Review of Garlic from the People's Republic of China (March 18, 2009) (*Per Unit Memorandum*).

The Department conducted verification of the AR and NSR respondents from March 2 through March 14. On April 20 and 21, the Department issued its verification reports. On April 21, the Department notified parties that case briefs were due April 28. In response to requests filed by the AR and NSR respondents and Petitioners on April 23 and 24, respectively, the Department extended the deadlines for case briefs to May 1.

On April 29, Chenhe submitted a case brief. On May 1, 2009, Petitioners, Zhengzhou Yuanli Trading Co. Ltd. (Yuanli), Ningjin Ruifeng Foodstuff Co., Ltd. (Ningjin Ruifeng), as well as Weifang Shennong Foodstuff Co., Ltd. (Weifang Shennong), Anqiu Friend Food Co. Ltd. (Anqiu Friend), and Anqiu Haoshun Trade Co., Ltd. (Haoshun) (collectively, WAA), submitted case briefs. After reviewing the case briefs, the Department instructed WAA to re-file their case briefs because they contained untimely new factual information. WAA filed the final versions of their redacted case briefs on May 7. On May 6 and May 8, Yuanli, Petitioners, and WAA submitted rebuttal briefs. On May 28, the Department instructed Yuanli to re-file its case brief and Petitioners to re-file their rebuttal brief because they contained untimely new factual information. Yuanli and Petitioners re-filed their case and rebuttal briefs, respectively, on May 29.

Scope of the Order

The products covered by this Order are all grades of garlic, whole or separated into constituent cloves, whether or not peeled, fresh, chilled, frozen, provisionally preserved, or packed in water or other neutral substance, but not prepared or preserved by the addition of other ingredients or heat processing. The differences between grades are based on color, size, sheathing, and level of decay. The scope of this order does not include the following: (a) Garlic that has been mechanically harvested and that is primarily, but not exclusively, destined for non-fresh use; or (b) garlic that has been specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed. The subject merchandise is used principally as a food product and for seasoning. The subject garlic is currently classifiable under subheadings 0703.20.0010, 0703.20.0020, 0703.20.0090, 0710.80.7060, 0710.80.9750, 0711.90.6000, and 2005.90.9700 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this order is dispositive. In order to be excluded from the Order, garlic entered under the HTSUS subheadings listed above that is (1) mechanically harvested and primarily, but not exclusively, destined for non-fresh use or (2) specially prepared and cultivated prior to planting and then harvested and otherwise prepared for use as seed must be accompanied by declarations to CBP to that effect.

Analysis of Comments Received

Issues raised in the case and rebuttal briefs by parties to this proceeding and to which we have responded are listed in Appendix 1 to this notice and addressed in the Issues and Decision Memorandum (Issues and Decision Memorandum), which is hereby adopted by this notice.[1] Parties can find a complete discussion of the issues raised in these AR and NSRs and the corresponding recommendations in this public memorandum, which is on file in the Central Records Unit (CRU), Room 1117 of the main Department building. In addition, a copy of the Issues and Decision Memorandum can be accessed directly on our Web site at *http://ia.ita.doc.gov/*. The paper copy and electronic version of the Issues and Decision Memorandum are identical in content.

Final Partial Rescission of Administrative Review

In the *Preliminary Results,* the Department preliminarily rescinded the administrative review with respect to the following three companies: Jinan Farmlady Trading Co., Ltd. (Jinan Farmlady), Qingdao Tiantaixing Foods Co., Ltd. (Qingdao Tiantaixing), and Qingdao Xintianfeng Foods Co., Ltd. (Qingdao Xintianfeng). Jinan Farmlady, Qingdao Tiantaixing, and Qingdao Xintianfeng reported that they had no shipments of subject merchandise to the United States during the POR. *See Preliminary Results,* 73 FR at 74465. As we stated in the *Preliminary Results,* our examination of shipment data from CBP for the three no-shipment companies confirmed that there were no entries of subject merchandise which they exported during the POR. *Id.* We also received no comments or information to change our preliminary rescission. Therefore, we are rescinding this administrative review with respect to all three aforementioned companies.

Final Rescission of New Shipper Review With Respect to Anqiu Haoshun

In the *Preliminary Results,* the Department preliminarily rescinded Haoshun's new shipper review. *See Preliminary Results,* 73 FR at 74465. Based on our analysis of arguments made by the parties, the Department will not change its preliminary rescission. Therefore, we are rescinding this new shipper review with respect to Haoshun. (*See* ''Bona Fides Analysis'' section below; Comment 10 of the accompanying Issues and Decision Memorandum; and the memorandum from Scott Lindsay to Barbara Tillman, *Final Results of Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Bona Fide Analysis of Anqiu Haoshun Trade Co., Ltd.'s Sale* (June 8, 2009) (Haoshun Final Bona Fide Memorandum), and Haoshun Comments Memorandum.)

Bona Fides Analysis

As noted in the *Preliminary Results,* while conducting a review, particularly a review where a company's margin would be based on a single sale, the Department examines price, quantity, and other circumstances associated with the sale under review, and must determine if the sale was based on

[1] In addition, due to the proprietary nature of much of the information involved in company-specific discussions, the Department has found it necessary to address certain issues in separate memoranda. *See Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Bona Fides Comments Memorandum for Ningjin Ruifeng Foodstuff Co., Ltd.* (Ningjin Ruifeng Comments Memorandum), *Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China (PRC): Bona Fides Comments Memorandum for Anqiu Haoshun Foodstuff Co., Ltd.* (Haoshun Comments Memorandum), and the three company-specific memoranda referenced in the ''Bona Fides Analysis'' section below.

normal commercial considerations and presents an accurate representation of the company's normal business practices. If the Department determines that the price was not based on normal commercial considerations or is atypical of the respondent's normal business practices, including other sales of comparable merchandise, the sale may be considered non-*bona fide.*

In the *Preliminary Results,* the Department preliminarily concluded that the single sale made by Haoshun during the POR was a not a *bona fide* commercial transaction and preliminarily rescinded the NSR with respect to Haoshun. In addition, the Department preliminarily found the sales made by Yuanli and Ningjin Ruifeng to be *bona fide* commercial transactions. Petitioners, Respondents, Yuanli, and Ningjin Ruifeng have submitted extensive arguments regarding the Department's preliminary *bona fides* analyses of Haoshun's, Yuanli's and Ningjin Ruifeng's new shipper sales. In addition, these parties have submitted arguments as to whether the Department should rescind each company's NSR in these final results. Most of the parties' arguments are based on information which is business proprietary. Thus, the parties' comments are fully discussed in the Haoshun Comments Memorandum, Ningjin Ruifeng Comments Memorandum, and *Final Results of Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Bona Fide Analysis of Zhengzhou Yuanli Trading Co. Ltd's Sale* (June 8, 2009) (Yuanli Final Bona Fide Memorandum).

Based on the totality of the circumstances as discussed in the memoranda addressing *bona fides* issues, for these final results, the Department continues to find the price and quantity of Haoshun's single POR sale to be unreasonable and atypical, and therefore find the sale to be not *bona fide.* Thus, the Department has rescinded the NSR with respect to Haoshun. In addition, we determine that the new shipper sale made by Ningjin was not a *bona fide* commercial transaction because Ningjin failed to establish payment terms while negotiating its U.S. sale, the quantity of garlic sold was unreasonably low, and there is other evidence that this transaction may not have been made on an arm's-length basis. Thus, the Department has also rescinded the NSR with respect to Ningjin. Finally, we continue to find that Yuanli's sales was *bona fide.* Given the proprietary nature of the underlying data used to formulate the Department's analysis and determinations, *see* the Issues and Decision Memorandum at Comment 10, Haoshun Final Bona Fide Memorandum, Haoshun Comments Memorandum, *Final Results of Antidumping Duty New Shipper Review of Fresh Garlic from the People's Republic of China: Bona Fide Analysis of Ningjin Ruifeng Foodstuff Co., Ltd.'s Sale* (June 8, 2009), Ningjin Ruifeng Comments Memorandum, and Yuanli Final Bona Fide Memorandum, for details of the proprietary data that support the decisions contained herein.

Changes Since the Preliminary Results

Based on a review of the record as well as comments received from parties regarding our *Preliminary Results,* we have made revisions to the margin calculations for Anqiu Friend, Weifang Shennong, and Yuanli. Specifically, the Department will use an average of the financial ratios of ADF Foods Ltd. (ADF); Tata Tea Ltd. (Tata Tea); and Limtex to value the factory overhead (FOH), selling, general & administrative (SG&A) expenses, and profit used to calculate NV. (*See* 19 CFR 351.408(c)(4).) We note that using an average of three Indian processors' data will allow us to calculate financial ratios that better reflect the broader experience of the surrogate industry. Moreover, as ADF's and Tata Tea's production processes are more comparable to that of peeled garlic, which comprises an increasing share of all PRC garlic imports, and Limtex's production process is comparable to that of non-processed whole garlic bulbs, which continue to comprise a large share of PRC garlic imports nonetheless, the resulting financial ratios will be a better surrogate for the garlic industry in the PRC as a whole. *See* Issues and Decision Memorandum at Comment 3. *See also Administrative Review and New Shipper Review of Fresh Garlic from the People's Republic of China: Surrogate Values for the Final Results* (*Final Surrogate Values Memorandum*).

As a result of the revisions made to Anqiu Friend's and Weifang Shennong's company-specific margins, the margin calculated for the four separate rate companies, Jinxiang Dongyun Freezing Storage Co., Ltd. (Jinxiang Dongyun), Qingdao Saturn International Trade Co., Ltd. (Qingdao Saturn), Qufu Dongbao Import & Export Trade Co., Ltd. (Qufu Dongbao), and Shanghai LJ International Trading Co., Ltd. (Shanghai LJ), has also changed. For all changes to the calculations for Anqiu Friend, Weifang Shennong, and Yuanli, see the Issues and Decision Memorandum and the company-specific analysis memoranda.

With respect to the surrogate value for paper labels, information on the record indicates that the paper labels used by respondents appear to be a self-adhesive rectangular sheet, similar to the description of the Indian HTS #4811.41.00. Thus, in accordance with our surrogate value selection criteria, the Department finds that in this case the Indian HTS #4811.41.00 represents the best surrogate value based on the available information on the record and we have changed our surrogate value calculations accordingly. *See* Issues and Decision Memorandum at Comment 6. *See also Final Surrogate Values Memorandum.*

Lastly, following the methodologies established in the aforementioned *Per-Unit Memorandum* and consistent with the Department's practice, we are calculating per-unit cash deposit and assessment rates for the separate rate companies and companies that are part of the PRC-wide entity. *See Per-Unit Memorandum, Final Results of the Administrative Review of Fresh Garlic from the People's Republic of China: Separate Rate Companies and PRC-Wide Entity—Per-Unit Assessment Rates* (June 8, 2009), and Issues and Decision Memorandum at Comment 8. *See also Honey from the People's Republic of China: Final Results and Rescission, In Part, of Aligned Antidumping Duty Administrative Review and New Shipper Review,* 73 FR 42321 (July 21, 2008).

Final Results of Reviews

As a result of our reviews, we determine that the following margins exist for the period November 1, 2006 through October 31, 2007:

Manufacturer/Exporter	Weight-Averaged margin (percent)
Fresh Garlic from the PRC 2006–2007 Administrative Review	
Anqiu Friend Food Co., Ltd.	64.78
Weifang Shennong Foodstuff Co., Ltd	80.69
Jinxiang Dongyun Freezing Storage Co., Ltd	72.74
Qingdao Saturn International Trade Co., Ltd	72.74
Qufu Dongbao Import & Export Trade Co., Ltd	72.74
Shanghai LJ International Trading Co., Ltd	72.74
PRC-wide Rate (*see* Appendix 2)	376.67

Manufacturer/Exporter	Weight-Averaged margin (percent)
Fresh Garlic from the PRC 2006–2007 New Shipper Review	
Exported and Produced by Zhengzhou Yuanli Trading Co., Ltd	120.18

Disclosure

We will disclose the calculations used in our analysis to parties to these proceedings within five days of the date of publication of this notice. *See* 19 CFR 351.224(b).

Assessment Rates

Consistent with the final results of the 12th NSR review of Fresh Garlic from the PRC, we will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR. *See Fresh Garlic from the People's Republic of China: Final Results and Rescission, in Part, of Twelfth New Shipper Reviews,* 73 FR 56550, 56552 (September 29, 2008) (*12th NSR of Fresh Garlic from the PRC*). Therefore, the Department will determine, and CBP shall assess, antidumping duties on all appropriate entries pursuant to section 751(a)(2)(A) of the Act and 19 CFR 351.212(b)(1). The Department will issue appropriate assessment instructions directly to CBP 15 days after publication of the final results of this review. For assessment purposes, we calculated importer-specific assessment rates for fresh garlic from the PRC. Specifically, we divided the total dumping margins for each importer by the total quantity of subject merchandise sold to that importer during the POR to calculate a per-unit assessment amount. We will direct CBP to assess importer-specific assessment rates based on the resulting per-unit (*i.e.,* per kilogram) amount on each entry of the subject merchandise during the POR if any importer-specific assessment rate calculated in the final results of this review is above *de minimis.*

Moreover, as noted above, the Department is calculating per-unit cash deposit and assessment rates for separate rate companies and companies that are part of the PRC-wide entity. Using CBP data, we totaled the quantity and value of the entries made by the four separate rate companies to derive a weighted average unit value (AUV), which we then multiplied by the separate rate to calculate a per-unit assessment amount. For companies determined to be part of the PRC-wide entity, the Department employed the methodology discussed above, except we calculated an AUV exclusive of entries from the two mandatory respondents and the four separate rate companies, and then multiplied the AUV by the PRC-wide rate.

Cash Deposit Requirements

Consistent with the final results of the *12th NSR of Fresh Garlic from the PRC,* we have established and will collect a per kilogram cash-deposit amount which will be the per-unit equivalent of the company-specific dumping margin published in the final results of these reviews. The following cash deposit requirements will be effective upon publication of the final results of these reviews for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results, as provided by section 751(a)(1) of the Act: (1) For subject merchandise exported by Anqiu Friend and exported by Weifang Shennong the cash deposit rates will be the per unit rates determined in the final results of the administrative review; (2) for subject merchandise produced and exported by Yuanli, the cash deposit rates will be the per unit rate determined in the final results of the new shipper review; (3) for subject merchandise exported by but not produced by Yuanli, the cash deposit rate will be the PRC-wide rate; (4) for subject merchandise exported by Jinxiang Dongyun, Qingdao Saturn, Qufu Dongbao, and Shanghai LJ, the cash deposit rates will be the per unit rates determined in the final results of the administrative review; (5) for previously-investigated or previously-reviewed PRC and non-PRC exporters who received a separate rate in a prior segment of the proceeding (which were not reviewed in this segment of the proceeding), the cash deposit rate will continue to be the rate assigned in that segment of the proceeding; (6) for subject merchandise exported by Haoshun, Ningjin, Chenhe, Greening and all other PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the per-unit PRC-wide rate; and (7) the cash deposit rate for non-PRC exporters of subject merchandise which have not received their own rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter. These requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Orders

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These administrative and new shipper reviews and notice are issued and published in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213 and 351.214.

Dated: June 8, 2009.

Carole Showers,

Acting Deputy Assistant Secretary for Policy and Negotiations.

Appendix 1

Comment 1: Intermediate Input Methodology.
Comment 2: Garlic Bulb Surrogate Value.
Comment 3: Surrogate Financial Ratios.
Comment 4: Timing of Petitioners' Surrogate Value Submission.
Comment 5: Water Valuation.
Comment 6: Paper Label Valuation.
Comment 7: Yield Factor Valuation.
Comment 8: Per Unit Assessment.
Comment 9: Anqiu Friend's Affiliations.
Comment 10: *Bona Fides* of New Shipper Companies.
Comment 11: Rescission of Chenhe and Greening.

Appendix 2

The following companies subject to this antidumping duty administrative review did not apply for a separate rate and thus have been assigned the PRC-wide rate for their imports of subject merchandise during the POR.

1. APS Qingdao.

2. American Pioneer Shipping.
3. Beijing Jim International Food Co., Ltd.
4. Burgeon International Inc.
5. Fujian Meitan Import & Export Xiamen Corporation.
6. Jining Meiya Foods Co., Ltd.
7. Jining Trans-High Trading Co., Ltd.
8. Jinxian County Huaguang Food Import & Export Co., Ltd.
9. Junan Auto Imp and Exp Co., Ltd.
10. Linyi Futai Foodstuff Co., Ltd.
11. Marnex (HongKong) Company.
12. New Future International Trading Co.
13. Omni Decor China Ltd.
14. Qingdao Rock-It Sports Inc.
15. Sea Trade International Incorporated.
16. Shandong Chengshun Farm Produce Trading Co., Ltd.
17. Shandong Chenhe Int'l Trading Co., Ltd.
18. Shandong Dongsheng Eastsun Foods Co., Ltd.
19. Shandong Garlic Company.
20. Shanghai New Long March International Trade Co., Ltd.
21. Shenzhen Greening Trading Co., Ltd.
22. Shenzhen Imp & Exp. Ltd.
23. T&S International, LLC.
24. Taiwan Wachine Co., Ltd.
25. Taizhou Overseas Int'l Ltd.

[FR Doc. E9–14358 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–891)

Notice of Partial Rescission, Intent To Rescind and Extension of Preliminary Results of Antidumping Duty Administrative Review: Hand Trucks and Certain Parts Thereof From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

SUMMARY: In response to requests from Gleason Industrial Products, Inc., and Precision Products, Inc. (collectively, petitioners), the U.S. Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China for the companies listed below for the period December 1, 2007, through November 30, 2008. No other interested party requested a review for this period of review. For the reasons discussed below, the Department is partially rescinding this administrative review with respect to two companies and intends to rescind the review with respect to a third company.

EFFECTIVE DATES: June 19, 2009.

FOR FURTHER INFORMATION CONTACT: David Cordell or Robert James, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0408 or (202) 482–0649 respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 1, 2008, the Department published in the Federal Register its notice of opportunity to request an administrative review of the antidumping duty order on hand trucks and certain parts thereof from the People's Republic of China. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 73 FR 72764 (December 1, 2008). On December 30, 2008, in accordance with 19 CFR 351.213(b)(1), petitioners requested that the Department conduct an administrative review for the following exporters of the subject merchandise: Qingdao Huatian Hand Truck Co., Ltd. (Huatian); True Potential Co., Ltd. (True Potential); Since Hardware (Guangzhou) Co., Ltd. (Since Hardware); and New-Tec Integration (Xiamen) Co., Ltd. (New-Tec).

On February 2, 2009, the Department published in the Federal Register a notice of the initiation of the antidumping duty administrative review of hand trucks from the PRC for the period December 1, 2007, through November 30, 2008, with respect to the four companies named above. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 74 FR 5821 (February 2, 2009) (*Initiation Notice*).

On February 19, 2009, the Department issued a memorandum indicating its intention to select mandatory respondents based upon U.S. Customs and Border Protection data for U.S. imports of hand trucks from the PRC during the POR. On February 13, 2009 petitioners provided comments to the Department in which they requested that the Department select Huatian and True Potential as mandatory respondents. On March 4, 2009, Huatian and True Potential both provided the Department with separate rate certifications, thereby meeting the 30-day deadline for submission of such certifications as detailed in the *Initiation Notice*. On March 16, 2009, the Department determined that it was not practicable to examine individually all of the companies covered by the 2007–2008 administrative review. The Department stated it was limiting its examination to the largest producers/exporters that could reasonably be reviewed, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Tariff Act). The Department selected Huatian and True Potential as the two respondents required to submit a full questionnaire response in the administrative review. *See* memorandum titled ''Respondent Selection Memorandum: Antidumping Duty Administrative Review of Hand Trucks and Parts Thereof from the People's Republic of China'' dated March 16, 2009.

Huatian and True Potential filed their section A responses on April 13, 2009 and their section C and D responses on April 28, 2009. On May 1, 2009, pursuant to 19 CFR 351.213(d)(1), petitioners withdrew their requests for review of Huatian and True Potential but did not withdraw the request with respect to Since Hardware and New-Tec

On March 4, 2009, New-Tec provided certification that New-Tec did not ship to the United States any subject merchandise during the POR and requested the Department rescind the review with respect to New-Tec. On April 21, 2009, the Department's no shipments inquiry with respect to New-Tec was posted by CBP. *See* message number 9120201 dated April 21, 2009. The Department has received no information from that inquiry, and has found no evidence of shipments of subject merchandise to the United States by New-Tec of subject merchandise during the POR.

Rescission of Review

Section 351.213(d)(1) of the Department's regulations provide that the Department will rescind an administrative review if the party that requested the review withdraws its request for review within 90 days of the date of publication of the notice of initiation of the requested review, or withdraws at a later date if the Department determines that it is reasonable to extend the time limit for withdrawing the request. The Department initiated the administrative review of the antidumping duty order on February 2, 2009. Petitioners withdrew their request for review of Huatian and True Potential on May 1, 2009. As the party that requested this review has timely withdrawn the

requests for review, this review is rescinded with respect to Huatian and True Potential.

Intent To Rescind Review in Part

On March 4, 2009, New-Tec submitted a certification of no shipments of subject merchandise to the United States. We have not received comments on New-Tec's submission. We made inquires with CBP as to whether any shipments were entered with respect to New-Tec during the POR. See message number 9120201 dated April 21, 2009. We received no response to that inquiry. We examined CBP information used in the selection of the mandatory respondents to further confirm no shipments by New-Tec during the POR. *See* ''Letter from Robert James to All Interested Parties'' dated February 9, 2009, containing CBP data on all entries of hand trucks and certain parts thereof during the POR. Based on the above, we preliminarily find that New-Tec had no shipments of subject merchandise during the POR, and we intend to rescind the review with respect to New-Tec pursuant to 19 CFR 351.213(d)(3).

Interested parties may submit comments on the Department's intent to rescind with respect to New-Tec no later than 30 days after the date of publication of this preliminary notice. The Department will issue the final notice, which will include the results of its analysis of issues raised in any such comments, in the preliminary results of the review.

Since Hardware

Because the Department is rescinding the review with respect to Huatian and True-Potential, and because the Department intends to rescind the review with respect to New-Tec, the Department has decided to make Since Hardware the mandatory respondent in this review. Since Hardware was issued a complete questionnaire to respond to on May 5, 2009. On May 26, 2009, Since Hardware entered its notice of appearance in this segment of the proceeding. The Department will issue appropriate assessment instructions regarding the rescinded companies directly to U.S. Bureau of Customs and Border Protection.

Extension of Preliminary Results

The Department has determined that it is not practicable to complete the preliminary results by the current 245-day deadline of September 2, 2009. The Department selected Since Hardware as a mandatory respondent on May 5, 2009, four days after petitioners withdrew their request for a review of the two previously-selected mandatory respondents Huatian and True Potential. *See* Memorandum to the File, ''Re: Selection of New Mandatory Respondent,'' dated May 5, 2009. Because May 5, 2009 was more than three months subsequent to the initiation of this review, we will need additional time to analyze Since Hardware's response and complete the antidumping calculation. Therefore, in accordance with section 751(a)(3)(A) of the Act, and 19 CFR 351.213(h)(2), the Department is extending the time limit for the preliminary results by 120 days to December 31, 2009.

Notification to Importers

This notice serves as a reminder to importers of their responsibility under section 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's assumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

Notification Regarding APOs

This notice also serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with section 351.305(a)(3) of the Department's regulations. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is issued and published in accordance with section 777(i)(1) of the Tariff Act, and 19 CFR 351.213(d)(4) of the Department's regulations.

Dated: June 12, 2009.

John M. Andersen,

Acting Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. E9–14472 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP86

Marine Mammals; File No.1032–1917

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

ACTION: Notice; receipt of application for amendment.

SUMMARY: Notice is hereby given that Robert A. Garrott, Ph.D, Ecology Department, Montana State University, 310 Lewis Hall, Bozeman, MT, 59717, has applied for an amendment to Scientific Research Permit No.1032–1917.

DATES: Written, telefaxed, or e-mail comments must be received on or before July 20, 2009.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the Features box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov/*, and then selecting File No. 1032–1917–01 from the list of available applications.

These documents are also available upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 713–2289; fax (301) 427–2521; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562) 980–4001; fax (562) 980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 427–2521, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period.

Comments may also be submitted by e-mail. The mailbox address for providing e-mail comments is *NMFS.Pr1Comments@noaa.gov*. Include in the subject line of the e-mail

comment the following document identifier: File No. 1032–1917–01.

FOR FURTHER INFORMATION CONTACT: Kate Swails or Tammy Adams, (301) 713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 1032–1917 is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

Permit No. 1032–1917, issued on September 4, 2007 (72 FR 51621), authorizes the permit holder to continue long-term studies of the Weddell seal (*Leptonychotes weddellii*) population in the Erebus Bay, McMurdo Sound, Ross Sea, and White Island areas of Antarctica. Up to 325 adults and 800 pups may be captured annually. Animals may be weighed, tissued sampled, flipper tagged, and released. Annually up to 2000 Weddell, 50 crabeater (*Lobodon carcinophagus*), and 50 leopard (*Hydrurga leptonyx*) seals may be incidentally disturbed as a result of the research activities. The permit authorizes up to 4 (2 adults and 2 pups) Weddell seal research-related mortalities annually. The permit holder is requesting the permit be amended to include authorization for use of a small temperature logging tag on pups. The additional tag would be used to measure the amount of time pups spend in the water. This information would be used as part of the mass dynamics studies.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: June 16, 2009.

P. Michael Payne,

Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. E9–14476 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–940]

Certain Tow-Behind Lawn Groomers and Certain Parts Thereof From the People's Republic of China: Final Affirmative Countervailing Duty Determination

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (Department) has determined that countervailable subsidies are being provided to producers and exporters of certain tow-behind lawn groomers (lawn groomers) and certain parts thereof from the People's Republic of China (PRC). For information on the estimated countervailing duty rates, please see the ''Suspension of Liquidation'' section, below.

EFFECTIVE DATE: June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Gene Calvert or Jun Jack Zhao, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3586 and (202) 482–1396, respectively.

SUPPLEMENTARY INFORMATION:

Period of Investigation

The period for which we are measuring subsidies, *i.e.*, the period of investigation (POI), is January 1, 2007 through December 31, 2007.

Case History

The following events have occurred since the announcement of the preliminary determination, which was published in the **Federal Register** on November 24, 2008. *See Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination and Alignment of Final Countervailing Duty Determination with Final Antidumping Duty Determination*, 73 FR 70971 (November 24, 2008) (*Preliminary Determination*).

The Department issued several supplemental questionnaires to the Government of the People's Republic of China (GOC), Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited (collectively, Princeway) and Jiashan Superpower Tools Co., Ltd. (Superpower). The Department received responses to these questionnaires in November and December 2008. Public versions of the questionnaires and responses, as well as the various memoranda cited below, are available at the Department's Central Records Unit (Room 1117 in the HCHB Building) (hereafter referred to as ''CRU'').

From January 5 through January 21, 2009, we conducted verification of the questionnaire responses submitted by the GOC, Superpower and Princeway. We issued verification reports on February 27, 2009. *See Verification of the Questionnaire Responses Submitted by the Government of the People's Republic of China (GOC), Verification of the Questionnaire Responses Submitted by Princeway Furniture (Dong Guan) Co., Ltd. & Princeway Limited*, and *Verification of the Questionnaire Responses Submitted by Jiashan Superpower Tools Co., Ltd.*

On May 13, 2009, we issued our post-preliminary determination regarding the ''Provision of Hot-Rolled Steel at Less Than Adequate Remuneration,'' ''Export Incentive Payments Characterized as VAT Rebates,'' ''Patent Subsidy Authorized by the Administration Rule for Patent Specific Fund of Jiashan County, SHAN KE [2006] No. 58,'' ''Foreign Trade Assistance Subsidy (Exhibition Attendance Incentive Policy of Jiashan County: Article II.24 of SZF 132),'' and ''Amortization of Startup Costs Under Article 49 of the FIE Tax Regulations.'' *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, *''Countervailing Duty Investigation of Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China''* (May 13, 2009).

We received a case brief from the GOC on May 20, 2009. Agri-Fab, Inc. (Petitioner) and respondent companies did not submit case briefs or rebuttal briefs. On December 23, 2008, the GOC submitted a timely request for a hearing pursuant to 19 CFR 351.310(c). On May 27, 2009, the GOC withdrew its request for a hearing.

Scope of the Investigation

The scope of this investigation covers certain non-motorized tow behind lawn groomers, manufactured from any material, and certain parts thereof. Lawn groomers are defined as lawn sweepers, aerators, dethatchers, and spreaders. Unless specifically excluded, lawn groomers that are designed to perform at least one of the functions listed above are included in the scope of this investigation, even if the lawn groomer is designed to perform additional non-subject functions (*e.g.*, mowing).

All lawn groomers are designed to incorporate a hitch, of any

configuration, which allows the product to be towed behind a vehicle. Lawn groomers that are designed to incorporate both a hitch and a push handle, of any type, are also covered by the scope of this investigation. The hitch and handle may be permanently attached or removable, and they may be attached on opposite sides or on the same side of the lawn groomer. Lawn groomers designed to incorporate a hitch, but where the hitch is not attached to the lawn groomer, are also included in the scope of the investigation.

Lawn sweepers consist of a frame, as well as a series of brushes attached to an axle or shaft which allows the brushing component to rotate. Lawn sweepers also include a container (which is a receptacle into which debris swept from the lawn or turf is deposited) supported by the frame. Aerators consist of a frame, as well as an aerating component that is attached to an axle or shaft which allows the aerating component to rotate. The aerating component is made up of a set of knives fixed to a plate (known as a ''plug aerator''), a series of discs with protruding spikes (a ''spike aerator''), or any other configuration, that are designed to create holes or cavities in a lawn or turf surface. Dethatchers consist of a frame, as well as a series of tines designed to remove material (*e.g.*, dead grass or leaves) or other debris from the lawn or turf. The dethatcher tines are attached to and suspended from the frame. Lawn spreaders consist of a frame, as well as a hopper (*i.e.*, a container of any size, shape, or material) that holds a media to be spread on the lawn or turf. The media can be distributed by means of a rotating spreader plate that broadcasts the media (broadcast spreader), a rotating agitator that allows the media to be released at a consistent rate (drop spreader), or any other configuration.

Lawn dethatchers with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 100 pounds or less are covered by the scope of the investigation. Other lawn groomers sweepers, aerators, and spreaders with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less are covered by the scope of the investigation.

Also included in the scope of the investigation are modular units, consisting of a chassis that is designed to incorporate a hitch, where the hitch may or may not be included, which allows modules that perform sweeping, aerating, dethatching, or spreading operations to be interchanged. Modular units when imported with one or more lawn grooming modules with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 200 pounds or less when including a single module, are included in the scope of the investigation. Modular unit chassis, imported without a lawn grooming module and with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 125 pounds or less, are also covered by the scope of the investigation. When imported separately, modules that are designed to perform subject lawn grooming functions (*i.e.*, sweeping, aerating, dethatching, or spreading), with a fully assembled net weight (*i.e.*, without packing, additional weights, or accessories) of 75 pounds or less, and that are imported with or without a hitch, are also covered by the scope.

Lawn groomers, assembled or unassembled, are covered by this investigation. For purposes of this investigation, ''unassembled lawn groomers'' consist of either 1) all parts necessary to make a fully assembled lawn groomer, or 2) any combination of parts, constituting a less than complete, unassembled lawn groomer, with a minimum of two of the following ''major components'':

1) an assembled or unassembled brush housing designed to be used in a lawn sweeper, where a brush housing is defined as a component housing the brush assembly, and consisting of a wrapper which covers the brush assembly and two end plates attached to the wrapper;
2) a sweeper brush;
3) an aerator or dethatcher weight tray, or similar component designed to allow weights of any sort to be added to the unit;
4) a spreader hopper;
5) a rotating spreader plate or agitator, or other component designed for distributing media in a lawn spreader;
6) dethatcher tines;
7) aerator spikes, plugs, or other aerating component; or
8) a hitch, defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. Individual hitch component parts, such as tubing, hitch plates, pins or fasteners are not covered by the scope.

The major components or parts of lawn groomers that are individually covered by this investigation under the term ''certain parts thereof'' are: (1) brush housings, where the wrapper and end plates incorporating the brush assembly may be individual pieces or a single piece; and (2) weight trays, or similar components designed to allow weights of any sort to be added to a dethatcher or an aerator unit.

The products for which relief is sought specifically exclude the following: 1) agricultural implements designed to work (*e.g.*, churn, burrow, till, etc.) soil, such as cultivators, harrows, and plows; 2) lawn or farm carts and wagons that do not groom lawns; 3) grooming products incorporating a motor or an engine for the purpose of operating and/or propelling the lawn groomer; 4) lawn groomers that are designed to be hand held or are designed to be attached directly to the frame of a vehicle, rather than towed; 5) ''push'' lawn grooming products that incorporate a push handle rather than a hitch, and which are designed solely to be manually operated; 6) dethatchers with a net assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 100 pounds, or lawn groomers sweepers, aerators, and spreaders with a net fully–assembled weight (*i.e.*, without packing, additional weights, or accessories) of more than 200 pounds; and 7) lawn rollers designed to flatten grass and turf, including lawn rollers which incorporate an aerator component (*e.g.*, ''drum–style'' spike aerators).

The lawn groomers that are the subject of this investigation are currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) statistical reporting numbers 8432.40.0000, 8432.80.0000, 8432.80.0010, 8432.90.0030, 8432.90.0080, 8479.89.9896, 8479.89.9897, 8479.90.9496, and 9603.50.0000. These HTSUS provisions are given for reference and customs purposes only, and the description of merchandise is dispositive for determining the scope of the product included in this investigation.

Scope Comments

On December 30, 2008, and on January 7, 2009, Brinly–Hardy Company (Brinly–Hardy), a domestic producer of the merchandise under consideration, submitted comments on the scope of the investigation. Specifically, Brinly–Hardy requested that the scope be revised to define one of the eight listed ''major components,'' specifically a hitch, as a complete hitch assembly, with all necessary components. Brinly–Hardy requested that individual components such as tubing, hitch plates or pins, not be covered by the scope.

On January 12, 2009, Petitioner submitted comments in response to Brinly–Hardy's request. Petitioner agreed that a hitch should be defined, but stated that a hitch should be defined as consisting of its own major components, *i.e.*, tubing and a hitch plate, rather than all necessary components. Petitioner stated that the absence of minor components such as a hitch pin or fasteners is not intended to remove a hitch assembly from the definition of a hitch.

We have received no further comments on the scope of the investigation. Thus, we are making a final determination that hitches are defined as a complete hitch assembly comprising of at least the following two major hitch components, tubing and a hitch plate regardless of the absence of minor components such as pin or fasteners. The revised scope language is included in the ''Scope of the Investigation'' section, above. *See also* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, *''Issues and Decision Memorandum for the Final Determination in the Countervailing Duty Investigation of Certain Tow-Behind Lawn Groomers and Certain Parts Thereof from the People's Republic of China''* (June 12, 2009) (hereafter referred to as the *''Decision Memorandum'')*, which is hereby adopted by this notice, at Comment 12.

Injury Test

Because the PRC is a ''Subsidies Agreement Country'' within the meaning of section 701(b) of the Tariff Act of 1930, as amended (the Act), the International Trade Commission (ITC) is required to determine pursuant to section 701(a)(2) of the Act whether imports of the subject merchandise from the PRC materially injure, or threaten material injury to, a United States industry. On August 21, 2008, the ITC published its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of allegedly subsidized imports from the PRC of subject merchandise. *See Certain Tow-Behind Lawn Groomers and Parts Thereof From China Determinations*, 73 FR 49489 (August 21, 2008); and *Certain Tow-Behind Lawn Groomers and Parts Thereof from China (Preliminary)*, USITC Pub. 4028, Inv. Nos. 701–TA–457 and 731–TA–1153 (August 2008).

Analysis of Comments Received

All issues raised in the case brief submitted by the GOC are addressed in the *Decision Memorandum*. Attached to this notice as an Appendix is a list of the issues that parties have raised and to which we have responded in the *Decision Memorandum*. Parties can find this public memorandum in the Department's CRU. In addition, a complete version of the *Decision Memorandum* can be accessed directly on the internet at http://ia.ita.doc.gov/frn/. The paper copy and electronic version of the *Decision Memorandum* are identical in content.

Use of Adverse Facts Available

For purposes of this final determination, we have continued to rely on facts available and have again used adverse inferences in accordance with sections 776(a) and (b) of the Act to determine the countervailable subsidy rates for the following five companies that provided no response to the Department's ''quantity and value'' questionnaire issued during the respondent selection process: Qingdao Hundai Tools Co., Ltd., Qingdao Taifa Group Co., Ltd., Maxchief Investments Ltd., Qingdao EA Huabang Instrument Co., Ltd., and World Factory Inc. (collectively, non-h;cooperative companies). A full discussion of our decision to apply adverse facts available (AFA) is presented in the *Decision Memorandum* in the section ''Use of Facts Otherwise Available and Adverse Facts Available.'' On this basis, we determine that the AFA countervailable subsidy rate for the five non–cooperating companies is 264.98 percent *ad valorem*.

Suspension of Liquidation

In accordance with section 705(c)(1)(B)(i)(I) of the Act, we have calculated an individual rate for the companies under investigation, Superpower and Princeway. Section 705(c)(5)(A)(i) of the Act states that for companies not investigated, we will determine an all others rate equal to the weighted average countervailable subsidy rates established for exporters and producers individually investigated, excluding any zero and *de minimis* countervailable subsidy rates, and any rates determined entirely under section 776 of the Act. As Princeway's rate was *de minimis*, it is not included in the all others rate.

Exporter/Manufacturer	Net Subsidy Rate
Princeway Furniture (Dong Guan) Co., Ltd. and Princeway Limited	0.56% (de minimis)
Jiashan Superpower Tools Co., Ltd	13.30%
Maxchief Investments Ltd	264.98%
Qingdao EA Huabang Instrument Co., Ltd	264.98%
Qingdao Hundai Tools Co., Ltd	264.98%
Qingdao Taifa Group Co., Ltd	264.98%
World Factory, Inc	264.98%
All Others	13.30%

In accordance with section 703(d) of the Act, we instructed U.S. Customs and Border Protection to discontinue the suspension of liquidation for countervailing duty purposes for subject merchandise entered on or after March 24, 2009, but to continue the suspension of liquidation of entries made from November 24, 2008 through March 23, 2009.

We will issue a countervailing duty order and reinstate the suspension of liquidation under section 706(a) of the Act if the ITC issues a final affirmative injury determination, and will require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above, except for Princeway, which has a *de minimis* rate and will be excluded from an order. This exclusion will apply only to subject merchandise both produced and exported by Princeway. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (APO), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/

destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This determination is published pursuant to sections 705(d) and 777(i) of the Act.

Dated: June 12, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

List of Comments and Issues in the Decision Memorandum

Comment 1: Application of CVD Law to a Country that the Department Treats as an NME in a Parallel AD Investigation
Comment 2: Double Counting/ Overlapping Remedies
Comment 3: Cut–off Date for Countervailing Subsidies
Comment 4: Discount Rate Used for Benefit Calculations
Comment 5: Public Authority Status of Hot–Rolled Steel Producer
Comment 6: Preferential Tax Policies for Enterprises with Foreign Investment (Two Free, Three Half Program)
Comment 7: Refund of Enterprise Income Taxes on FIE Profits Reinvested in an Export Oriented Enterprise
Comment 8: Import Tariff and VAT Exemptions for Encouraged Industries Importing Equipment for Domestic Operations
Comment 9: Export Incentive Payments Characterized as ''VAT Rebates''
Comment 10: Amortization of Startup Costs in the PRC Tax Law
Comment 11: Calculation of the All Others Rate
Comment 12: Whether to Clarify the Scope Language for Hitches

[FR Doc. E9–14471 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

The Manufacturing Council: Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of an open meeting.

SUMMARY: The Manufacturing Council will hold an introductory meeting with the Secretary of Commerce to discuss topics related to the U.S. manufacturing sector.

DATES: June 23, 2009.

Time: TBD.
Location: TBD.

FOR FURTHER INFORMATION CONTACT: J. Marc Chittum, The Manufacturing Council, Room 4043, 1401 Constitution Avenue, NW., Washington, DC 20230; telephone: 202–482–4501; and e-mail: *Marc.Chittum@mail.doc.gov*.

Dated: June 15, 2009.

J. Marc Chittum,

Executive Secretary, The Manufacturing Council.

[FR Doc. E9–14392 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcing a Workshop on the Protocol for Lightweight Authentication of Identity (PLAID)

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of public workshop.

SUMMARY: The National Institute of Standards and Technology (NIST), in cooperation with the Australian Federal Government agency, Centrelink, will hold a public workshop on July 13–15, 2009, at the NIST Gaithersburg campus. The workshop is open to the public but requires registration. The goal of the 3-day workshop is to explore potential commercial implementations of the Protocol for Lightweight Authentication of Identity (PLAID) and the potential usefulness of this protocol to U.S. Federal agencies.

PLAID public resources are available from the following site: *http://www.govdex.gov.au.*

The principle of the workshop is that each attending vendor has two days, with the assistance of Centrelink, to ''port'' existing source code, or develop new code for their device or card. All the information vendors need will be available to them ahead of the workshop on the *http://www.govdex.gov.au site.* Vendors may obtain as much or as little assistance as they please from other vendors in the workshop. (Card vendors might, for instance, assist device vendors.)

On the third day, end-users are invited to view the efforts of all of the vendors. Each vendor will use their space to demonstrate their PLAID implementation to attendees. Attendees are invited to interact with the vendors and discuss their PLAID implementation.

DATES: The workshop will be held on July 13–15, 2009, 9 a.m. till 5 p.m.

ADDRESSES: The workshop will be held in the Employees' Lounge and the Poster Hallway in the Administration Building on the NIST Gaithersburg campus, 100 Bureau Drive, Gaithersburg, Maryland 20899. Please note registration and admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Tanya Brewer, T: (301) 975–4534, E: *tbrewer@nist.gov.*

SUPPLEMENTARY INFORMATION:

The National Institute of Standards and Technology (NIST), in cooperation with the Australian Federal Government agency, Centrelink, will hold a public workshop on July 13–15, 2009, at the NIST Gaithersburg campus. The workshop is open to the public but requires registration. The goal of the 3-day workshop is to explore potential commercial implementations of the Protocol for Lightweight Authentication of Identity (PLAID) and the potential usefulness of this protocol to U.S. Federal agencies.

PLAID public resources are available from the following site: *http://www.govdex.gov.au.* The principle of the workshop is that each attending vendor has two days, with the assistance of Centrelink, to ''port'' existing source code, or develop new code for their device or card. All the information vendors need will be available to them ahead of the workshop on the *www.govdex.gov.au* site. Vendors may obtain as much or as little assistance as they please from other vendors in the workshop. (Card vendors might, for instance, assist device vendors.)

On the third day, end-users are invited to view the efforts of all of the vendors. Each vendor will use their space to demonstrate their PLAID implementation to attendees. Attendees are invited to interact with the vendors and discuss their PLAID implementation.

This workshop is open to the public, but all attendees, vendors and others, must pre-register in advance. All visitors to the NIST campus are required to register in advance. No late or same-day registrations will be accepted for this reason. All attendees must present a government-issued ID when gaining access to the campus. There is no registration fee. Please submit your name, time of arrival, e-mail address and phone number to Tanya Brewer or Annie Sokol, and one of them will provide you with further logistics information. Non-U.S. citizens must also submit their country of citizenship, title, employer/sponsor, and address. The registration deadline is July 7, 2009. Tanya Brewer's e-mail address is

tbrewer@nist.gov, and Annie Sokol's is *annie.sokol@nist.gov.*

Dated: June 15, 2009.

Patrick Gallagher,

Deputy Director.

[FR Doc. E9–14459 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XP45

2009 European Union Export Certification for Fishery Products

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

ACTION: Notice of procedural change.

SUMMARY: The National Oceanic and Atmospheric Administration Seafood Inspection Program (NOAA SIP) will become the sole certifying agency for all fish and fishery products for export to European Union (EU) or European Free Trade Association (EFTA) member countries. Due to the large volume of demand for these certificates and the need for expedient service, SIP, through this notice, is announcing a change from current practices, including fee structure, for providing Health Certificates for the EU and EFTA.

DATES: Effective June 16, 2009.

FOR FURTHER INFORMATION CONTACT: Timothy Hansen, *Timothy.hansen@noaa.gov*, Program Director SIP NMFS/NOAA (301) 713–2355 EXT. 214

SUPPLEMENTARY INFORMATION:

Background

On January 15, 2009 (74 FR 2600), the U.S. Food and Drug Administration (FDA) published a **Federal Register** Notice announcing that after February 17, 2009, FDA will no longer issue health certificates required by the EU for export of fish or fishery products to the EU or the EFTA. By subsequent notice in the **Federal Register** on February 11, 2009 (74 FR 6902), FDA announced a 120-day delay in the effective date of the January 15, 2009 notice. FDA now intends to cease issuing EU Health Certificates on June 17, 2009. The U. S. Department of Commerce Seafood Inspection Program will continue to issue these certificates upon request on a fee-for-service basis.

The Seafood Inspection Program of the National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, operating under authority of the Agricultural Marketing Act (7 U.S.C. 1621 *et seq.*) and the Fish and Wildlife Act (16 U.S.C. 742a *et seq.*), is responsible for the development and advancement of commercial grade standards for fishery products and better health and sanitation standards in the industry and for furnishing inspection, evaluation, analytical, grading, and certification services to interested parties. Its major purpose is to encourage and assist the industry in improving the quality, wholesomeness, safety, proper labeling, and marketability of its products.

In 1993, the EU began requiring health certificates for fish and fishery products that entered the EU. Both the FDA and SIP were recognized by the EU as competent U.S. Government authorities and acceptable sources for EU health certificates. The EU also required that shippers to the EU be on a list of firms that demonstrated compliance with the U.S. food safety laws and regulations. Since 1993, FDA has issued health certificates for seafood processing firms appearing on the EU Export Certificate List free of charge. By contrast, SIP examined the product and labeling, confirmed all the shipping information and issued health certificates on a fee for service basis. FDA initially issued approximately 3000 certificates per year, but as European demand for U.S. fishery products increased over the years, the number of certificates issued annually by FDA has grown ten-fold to over 30,000. FDA currently issues about 80 percent of all EU health certificates. The increased volume of certificates issued and concomitant decrease in agency resources has made FDA reassess its involvement in the issuance of EU health certificates.

New Procedures for Receiving EU Certificates From SIP

Effective immediately, SIP policy is as follows: SIP, upon request, will issue EU Health Certificates to SIP program participants and rely on inspection results or an approved control system, e.g. the Hazard Analysis and Critical Control Points Quality Management Program (HACCP QMP) or the Integrated Quality Assurance (IQA) Program, to issue the certificate. Seafood processors and other entities that are not SIP program participants may receive EU Health Certificates from SIP based on a periodic verification of the information provided, compliance of the product labeling to EU requirements and the condition of the product. Instructions for requesting an EU Health Certificate can be found on the SIP Web site at:*http://www.seafood.nmfs.noaa.gov*.

All applicants for EU Health Certificates must be in regulatory good standing with the FDA and must be on the FDA's EU Export Certificate List. In addition, prior to the issuance of EU Health Certificates, all applicants will be required to sign an agreement including, but not limited to, the following provisions:

- The applicant agrees to allow SIP auditors or EC Food and Veterinary auditors entrance to the processing facility at reasonable times when periodic audits occur.
- The applicant agrees to keep information about the origin of foreign raw material to ensure that it was produced in a firm and country that are approved by the EC, make this information available to SIP auditors upon request and provide this information for each certificate request when foreign product is to be certified by SIP.
- The applicant acknowledges that s/he has read the terms and conditions of the agreement and understands that making false statements in connection with issuance of an EU Health Certificate would be a violation of 7 U.S.C.1622(h), punishable by a fine of not more than $1,000 or imprisonment for not more than one year, or both.

Fee Structure

Program Participants

For participants in SIP's continuous on-site inspection service program, certificates will be provided at no extra cost assuming that the work demands can be adequately addressed in the agreed upon contract hours. If additional time is needed for EU Health Certificate completion, it will be charged at the appropriate hourly rate, published on the SIP Web site. EU Health Certificates for facilities operating under the HACCP QMP or the IQA Program will be charged $50 for each EU Health Certificate request. Participants may choose to contract specifically for EU Health Certificate services if there is a significant volume.

Non-Program Participants

Seafood processors and other entities that are not SIP program participants will be charged $69 for each EU Health Certificate request. Fees and charges may be adjusted as necessary to recover costs. Changes in this fee structure will be announced via notice in the **Federal Register**.

Dated: June 16, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. E9–14475 Filed 6–16–09; 4:15 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Bureau of the Census

Request for Nominations of Members To Serve on the Census Advisory Committee on the African American Population

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) is requesting nominations of individuals to the Census Advisory Committee on the African American Population. The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by July 20, 2009.

ADDRESSES: Please submit nominations to Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233. Nominations also may be submitted via fax at 301–763–8609, or by e-mail to *jeri.green@census.gov.*

FOR FURTHER INFORMATION CONTACT: Jeri Green, Chief, Census Advisory Committee Office, U.S. Census Bureau, Room 8H182, 4600 Silver Hill Road, Washington, DC 20233, telephone (301) 763–2070.

SUPPLEMENTARY INFORMATION: The Committee was established in accordance with the Federal Advisory Committee Act (Title 5, United States Code (U.S.C.), Appendix 2) in 1995. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Committee provides an organized and continuing channel of communication between African American communities and the Census Bureau. Committee members identify useful strategies to reduce the differential undercount for the African American population, and on ways data can be disseminated for maximum usefulness to the African American population.

2. The Committee draws upon prior decennial planning efforts, research studies, test censuses, and other experiences to provide advice and recommendations for the 2010 Decennial Census Program.

3. The Committee functions solely as an advisory body under the Federal Advisory Committee Act.

4. The Committee reports to the Director of the Census Bureau.

Membership

1. Members are appointed by and serve at the discretion of the Secretary of Commerce. They are appointed to the nine-member Committee for a period of three years.

2. Members will be reevaluated at the conclusion of the three-year term with the prospect of renewal, pending meeting attendance, administrative compliance, advisory committee needs, and the Secretary's concurrence. Committee members are selected in accordance with applicable Department of Commerce guidelines. The Committee aims to have a balanced representation, considering such factors as geography, gender, technical expertise, community involvement, and knowledge of census procedures and activities. The Committee aims to include members from diverse backgrounds, including State and local governments, academia, media, research, community-based organizations, and the private sector. No employee of the Federal government can serve as a member of the Committee. Meeting attendance and active participation in the activities of the Advisory Committee are essential for sustained Committee membership as well as submission of required annual financial disclosure statements.

Miscellaneous

1. Members of the Committee serve without compensation, but receive reimbursement for Committee-related travel and lodging expenses.

2. The Committee meets at least once a year, budget permitting, but additional meetings may be held as deemed necessary by the Census Director or Designated Federal Official. All

Committee meetings are open to the public in accordance with the Federal Advisory Committee Act.

Nomination Information

1. Nominations are requested as described above.

2. Nominees should have expertise and knowledge of the cultural patterns, issues, and/or data needs of the African American community. Such knowledge and expertise are needed to provide advice and recommendations to the Census Bureau on how best to enumerate the African American population and obtain complete and accurate data on this population. Individuals, groups, or organizations may submit nominations on behalf of a potential candidate. A summary of the candidate's qualifications (resumé or curriculum vitae) *must* be included along with the nomination letter. Nominees must have the ability to participate in Advisory Committee meetings and tasks. Besides Committee meetings, active participation may include Committee assignments and participation in conference calls and working groups.

3. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Dated: June 12, 2009.

Thomas L. Mesenbourg,

Acting Director, Bureau of the Census.

[FR Doc. E9–14442 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XN11

Notification of Stock Status Determination for Atlantic Highly Migratory Species Shortfin Mako Shark

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

ACTION: Notification of determination overfishing and approaching an overfished condition.

SUMMARY: This action serves as a notice that NMFS, on behalf of the Secretary of Commerce (Secretary), has determined that overfishing is occurring on Atlantic highly migratory species shortfin mako and the stock is approaching an overfished condition. The Secretary is required to take action within 1 year following determination that: a stock is overfished; a stock is approaching an overfished condition; or existing remedial action taken to end overfishing or rebuild an overfished stock has not resulted in adequate progress.

FOR FURTHER INFORMATION CONTACT: Mark Nelson, telephone: (301) 713–2341.

SUPPLEMENTARY INFORMATION: Pursuant to sections 304(e)(2) and (e)(7) of the

Magnuson–Stevens Fishery Conservation and Management Act (Magnuson–Stevens Act), 16 U.S.C. 1854(e)(2) and (e)(7), and implementing regulations at 50 CFR 600.310(e)(2), NMFS, on behalf of the Secretary, notifies fishery management councils whenever it determines: overfishing is occurring; a stock or stock complex is approaching an overfished condition; a stock or stock complex is overfished; or existing action taken to end previously identified overfishing or rebuilding a previously identified overfished stock or stock complex has not resulted in adequate progress.

For a fishery determined to be overfished or approaching an overfished condition, NMFS also requests that the appropriate Council, or the Secretary, for fisheries under section 302(a)(3), take action to end overfishing in the fishery and to implement conservation and management measures to rebuild affected stocks. Councils (or the Secretary) receiving notification that a fishery is overfished must, within 1 year of notification, prepare an FMP, amend an existing FMPs or propose regulations to end overfishing and rebuild affected stocks in accordance with 16 U.S.C. 1854(e)(3)–(4) as implemented by 50 CFR 600.310(j)(2)(ii). If a stock is approaching an overfished condition the Council (or the Secretary) must take similar action, within 1 year of notification, to prevent overfishing. When developing the foregoing remedial actions Councils (or the Secretary) should ensure that such actions address the requirements to amend the FMP for each affected stock or stock complex to establish a mechanism for specifying and actually specify Annual Catch Limits (ACLs) and Accountability Measures (AMs) to prevent overfishing by 2010 in accordance with 16 U.S.C. 1853(a)(16) and 50 CFR 600.310(j)(2)(i).

Based on the best available science, the Secretary has determined, effective December 31, 2008, that overfishing is occurring on Atlantic highly migratory species shortfin mako and the stock is approaching an overfished condition.

As noted above, within 1 year of determination that a fishery is overfished the respective Council (or the Secretary) must take remedial action in response to the determination, to end overfishing. Such action must be submitted to NMFS within 1 year of notification and may be in the form of a new fishery management plan (FMP), an FMP amendment, or proposed regulations. In addition, for the fisheries experiencing overfishing, the responsible Councils (or the Secretary) must propose and NMFS must adopt mechanisms in the applicable FMPs for specification of and actually specify effective ACLs and AMs by fishing year 2010 to prevent overfishing.

Dated: June 15, 2009.

Alan D. Risenhoover,

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

[FR Doc. E9–14489 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–22–S

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and a service previously furnished by such agencies.

DATES: *Effective Date:* July 20, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202–3259.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 4/10/2009, 4/17/2009, and 4/24/2009 the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (74 FR No. 68 page 16368, 74 FR No. 73 pages 17824–5, and 74 FR No. 78 pages 18694–5) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. The action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following products and services are added to the Procurement List:

Products

NSN: 6850–01–167–0678—Cleaner, Brake Parts.
NPA: Lighthouse for the Blind, St. Louis, MO.
Contracting Activity: Defense Logistics Agency, Defense Supply Center Columbus, OH.
Coverage: C-list for the total requirement for the Defense Supply Center Columbus, Columbus, OH.
NSN: 7510–00–NIB–0869—Tape, Package Sealing Pack w/Pistol Grip Dispenser.
NSN: 7510–00–NIB–0870—Tape, Package Sealing Pack w/Handheld Dispenser.
NSN: 7510–00–NIB–0871—Tape, Package Sealing Prepack Commercial Grade.
NSN: 7510–00–NIB–0872—Tape, Packaging Sealing Prepack Economy Grade.
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A-List for the total Government requirement as aggregated by the General Services Administration.
NSN: 8105–00–NIB–1281—Bag, Trash, Insect Repellent.
NSN: 8105–00–NIB–1282—Bag, Trash, Insect Repellent.
NSN: 8105–00–NIB–1283—Bag, Trash, Insect Repellent.
NSN: 8105–00–NIB–1284—Bag, Trash, Insect Repellent.
NSN: 8105–00–NIB–1285—Bag, Trash, Insect Repellent.
NSN: 8105–00–NIB–1286—Bag, Trash, Insect Repellent.
NSN: 8105–00–NIB–1287—Bag, Trash, Insect Repellent.

NSN: 8105–00–NIB–1288—Bag, Trash, Insect Repellent.
NPA: Envision, Inc., Wichita, KS.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: B-List for the broad Government requirement as aggregated by the General Services Administration.

Services

Service Type/Location: Laundry Services, Marine Corps Base, Camp Lejeune, NC.
NPA: Chesapeake Service Systems, Inc., Chesapeake, VA.
Contracting Activity: Dept of the Navy, Commanding General, Camp Lejeune, NC.
Service Type/Location: Warehousing, Redstone Arsenal, Huntsville, AL.
NPA: Alabama Goodwill Industries, Inc., Birmingham, AL.
Contracting Activity: Defense Commissary Agency (DECA), Fort Lee, VA.
Service Type/Location: Custodial Services, Camp Bullis Gymnasium—Building 5031, 6929 Camp Bullis Rd, Camp Bullis, TX.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Dept of the Army, Xr W6bb ACA Sam Houston, TX.
Service Type/Location: Grounds Maintenance, Post Wide, Fort Campbell, KY.
NPA: PRIDE Industries, Roseville, CA.
Contracting Activity: Dept of the Army, XR W6bb ACA Fort Campbell, KY.

Deletions

On 4/10/2009 and 4/17/2009, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (74 FR No. 68 pages 16368–9 and 74 FR No. 73 pages 17824–5) of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and service deleted from the Procurement List.

End of Certification

Accordingly, the following products and service are deleted from the Procurement List:

Products:

NSN: 7510–01–390–0704—Illuminator/Corrector Stx and Refills.
NSN: 7510–01–390–0705—Illuminator/Corrector Stx and Refills.
NSN: 7510–01–390–0708—Illuminator/Corrector Stx and Refills.
NPA: San Antonio Lighthouse for the Blind, San Antonio, TX.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
NSN: 7520–01–483–8903—Paper Cutter, Rotary Precision.
NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.
Contracting Activity: GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

Service

Service Type/Location: Janitorial/Custodial, National Zoological Park, 111 North Capitol Street, NE., Washington, DC.
NPA: Melwood Horticultural Training Center, Upper Marlboro, MD.
Contracting Activity: SMITHSONIAN INSTITUTION, Washington DC.

Patricia Briscoe,

Deputy Director, Business Operations.

[FR Doc. E9–14385 Filed 6–18–09; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to the procurement list.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

DATES: Comments Must Be Received on or Before: July 20, 2009.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION OR TO SUBMIT COMMENTS CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or e-mail *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

NSN: 7510–00–NIB–0877—Binder, 3 D–Ring, 100% Recycled 1'' Black
NSN: 7510–00–NIB–0879—Binder, 3 D–Ring, 100% Recycled 2'' Black
NSN: 7510–00–NIB–0880—Binder, 3 D–Ring, 100% Recycled 3'' Black
NSN: 7510–00–NIB–0885—Binder, 3 D–Ring, 100% Recycled 1'' Dark Green
NSN: 7510–00–NIB–0887—Binder, 3 D–Ring, 100% Recycled 2'' Dark Green
NSN: 7510–00–NIB–0888—Binder, 3 D–Ring, 100% Recycled 3'' Dark Green
Coverage: A–List for the total Government requirement as aggregated by the General

Services Administration.
NSN: 7510–00–NIB–0878—Binder, 3 D–Ring, 100% Recycled 1.5'' Black
NSN: 7510–00–NIB–0881—Binder, 3 D–Ring, 100% Recycled 1'' Blue
NSN: 7510–00–NIB–0882—Binder, 3 D–Ring, 100% Recycled 1.5'' Blue
NSN: 7510–00–NIB–0883—Binder, 3 D–Ring, 100% Recycled 2'' Blue
NSN: 7510–00–NIB–0884—Binder, 3 D–Ring, 100% Recycled 3'' Blue
NSN: 7510–00–NIB–0886—Binder, 3 D–Ring, 100% Recycled 1.5'' Dark Green
Coverage: B–List for the broad Government requirement as aggregated by the General Services Administration.
NPA: South Texas Lighthouse for the Blind, Corpus Christi, TX
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.

NSN: 6545–00–NIB–0088—Kit, Ambulance
NSN: 6545–00–NIB–0091—Accelerate-OR JB Kit
NSN: 6545–00–NIB–0090—Accelerate-OR A Kit
NSN: 6545–00–NIB–0089—Accelerate-OR M Kit
NSN: 6545–00–NIB–0074—Accelerate-OR R Kit
NPA: Bosma Industries for the Blind, Inc., Indianapolis, IN.
Contracting Activity: Veterans Affairs, Department of, NAC, Hines, IL.
Coverage: C-List for 100% of the requirement for the Department of Veterans Affairs.

NSN: 7520–00–NIB–2033—PEN, RETRACTABLE, BIODEGRADABLE
NSN: 7520–00–NIB–2034—PEN, RETRACTABLE, BIODEGRADABLE
NSN: 7520–00–NIB–2035—PEN, RETRACTABLE, BIODEGRADABLE
NSN: 7520–00–NIB–2036—PEN, RETRACTABLE, BIODEGRADABLE
NSN: 7520–00–NIB–2037—PEN, RETRACTABLE, BIODEGRADABLE with GRIP
NSN: 7520–00–NIB–2038—PEN, RETRACTABLE, BIODEGRADABLE with GRIP
NSN: 7520–00–NIB–2039—PEN, RETRACTABLE, BIODEGRADABLE with GRIP
NSN: 7520–00–NIB–2040—PEN, RETRACTABLE, BIODEGRADABLE with GRIP
NPA: West Texas Lighthouse for the Blind, San Angelo, TX.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products, New York, NY.
Coverage: A–List for the total Government requirement as aggregated by the General Services Administration.

NSN: 7520–00–NIB–2021—Pencil, Mechanical, .5 MM HB Lead
NSN: 7520–00–NIB–2022—Pencil, Mechanical, .7 MM HB Lead
NSN: 7510–00–NIB–0875—Refill, 12 Lead Cartridge, 0.5 mm HB
NSN: 7510–00–NIB–0876—Refill, 12 Lead Cartridge, 0.7 mm HB
NPA: San Antonio Lighthouse for the Blind, San Antonio, TX.
Contracting Activity: Federal Acquisition Service, GSA/FSS OFC SUP CTR—Paper Products.
Coverage: B-List for the broad Government requirement as aggregated by the General Services Administration.

NSN: 7510–00–L98–0032—Tape, Pressure Sensitive, Package Sealing 110 yd
NSN: 7510–00–L98–0037—Tape, Pressure Sensitive, Package Sealing 110 yd
NSN: 7510–00–L98–0033—Tape, Pressure Sensitive, Package Sealing 110 yd
NPA: Cincinnati Association for the Blind, Cincinnati, OH.
Contracting Activity: Defense Logistics Agency, Defense Distribution Center, New Cumberland, PA.
Coverage: C–List for the total Defense Logistics Agency requirement.

NSN: 891500NSH0145—Diced Green Peppers
NSN: 891500NSH0147—Cole Slaw with Carrots
NSN: 891500NSH0146—Sliced Yellow Onions
NPA: Employment Solutions, Inc., Lexington, KY.
Contracting Activity: Federal Prison System, Lexington, FMC, Lexington, KY.
Coverage: C-List for the total Federal Prison System requirement.

Services

Service Type/Location:
Acquisition Support Services, DCMA Headquarters, 6350 Walker Lane, Alexandria, VA.
NPA: Virginia Industries for the Blind, Charlottesville, VA.
Contracting Activity: Defense Contract Management Agency (DCMA), Alexandria, VA.

Service Type/Location:
Laundry Services, Naval Hospital & Dental Clinic, 100 Bresster Blvd, Camp Lejeune, NC, Dental Clinic, Bldg 4389, Cherry Point, NC.
NPA: Chesapeake Service Systems, Inc., Chesapeake, VA.
Contracting Activity: Dept of the Navy, FISC Norfolk, VA.

Service Type/Location:
Mess Attendant Services, Patterson Dining Facility, Building 403, Dover Air Force Base, DE.
NPA: Opportunity Center, Incorporated, Wilmington, DE.
Contracting Activity: Dept of the Air Force, FA4497 436 CONS LGC, Dover AFB, DE.

Service Type/Location:
Ground Maintenance: CG Island, Yerba Buena Island, Coast Guard Island, MLCPAC, Building 54C, Alameda, CA. Sector San Francisco, Yerba Buena Island, San Francisco, CA.
Senior Officer's Quarters, Yerba Buena Island, San Francisco, CA.
NPA: Rubicon Programs, Inc., Richmond, CA.
Contracting Activity: U.S. Coast Guard, MLC Pacific (VPL), Alameda, CA.

Service Type/Location:
Dining Facility Attendant Service: Fort Bragg, NC.
NPA: Employment Source, Inc., Fayetteville, NC.
Contracting Activity: Dept of the Army, XR W6BB FT BRAGG, NC.

Service Type/Location:
Grounds Maintenance Services: Ellington Field, 14555 Scholl Street Houston, TX, US Army Reserve Center at Perimeter Park, 7077 Perimeter Park Dr, Houston, TX.
NPA: On Our Own Services, Inc., Houston, TX.
Contracting Activity: Dept of the Army, XR W6BB ACA Presidio of Monterey, CA.

Service Type/Location:
Janitorial Services: Coast Guard Island, Building 54C, Alameda, CA.
NPA: Calidad Industries, Inc., Oakland, CA.
Contracting Activity: U.S. Coast Guard, MLC Pacific (VPL), Alameda, CA.

Service Type/Location:
Switchboard Services: Minot Air Force Base, 211 Missile Ave, Minot AFB, ND.
NPA: MVW Services, Inc., Minot, ND.
Contracting Activity: Dept of the Air Force, FA4528 5 CONS LGC, Minot AFB, ND.

Service Type/Location:
Secure Document Destruction: Federal Law Enforcement Training Center, 1300 W. Richey Ave., Artesia, NM.
NPA: Adelante Development Center, Inc., Albuquerque, NM.
Contracting Activity: Federal Law Enforcement Training Center, Department of Homeland Security, Artesia, NM.

Service Type/Location:
Facility Operations & Maintenance: Directorate of Public Works, 5418 South Scott Plaza, Fort Dix, NJ.
Barnes Building, 495 Summer Street, Boston, MA.
NPA: PRIDE Industries, Roseville, CA.
Contracting Activity: Dept of the Army, XR W6BA ACA Army Reserve Cont Ctr, Fort Dix, NJ.

Service Type/Location:
Laundry Service: Elwyn, 111 Elwyn Road, Elwyn, PA (NPA Facility).
NPA: Elwyn, Inc., Aston, PA.
Contracting Activity: Department of Veterans Affairs, Veterans Administration Medical Center, Wilmington, DE.

Service Type/Location:
Custodial Services: York VA Outpatient Clinic, 2251 Eastern Boulevard, York, PA.
NPA: Goodwill Services, Inc., Harrisburg, PA.
Contracting Activity: Department of Veterans Affairs, Lebanon, PA.

Service Type/Location:
Housekeeping Services: Fort Custer Education Center, 2501 26th Street, Augusta, MI.
NPA: Navigations, Inc., Battle Creek, MI.
Contracting Activity: Dept of the Army, XRAW8AC MIARNG Element, JF HQ, Lansing, MI.

Service Type/Location:
Food Service Attendant: Joint Dining Facility, Selfridge Air National Guard, Selfridge ANG Base, MI.
NPA: New Horizons Rehabilitation Services, Inc., Auburn Hills, MI.
Contracting Activity: Dept of the Army, XRA W39L USA NG Readiness Center, Selfridge ANGB, MI.

Service Type/Location:
Warehouse Services: Navy Regional Supply Officer Oceana, 983 D Avenue, Virginia Beach, VA.
Navy Regional Supply Office, 452 Warehouse Street, Norfolk, VA.
NPA: Professional Contract Services, Inc., Austin, TX.
Contracting Activity: Dept of the Navy, FISC Norfolk, Norfolk, VA.

Patricia Briscoe,
Deputy Director, Business Operations.
[FR Doc. E9–14387 Filed 6–18–09; 8:45 am]
BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday July 10, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9–14642 Filed 6–17–09; 4:15 pm]
BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday, July 31, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9–14643 Filed 6–17–09; 4:15 pm]
BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday July 17, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9–14645 Filed 6–17–09; 4:15 pm]
BILLING CODE 6351–01–P

COMMODITY FUTURES TRADING COMMISSION

Meetings; Sunshine Act

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

Sunshine Act Meetings

TIME AND DATE: 11 a.m., Friday July 24, 2009.

PLACE: 1155 21st St., NW., Washington, DC, 9th Floor Commission Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Sauntia S. Warfield, 202–418–5084.

Sauntia S. Warfield,
Assistant Secretary of the Commission.
[FR Doc. E9–14644 Filed 6–17–09; 4:15 pm]
BILLING CODE 6351–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Information Collection; Submission for OMB Review, Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the ''Corporation''), has submitted a public information collection request (ICR) entitled the Disaster Response Database form to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995, Public Law 104–13, (44 U.S.C. Chapter 35). Copies of this ICR, with applicable supporting documentation, may be obtained by calling the Corporation for National and Community Service, Mr. Phil Shaw, 202–606–6697 or *pshaw@cns.gov.* Individuals who use a telecommunications device for the deaf (TTY–TDD) may call (202) 565–2799 between 8:30 a.m. and 5 p.m. eastern time, Monday through Friday.

ADDRESSES: Comments may be submitted, identified by the title of the information collection activity, to the Office of Information and Regulatory Affairs, Attn: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service, by any of the following two methods within 30 days from the date of publication in this **Federal Register**:

(1) *By fax to:* (202) 395–6974, Attention: Ms. Katherine Astrich, OMB Desk Officer for the Corporation for National and Community Service; and

(2) *Electronically by e-mail to*: *Katherine_T._Astrich@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility, and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submissions of responses.

Comments

A 60-day public comment Notice was published in the **Federal Register** on March 18, 2009. This comment period ended May 18, 2009. No public comments were received from this notice.

Description: Currently, the Corporation is soliciting comments concerning its proposed renewal of its

Disaster Response Database (DRD). The DRD is a data collection tool that allows the Corporation to collect information from its programs and grantees on disaster response activities across the country. This tool serves as a central repository of information on Corporation disaster response activities for reporting to the public.

Type of Review: Renewal of existing information collection.

Agency: Corporation for National and Community Service.

Title: Disaster Response Database.

OMB Number: 3015–0114.

Agency Number: None.

Affected Public: Corporation for National and Community Service programs/grantees involved in disaster activities.

Total Respondents: 100 annually.

Frequency: Annually.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 50 Hours.

Total Burden Cost (Capital/Startup): None.

Total Burden Cost (Operating/Maintenance): None.

Dated: June 11, 2009.

Kristin McSwain,

Chief of Program Operations.

[FR Doc. E9–14386 Filed 6–18–09; 8:45 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–HA–0143]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title and OMB Number: Continued Health Care Benefit Program, DD Form 2837; OMB Control Number 0704–0364.

Type of Request: Extension.

Number of Respondents: 2,500.

Responses per Respondent: 1.

Annual Responses: 2,500.

Average Burden per Response: .25 hours.

Annual Burden Hours: 625.

Needs and Uses: The continuing information collection requirement is necessary for individuals to apply for enrollment in the Continued Health Care Benefit Program (CHCBP). The CHCBP is a program of temporary health care benefit coverage that is made available to eligible individuals who lose health care coverage under the Military Health System (MHS).

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14428 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–OS–0141]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title And OMB Number: Waiver/Remission of Indebtedness Application, DD Form 2789; OMB Control Number 0730–0009.

Type of Request: Extension.

Number of Respondents: 7,000.

Responses per Respondent: 1.

Annual Responses: 7,000.

Average Burden Per Response: 1.4429 hours.

Annual Burden Hours: 10,100.

Needs and Uses: Used by current or former DoD civilian employees or military members to request waiver or remission of an indebtedness owed to the Department of Defense. Under 5 U.S.C. 5584, 10 U.S.C. 2774, and 32 U.S.C. 716, certain debts arising out of erroneous payments may be waived. Under 10 U.S.C. 4837, 10 U.S.C. 6161, and 10 U.S.C. 9837, certain debts may be remitted. Information obtained through this form is used in adjudicating the request for waiver or remission.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14439 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–OS–0142]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title and OMB Number: Custodianship Certification to Support Claim on Behalf of Minor Children of Deceased Members of the Armed Forces, DD Form 2790; OMB Control Number 0730–0010.

Type of Request: Extension.

Number of Respondents: 300.

Responses per Respondent: 1.

Annual Responses: 300.

Average Burden per Response: 24 minutes.

Annual Burden Hours: 120.

Needs and Uses: Per DoD Financial Management Regulation, 7000.14–R Volume 7B, Chapter 46, paragraph 460103A(1), an annuity for a minor child is paid to the legal guardian, or, if there is no legal guardian, to the natural parent who has care, custody, and control of the child as the custodian, or to a representative payee of the child. An annuity may be paid directly to the child when the child is considered to be of majority age under the law in the state of residence. The child then is considered an adult for annuity purposes and a custodian or legal fiduciary is not required.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14440 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–OS–0140]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title and OMB Number: Child Annuitant's School Certification, DD Form 2788; OMB Control Number 0730–0001.

Type of Request: Extension.

Number of Respondents: 3,600.

Responses per Respondent: 1.

Annual Responses: 3,600.

Average Burden per Response: 12 minutes.

Annual Burden Hours: 720.

Needs and Uses: In accordance with 10 U.S.C. 1447 and DoD Financial Management Regulation, 7000.14–R, Volume 7B, a child annuitant between the age of 18 and 22 years of age must provide evidence of intent to continue study or training at a recognized educational institution. The certificate is required for the school semester or other period in which the school year is divided.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14438 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0089]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork

Reduction Act of 1995, the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms or information technology.

DATES: Consideration will be given to all comments received August 18, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, 3010 Defense Pentagon, Washington, DC 20301–3010, or call at (703)602–4353.

Title, Form and OMB Number: Application for Homeowners Assistance; DD Form 1607; OMB Control Number 0704–TBD.

Needs and Uses: The Department plans to expand its Homeowners Assistance Program (HAP), with $555 million in Recovery Act funds dedicated to helping military families and DoD civilians who recently sold their homes at a loss. The expanded program will assist families forced to relocate due to base closures or normal assignment rotations. But, the most important aspect is that priority access to the funds will go to survivors of those killed during deployment, and those who were wounded, ill or injured during deployment.

Affected Public: Individuals or households.

Annual Burden Hours: 17,000 hours.

Number of Respondents: 17,000.

Responses per Respondent: 1.

Average Burden per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Secretary of Defense is authorized to provide financial help to eligible homeowners serving or employed at or near military installations which were ordered closed or partially closed, realigned or were ordered to reduce the scope of operations. The Department of the Army acts as executive agent for DoD in administering the program for all military departments. Before benefits can be paid, certain conditions must be met.

Eligible homeowners use the DD Form 1607, ''Application for Homeowners Assistance'' to apply. The application is reviewed by a department personnel office, military or civilian, for verification of service or employment and mailed to the appropriate office of the U.S. Army Corps of Engineers which administers the program. The U.S. Army Corps of Engineers will notify the applicant.

It is the objective of the Department of Defense to assure that all applications for assistance under this program are given full consideration and that benefits under the program are extended to all homeowners who are entitled to assistance in accordance with applicable policies and procedures.

This request has been submitted to the Office of Management and Budget (OMB) for emergency approval. Any comments received on this notice will be addressed in a subsequent information collection package to be submitted to OMB under regular processing timeframes.

Dated: June 16, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14429 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0088]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms or information technology.

DATES: Consideration will be given to all comments received August 18, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, 3010 Defense Pentagon, Washington, DC 20301–3010, or call at (703) 692–3032.

Title and OMB Number: Synchronized Predeployment and Operational Tracker (SPOT) System; OMB Control Number 0704–TBD.

Needs and Uses: In accordance with section 861 of Public Law 110–181 and DoD Instruction 3020.41, ''Contractor Personnel Authorized to Accompany the U.S. Armed Forces'' and other appropriate policy, Memoranda of Understanding, and regulations, the DoD Components, the Department of State (DoS), and the United States Agency for International Development (USAID) shall ensure that contractors enter data into the Synchronized Predeployment and Operational Tracker (SPOT) System before deployment outside the United States.

Data collection on contractors is a condition of their contract when DFARS 252.225–7040 is incorporated and persons who choose not to have data collected will not be entitled to employment opportunities which require this data to be collected.

Affected Public: Business or other for-profit.

Annual Burden Hours: 150,000 hours (300,000 individual records × .5 hrs).

Number of Respondents: 1,300 companies.

Responses per Respondent: 1 to 32,000 employees (average 231).

Average Burden per Response: Approximately 30 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Department of Defense has designated the SPOT as the joint Web-based database to assist the Combatant Commander (CCDR) in maintaining awareness of the nature, extent, and potential risks and capabilities associated with contracted support in support of contingency operations, humanitarian or peacekeeping operations, or military exercises designated by the CCDR.

The designated joint Web-based database (SPOT or its successor) shall:

(a) Serve as the central repository for up-to-date status and reporting on all DoD funded contingency contractor personnel as well as other personnel as directed by the Under Secretary of Defense for Acquisition, Technology, and Logistics (USD(AT&L)), or by the CCDR.

(b) Track contract capability information for all DoD funded contracts supporting contingency operations, humanitarian or peacekeeping operations, or military exercises designated by the CCDR. Contract capability information shall provide planners and CCDRs an awareness of the nature, extent, and potential risks and capabilities associated with the contracted effort.

(c) Provide by-name accountability of all DoD funded contingency contractor personnel and other personnel as directed by USD(AT&L) or the CCDR.

(d) Contain, or link to, minimum contract information (*e.g.,* contract number, company contact information, sponsoring (requiring activity) military unit contact information, and a summary of services or capability provided by the contract) necessary to establish and maintain accountability and visibility of the personnel and the contract capabilities in contingency operations, humanitarian or peacekeeping operations, or military exercises designated by the CCDR.

Section 861 of Public Law 110–181 required the identification of common databases among the DoD, DoS, and USAID to serve as repositories of information on contracts and contractor personnel in Iraq and Afghanistan. In a signed memorandum of understanding, the Agencies agreed that SPOT will serve as the interagency database for information on contractor personnel. Each Agency must require its contractors operating in contingency operations to input information into SPOT and ensure data integrity.

This request has been submitted to the Office of Management and Budget (OMB) for emergency approval. Any comments received on this notice will be addressed in a subsequent information collection package to be submitted to OMB under regular processing timeframes.

Dated: May 19, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14431 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–HA–0144]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title and OMB Number: Survey of Experiences with the Human Subjects Review Process; OMB Control Number 0720–TBD.

Type of Request: Extension.

Number of Respondents: 1000.

Responses per Respondent: 1.

Annual Responses: 1000.

Average Burden per Response: 30 minutes.

Annual Burden Hours: 500.

Needs and Uses: This information collection aligns with the Military Health System objectives to foster research innovations and to transform the infrastructure to eliminate redundancies and increase desired outcomes. The proposed information collection will enable the Office of the Under Secretary of Defense for Personnel and Readiness, Human Research Protection Program to assess the effectiveness of current review processes and facilitate efforts to measure and improve the overall efficiency and effectiveness of the program.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. John Kraemer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Kraemer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14437 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket No. DoD–2008–OS–0111]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title and OMB Number: Department of Defense Education Activity (DoDEA) School Accreditation Parent and Student Surveys; OMB Control Number 0704–TBD.

Type of Request: New.

Number of Respondents: 32.

Responses per Respondent: 1.

Annual Responses: 32.

Average Burden per Response: 45 Minutes.

Annual Burden Hours: 24.

Needs and Uses: The Department of Defense Education Activity (DoDEA) regulation 2010.1 (Accreditation Program) requires accreditation of all DoDEA schools in order to provide the activity, the military community served by the activity, and the public at large with an external review of the quality of the educational program provided to DoDEA students. DoDEA's accreditation process is based on the processes and standards of the North Central Association Commission on Accreditation and School Improvement (NCACASI)/AdvancED. As part of the accreditation process, the interview team uses a worldwide standardized set of questions to gather data from students and parents to assess accreditation standards in the following areas: Vision and Purpose, Governance and Leadership, Teaching and Learning, Documenting and Using Results, Resources and Support Systems, Stakeholder Communications and Relationships, and Commitment to Continuous Improvement.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 15, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14432 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2009–OS–0087]

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, DoD.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms or information technology.

DATES: Consideration will be given to all comments received August 18, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics, 3010 Defense Pentagon, Washington, DC 20301–3010, or call at (703) 692–3032.

Title and OMB Number: Qualification to Possess Firearms or Ammunition; OMB Control Number 0704–TBD.

Needs and Uses: In accordance with DoD Instruction 3020.pp, ''Private Security Contractors Operating in Contingency Operations'' written acknowledgement by the contract company and its individual Private Security Contractor (PSC) personnel, after investigation of background of PSC personnel by the contractor, shall be provided verifying such personnel are not prohibited under 922(g) of title 18, United States Code to possess firearms or ammunition.

Affected Public: Business or other for-profit.

Annual Burden Hours: 3,750 hours (15,000 employees × .25 hrs).

Number of Respondents: 125 companies.

Responses per Respondent: 5 employees to 2,500 employees (average 120).

Average Burden per Response: Approximately 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Written acknowledgements shall be used to verify that PSC personnel meet qualifications to possess firearms or ammunition.

In the case of individuals found to have a qualifying conviction, the appropriate authority will immediately retrieve all government-issued firearms and ammunition. It will be requested that such individuals be removed from contracts supporting contingency operations.

This request has been submitted to the Office of Management and Budget (OMB) for emergency approval. Any comments received on this notice will be addressed in a subsequent information collection package to be submitted to OMB under regular processing timeframes.

Dated: May 19, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14430 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2008–0080]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title, Form, and OMB Number: Application and Contract for Establishment of a Junior Reserve Officers' Training Corps Unit, DA Form 3126; OMB Control Number 0702–0021.

Type of Request: Extension.

Number of Respondents: 70.

Responses per Respondent: 1.

Annual Responses: 70.

Average Burden per Response: 1 hour.

Annual Burden Hours: 70.

Needs and Uses: Educational institutions which desire to host a Junior ROTC unit may make application using DA Form 3126. The program provides unique educational opportunities for young citizens through their participation in a federally sponsored course while pursuing a civilian education. Participating students develop citizenship, leadership and communication skills, knowledge of the rule of the U.S. Army in support of national objectives, as well as an appreciation for the importance of physical fitness. The organization of units established by the Department of the Army at public and private secondary schools is provided under 10 U.S.C. 2031 and 32 CFR part 542.

Affected Public: Not-For-Profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14424 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0013]

Proposed Collection; Comment Request

AGENCY: Office of the Administrative Assistant to the Secretary of the Army, (OAA–AAHS), DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Department of the Army announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by August 18, 2009.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

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

• *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301–1160.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write U. S. Army Corps of Engineers Directorate of Civil Works, Regulatory Community of Practice (CECW–COR), 441 G Street, NW., Washington, DC 20314–1000. ATTN:

Jon E. Soderberg, or call Department of the Army reports clearance officer at (703) 428–6440.

Title, Associated Form, and OMB Number: Customer Service Survey—Regulatory Program, U. S. Army Corps of Engineers, ENG FORMS 5065; OMB Control Number 0710–0012.

Needs and Uses: The surveys of applicants who are required to obtain permits from the U.S. Army Corps of Engineers to build on or conduct dredge and fill operations in United States waters. Opinions on the quality of service are used to make program improvements.

Affected Public: Business or other for-profit.

Annual Burden Hours: 15,000.

Number of Respondents: 60,000.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The Corps will conduct surveys of customers at our districts, division and headquarters offices, currently a total of 49 offices. Most customer responses will be solicited by the 38 districts. These elements will tabulate their survey results and send copies to headquarters for a *Corps-wide tabulation.* The survey form will be provided to the public when they receive a regulatory product, primarily a permit decision or wetland determination.

Dated: April 15, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14433 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Army

[Docket ID: USA–2009–0008]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title, Form, and OMB Number: Department of Defense Standard Tender of Freight Services, SDDC Form 364–R; OMB Control Number 0704–0261.

Type of Request: Extension.

Number of Respondents: 434.

Responses per Respondent: 50.

Annual Responses: 21,563.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 5,391.

Needs and Uses: The information derived from the DoD tenders on file with the Military Surface Deployment and Distribution Command (SDDC) is used by SDDC subordinate commands and DoD shippers to select the best value carriers to transport surface freight shipments. Freight carriers furnish information in a uniform format so that the Government can determine the cost of transportation, accessorial, and security services, and select the best value carriers for 1.1 million Bill of Lading shipments annually. The DoD tender is the source document for the General Services Administration post-shipment audit of carrier freight bills.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DOD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14426 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2008–0059]

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by July 20, 2009.

Title, Form, and OMB Number: Enlistee Financial Statement: NAVCRUIT Form 1130/13; OMB Control Number 0703–0020.

Type of Request: Extension.

Number of Respondents: 3,300.

Responses per Respondent: 1.

Annual Responses: 3,300.

Average Burden per Response: 45 minutes.

Annual Burden Hours: 2,475.

Needs and Uses: All persons interested in entering the U.S. Navy or U.S. Navy Reserve, who have someone either fully or partially dependent on them for financial support, must provide information on their current financial situation which will determine if the individual will be able to meet their financial obligations on Navy pay. The information is provided on NAVCRUIT Form 1130/13 by the prospective enlistee during an interview with a Navy recruiter.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

You may also submit comments, identified by docket number and title, by the following method:

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

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

DoD Clearance Officer: Ms. Patricia Toppings.

Written requests for copies of the information collection proposal should be sent to Ms. Toppings at WHS/ESD/Information Management Division, 1777 North Kent Street, RPN, Suite 11000, Arlington, VA 22209–2133.

Dated: May 31, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–14427 Filed 6–18–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–89–2]

Application To Amend Presidential Permit; Bangor Hydro-Electric Company

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of Application.

SUMMARY: Bangor Hydro-Electric Company (BHE) has applied to amend the Presidential permit issued in Order No. PP–89–1.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 20, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Lamont Jackson (Program Office) at 202–586–0808, or by e-mail to *Lamont.Jackson@hq.doe.gov,* or Michael T. Skinker (Program Attorney) at 202–586–2793.

SUPPLEMENTARY INFORMATION: The construction, operation, maintenance, and connection of facilities at the international border of the United States for the transmission of electric energy between the United States and a foreign country is prohibited in the absence of a Presidential permit issued pursuant to Executive Order (EO) 10485, as amended by EO 12038.

On December 30, 2005, DOE issued a Presidential permit to BHE in Order No. PP–89–1, authorizing it to construct a 345,000-volt (345-kV) transmission line that originates at BHE's Orrington, Maine, substation and extends approximately 85 miles eastward crossing the U.S. international border with Canada in the vicinity of Baileyville, Maine. Article 3 of that Order limited operation of the permitted facilities, in combination with the 345-kV international transmission line owned by Maine Electric Power Company (MEPCo; Presidential Permit PP–43), to an instantaneous rate of transmission of 1,000 MW in the import mode and 400 MW in the export mode.

On April 17, 2009, BHE applied to DOE to amend Presidential Permit PP–89–1 by increasing the export limit contained in Article 3 from 400 MW to 550 MW. To support its application, BHE has provided engineering studies that demonstrate that the addition of the PP–89–1 facilities, along with upgrades to the MEPCo 345-kV international transmission facility, can allow for scheduled electric power flows across the New Brunswick-New England Interface in continuous quantities up to 550 MW in the export mode.

When DOE issues electricity export authorizations or Presidential permits, it routinely places limits on the amount of power allowed to be exported or transmitted over a permitted international transmission line. DOE usually defines these power limits as the ''maximum instantaneous rate of transmission.'' In its application, BHE also has requested that DOE change the way it refers to this limit to ''scheduled rate of transmission.'' BHE asserts that this is a clearer description of how energy is scheduled and actually flows over the power system in North America. BHE's application further asserts that ''an instantaneous flow that exceeds a scheduled flow for a short period presents no material reliability risk.'' DOE specifically seeks comment on the appropriateness of using this new way of referring to the power limits placed in export authorizations and Presidential permits.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with § 385.211 or 385.214 of the Federal Energy Regulatory Commission's (FERC) Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each comment, petition and protest should be filed with DOE on or before the date listed above.

Additional copies of such petitions to intervene or protests also should be filed directly with: Mr. Robert J.S. Hanf, Bangor Hydro Electric Co., 21 Telcom Drive, Bangor, ME 04402; and Mr. James Spurr, Emera, Inc., 1894 Barrington Street, Barrington Tower, Halifax, Nova Scotia, Canada B3J2A8.

Before a Presidential permit may be granted or amended, DOE must determine that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system. In addition, DOE must consider the environmental impacts of the proposed action (*i.e.,* granting the Presidential permit or amendment, with any conditions and limitations, or denying the permit) pursuant to the National Environmental Policy Act of 1969. DOE also must obtain the concurrences of the Secretary of State and the Secretary of Defense before taking final action on a Presidential permit application.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above. In addition, the application may be reviewed or downloaded electronically at *http://www.oe.energy.gov/permitting/electricity_imports_exports.htm.* Upon reaching the home page, select ''Pending Applications.''

Issued in Washington, DC, on June 16, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–14447 Filed 6–18–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. EA–357]

Application to Export Electric Energy; Hunt Electric Power Marketing, L.L.C.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Hunt Electric Power Marketing, L.L.C. (HEPM) has applied for authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before July 20, 2009.

ADDRESSES: Comments, protests, or requests to intervene should be

addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE–20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585–0350 (FAX 202–586–8008).

FOR FURTHER INFORMATION CONTACT: Ellen Russell (Program Office) 202–586–9624 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On June 4, 2009, DOE received an application from HEPM for authority to transmit electric energy from the United States to Mexico as a power marketer. HEMP proposes to deliver electric power to Mexico over any international transmission facility authorized by Presidential permit that is appropriate for open access transmission by third parties. The electric energy which HEPM proposes to export to Mexico would be surplus to the needs of the selling entities. HEPM has requested an electricity export authorization with a 5-year term.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the HEPM application to export electric energy to Mexico should be clearly marked with Docket No. EA–357. Additional copies are to be filed directly with Maria Coello, Hunt Electric Power Marketing, L.L.C., 1900 North Akard Street, Dallas, TX 75201 and James M. Bushee, Sutherland Asbill & Brennan LLP, Austin Centre, 701 Brazos Street, Suite 970, Austin, TX 78701–3232. A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at *http://www.oe.energy.gov/permits_pending.htm,* or by e-mailing Odessa Hopkins at *Odessa.hopkins@hq.doe.gov.*

Issued in Washington, DC, on June 16, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–14446 Filed 6–18–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Certification Notice—220]

Office Electricity Delivery and Energy Reliability; Notice of Filing of Self-Certification of Coal Capability Under the Powerplant and Industrial Fuel Use Act

AGENCY: Office Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of filing.

SUMMARY: On February 6, 2009, the Florida Municipal Power Agency, as owner of a new base load electric powerplant, submitted a coal capability self-certification to the Department of Energy (DOE) pursuant to section 201(d) of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended, and DOE regulations in 10 CFR 501.60, 61. Section 201(d) of FUA requires DOE to publish a notice of receipt of self-certifications in the **Federal Register**.

ADDRESSES: Copies of coal capability self-certification filings are available for public inspection, upon request, in the Office of Electricity Delivery and Energy Reliability, Mail Code OE–20, Room 8G–024, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of FUA, as amended (42 U.S.C. 8301 *et seq.*), provides that no new base load electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. Pursuant to FUA section 201(d), in order to meet the requirement of coal capability, the owner or operator of such a facility proposing to use natural gas or petroleum as its primary energy source shall certify to the Secretary of Energy (Secretary) prior to construction, or prior to operation as a base load electric powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with FUA section 201(a) as of the date it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** reciting that the certification has been filed.

The following owner of a proposed new base load electric powerplant has filed a self-certification of coal-capability with DOE pursuant to FUA section 201(d) and in accordance with DOE regulations in 10 CFR 501.60, 61:

Operator: Florida Municipal Power Agency.

Capacity: 300 megawatts (MW).

Plant Location: Cane Island Power Park in Osceola County, Florida.

In-Service Date: June 2011.

Issued in Washington, DC on June 15, 2009.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E9–14445 Filed 6–18–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2660–024]

Domtar Maine Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 15, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New License.

b. *Project No.:* 2660–024.

c. *Date Filed:* March 19, 2009.

d. *Applicant:* Domtar Maine Corporation.

e. *Name of Project:* Forest City Project.

f. *Location:* On Forest City Stream, a tributary of the St. Croix River in Washington and Aroostock Counties, Maine and Canada.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Scott Beal, Domtar Maine Corporation, 144 Main Street, Baileyville, Maine 04694, (207) 427–4004.

i. *FERC Contact:* John Costello, (202) 502–6119.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly

D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person 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.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing Forest City Project comprises an earth embankment dam containing a gated timber spillway and two impoundments (East Grand and North Lakes). There are no generating facilities located at the project. Approximately one-quarter of the 544-foot-long dam (*i.e.,* approximately 147 feet) is within the United States, the remaining section of the dam is located in Canada. The United States (western) section of the dam is an earth embankment measuring approximately 110-feet-long with a maximum height of 12 feet. The center section of the dam (*i.e.,* that portion located in the river channel) contains a 55-foot-wide gated timber crib spillway structure with three wooden gates (gates 1 and 2 are located within the United States). The spillway is approximately 33 feet wide with an elevation of 426.61 feet msl. A 5-foot-wide vertical slot design fishway is located in Canada. The eastern (Canadian) embankment is an earth structure approximately 397-feet-long, 30-feet-long with a crest elevation of 437.27 feet msl. No new construction is proposed.

m. 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.

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. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (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. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14453 Filed 6–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2618–020]

Domtar Maine Corporation; Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

June 15, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New License.

b. *Project No.:* 2618–020.

c. *Date Filed:* March 19, 2009.

d. *Applicant:* Domtar Maine Corporation.

e. *Name of Project:* West Branch Project.

f. *Location:* On Grand Lake Stream, a tributary of the St Croix River in Penobscot, Washington and Hancock Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Scott Beal, Domtar Maine Corporation, 144 Main Street, Baileyville, Maine 04694 (207) 427–4004.

i. *FERC Contact:* John Costello, (202) 502–6119.

j. *Deadline for filing motions to intervene and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person 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.

Motions to intervene and protests may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov/docs-filing/ferconline.asp*) under the ''e-filing'' link. For a simpler method of submitting text only comments, click on ''Quick Comment.''

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. The existing West Branch Project includes two developments (Sysladobsis and West Grand) comprising two dams and a dike. There are no generating facilities located at the project.

The Sysladobsis development includes the 250-foot-long by 9-foot-high Sysladobsis Dam (the furthest upstream), an earth embankment structure with a timber gate and fish facility. The dam impounds the 5,400-acre Sysladobsis Lake and discharges directly into the West Grand development.

The West Grand development includes the 487-foot-long West Grand Dam which has a 105.9-foot-long gate structure with five waste gates. A vertical slot design upstream fish passage facility is located adjacent to the dam's waste gate No.1. The 23,500 acre

impounded waters are comprised of West Grand, Junior, Pocumcus, Pug, Bottle, Norway, and Scraggly lakes.

The approximately 535-foot-long by 15-foot-high Farm Cove Dike is located approximately 3.5 miles west of the main outlet dam to West Grand Lake. The dike comprises a 10-foot-wide by 30-foot-long fishway. The dike has no gates or other flow controls; the only flow passing capability is through the fishway.

No new construction is proposed for the project.

m. 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.

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. Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests 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 protests or motions to intervene must be received on or before the specified deadline date for the particular application.

All filings must (1) bear in all capital letters the title ''PROTEST'' or ''MOTION TO INTERVENE;'' (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. 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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14455 Filed 6–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13358–000]

Riverbank USA Holdings Corp.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Competing Applications

June 15, 2009.

On January 27, 2009, Riverbank USA Holdings Corp. filed an application pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Verplanck Pumped Storage Project No. 13358–000, to be located in the vicinity of the Verplanck Quarry within the town of Cortlandt in West Chester, New York.

The proposed Verplanck Pumped Storage Project would consist of: (1) The Verplanck Quarry (upper reservoir); (2) four 13-foot diameter vertical penstocks leading to a powerhouse 2,000 feet underground; (3) a powerhouse containing four 250-megawatt (MW) units with a total installed capacity of 1,000 MW; (4) water leaving the turbines would be temporarily stored in six underground storage galleries (lower reservoir); and (5) a new double circuit 345-kilovolt transmission line, approximately 1.0 mile long. The estimated average annual energy production of the project would be 2,190 gigawatt-hours.

Applicant Contact: Mr. John Douglas, President and CEO, Riverbank Power Corporation, Royal Bank Plaza, South Tower, Box 166, 200 Bay Street, Suite 3110, Toronto, Ontario M5J2J4 Canada; 416–861–0092 ext. 156.

FERC Contact: Patrick Murphy, (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp.*

More information about this project can be viewed or printed on the ''eLibrary'' link of the Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp.* Enter the docket number (P–13358) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14456 Filed 6–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13359–000]

Riverbank USA Holdings Corp.; Notice of Preliminary Permit Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Competing Applications

June 15, 2009.

On January 27, 2009, Riverbank USA Holdings Corp. filed an application pursuant to section 4(f) of the Federal Power Act, proposing to study the feasibility of the Tomkins Cove Pumped Storage Project No. 13359–000, to be located in the vicinity of Tomkins Cove, an unincorporated hamlet in the town of Stony Point, Rockland County, New York.

The proposed Tomkins Cove Pumped Storage Project consists of: (1) The Tilden Tomkins Cove Quarry (upper reservoir); (2) four 13-foot diameter vertical penstocks leading to a powerhouse 2000 feet underground; (3) a powerhouse containing four 250-megawatt (MW) units with a total installed capacity of 1,000 MW; (4) water leaving the turbines, would be temporarily stored in six underground storage galleries (lower reservoir); and (5) a new double circuit 345-kilovolt transmission line, approximately 1.0-mile long. The estimated average annual energy production of the project would be 2,190 gigawatt-hours.

Applicant Contact: Mr. John Douglas, President and CEO; c/o Riverbank Power Corporation; Royal Bank Plaza;

South Tower, Box 166; 200 Bay Street, Suite 3110; Toronto, Ontario, M5J2J4 Canada.

FERC Contact: Patrick Murphy, (202) 502–8755.

Deadline for filing comments, motions to intervene, competing applications (without notices of intent), or notices of intent to file competing applications: 60 days from the issuance of this notice. Comments, motions to intervene, notices of intent, and competing applications may be filed electronically via the Internet. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the ''e-Filing'' link. If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and eight copies should be mailed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. For more information on how to submit these types of filings please go to the Commission's Web site located at *http://www.ferc.gov/filing-comments.asp*.

More information about this project can be viewed or printed on the ''eLibrary'' link of Commission's Web site at *http://www.ferc.gov/docs-filing/elibrary.asp*. Enter the docket number (P–13359) in the docket number field to access the document. For assistance, call toll-free 1–866–208–3372.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14454 Filed 6–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 11, 2009.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–2311–010; ER97–2846–013.

Applicants: Carolina Power & Light Company; Florida Power Corporation.

Description: Revisions to Updated Market Power Analysis of Progress Energy, Inc.

Filed Date: 06/10/2009.

Accession Number: 20090610–5157.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 1, 2009.

Docket Numbers: ER05–6–108; EL02–111–129; EL03–212–125; EL04–135–112.

Applicants: PJM Interconnection; Midwest Independent Transmission System Operator, Inc.

Description: PJM Interconnection, LLC et al. submits joint response to the 5/8/09 deficiency notice issue by the Commission.

Filed Date: 06/08/2009.

Accession Number: 20090610–0052.

Comment Date: 5 p.m. Eastern Time on Monday, June 29, 2009.

Docket Numbers: ER08–1574–005.

Applicants: ORNI 18, LLC.

Description: Notice of Non-Material Change in Status of ORNI 18, LLC.

Filed Date: 06/10/2009.

Accession Number: 20090610–5144.

Comment Date: 5 p.m. Eastern Time on Wednesday, July 1, 2009.

Docket Numbers: ER09–1013–001.

Applicants: PacifiCorp.

Description: PacfiCorp submits executed Appendix A, Exhibit 3.

Filed Date: 06/09/2009.

Accession Number: 20090610–0109.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Docket Numbers: ER09–1127–001.

Applicants: Wheelabrator South Broward Inc.

Description: Wheelabrator South Broward Inc submits substitute tariff sheet correcting a typo error.

Filed Date: 06/09/2009.

Accession Number: 20090610–0110.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Docket Numbers: ER09–1281–000.

Applicants: California Independent System Operator Corporation.

Description: California Independent System Operator submits an executed signature page.

Filed Date: 06/09/2009.

Accession Number: 20090611–0034.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Docket Numbers: ER09–1288–000.

Applicants: Saracen Energy LP.

Description: Saracen Energy LP submits a Notice of Cancellation of Rate Schedule FERC No. 1.

Filed Date: 06/09/2009.

Accession Number: 20090610–0115.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Docket Numbers: ER09–1289–000.

Applicants: Saracen Energy Partners, LP.

Description: Saracen Energy Partners, LP submits a Notice of Cancellation of Rate Schedule FERC No. 1.

Filed Date: 06/09/2009.

Accession Number: 20090610–0116.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Docket Numbers: ER09–608–001.

Applicants: Tucson Electric Power Company.

Description: Tucson Electric Power Company submits revised tariff sheet to its Open Access Transmission to reflect that is has received a waiver of North American Energy Standards Board.

Filed Date: 06/09/2009.

Accession Number: 20090610–0108.

Comment Date: 5 p.m. Eastern Time on Tuesday, June 30, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR09–5–000.

Applicants: North American Electric Reliability Corporation.

Description: Petition of the North American Electric Reliability Corporation for Approval of Proposed Revisions to the Standards Development Process of Texas Regional Entity and Related Regional Entity Rules.

Filed Date: 06/08/2009.

Accession Number: 20090608–5132.

Comment Date: 5 p.m. Eastern Time on Monday, June 29, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the

appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–14467 Filed 6–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

June 5, 2009.

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC09–84–000.
Applicants: NaturEner USA, LLC, NaturEner Montana Wind Energy 2, LLC, NaturEner Glacier Wind Energy 2, *LLC.*
Description: Application for Authorization of Disposition of Jurisdictional Facilities and Requests for Expedited Consideration and Confidential Treatment of NaturEner Montana Wind Energy 2, LLC, *et al.*
Filed Date: 06/04/*2009.*
Accession Number: 20090604–5112.
Comment Date: 5 p.m. Eastern Time on Thursday, June 25, *2009.*

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER03–983–021.
Applicants: Fox Energy Company *LLC.*
Description: Fox Energy Company LLC submits triennial market power analysis.
Filed Date: 06/03/*2009.*
Accession Number: 20090604–0485.
Comment Date: 5 p.m. Eastern Time on Monday, August 3, *2009.*

Docket Numbers: ER08–1442–001.
Applicants: Flat Ridge Wind Energy, *LLC.*
Description: Flat Ridge Wind Energy submits First Revised Sheet 1 *et al.* to its FERC Electric Tariff, Original Volume 1.
Filed Date: 06/03/*2009.*
Accession Number: 20090605–0078.
Comment Date: 5 p.m. Eastern Time on Monday, June 18, *2009.*

Docket Numbers: ER09–870–001.
Applicants: Ameren Energy Marketing Company.
Description: Ameren Energy Marketing Co. submits Third Revised Sheet No. 2 *et al.* to Second Revised Rate Schedule FERC No. 1.
Filed Date: 06/02/*2009.*
Accession Number: 20090604–0476.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, *2009.*

Docket Numbers: ER09–1028–001.
Applicants: Covanta Hempstead Company.
Description: Covanta Hempstead Co. submits Substitute Original Sheet 2 to their FERC Electric Tariff, Original Volume 1.
Filed Date: 06/03/*2009.*
Accession Number: 20090604–0488.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, *2009.*

Docket Numbers: ER09–1199–000.
Applicants: Commonwealth Edison Company of Indiana, Inc.
Description: Commonwealth Edison Company of Indiana, Inc. submits ministerial revision to Attachment H–13 of the PJM Interconnection, LLC Open Access Transmission Tariff.
Filed Date: 05/26/*2009.*
Accession Number: 20090528–0061.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 16, *2009.*

Docket Numbers: ER09–1262–001.
Applicants: Northeast Utilities Service Company.
Description: Northeast Utilities Service Company submits for acceptance Revised Sheet 1 to FERC Rate Schedule 100 to be effective 8/1/09.
Filed Date: 06/02/*2009.*
Accession Number: 20090605–0066.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, *2009.*

Docket Numbers: ER09–1264–000.
Applicants: Midwest Independent Transmission System Operator, Inc.
Description: Midwest Independent Transmission System Operator, Inc. submits Second Revised Sheet 2261 *et al.* to FERC Electric Tariff, Fourth Revised Volume 1.
Filed Date: 06/02/*2009.*
Accession Number: 20090604–0475.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, *2009.*

Docket Numbers: ER09–1265–000.
Applicants: PacifiCorp.
Description: PacifiCorp submits Rate Schedule No 641 between PacifiCorp and Utah Associated Municipal Power Systems.
Filed Date: 06/02/*2009.*
Accession Number: 20090604–0474.
Comment Date: 5 p.m. Eastern Time on Tuesday, June 23, *2009.*

Docket Numbers: ER09–1267–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Niagara Mohawk Power Corporation submits Original Service Agreement 1445 *et al.* to its FERC Electric Tariff, Original Volume 6.
Filed Date: 06/03/*2009.*
Accession Number: 20090605–0065.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, *2009.*

Docket Numbers: ER09–1268–000.
Applicants: American Electric Power Service Corporation.
Description: Operating Companies of the American Electric Power System submits Original Service Agreement 671 *et al.* to its FERC Electric Tariff, Third Revised Volume 6.
Filed Date: 06/03/*2009.*
Accession Number: 20090605–0064.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, *2009.*

Docket Numbers: ER09–1269–000.
Applicants: Escondido Energy Center, *LLC.*
Description: Escondido Energy Center, LLC submits Original Sheet 1 to FERC Electric Tariff, Original Volume 1 to be effective 7/15/09.
Filed Date: 06/03/*2009.*
Accession Number: 20090605–0063.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, *2009.*

Docket Numbers: ER09–1270–000.
Applicants: Chula Vista Energy Center, *LLC.*
Description: Chula Vista Energy Center, LLC submits Original Sheet 1 *et al.* to its FERC Electric Tariff, Original Volume 1 to be effective 7/15/09.
Filed Date: 06/03/*2009.*
Accession Number: 20090605–0062.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, *2009.*

Docket Numbers: ER09–1271–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits a revised rate schedule cover sheet to cancel PJM Rte Schedule FERC 3, which consists of a legacy Interconnection Agreement dated 9/30/65, periodically amended and supplemented *etc.*
Filed Date: 06/04/*2009.*
Accession Number: 20090605–0061.
Comment Date: 5 p.m. Eastern Time on Thursday, June 25, *2009.*

Docket Numbers: ER09–1272–000.
Applicants: PJM Interconnection, LLC.
Description: PJM Interconnection, LLC submits an executed Interconnection Service Agreement entered into among PJM, *et al.*
Filed Date: 06/04/*2009.*
Accession Number: 20090605–0060.

Comment Date: 5 p.m. Eastern Time on Thursday, June 25, *2009.*

Docket Numbers: ER09–1273–000.
Applicants: Westar Energy, Inc.
Description: Westar Energy, Inc submits a standard form of a Balancing Area Service Agreement as a new attachment to Westar's Open Access Transmission Tariff and Schedule 3A to its OATT.
Filed Date: 06/03/*2009.*
Accession Number: 20090605–0059.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, *2009.*

Docket Numbers: ER09–1274–000; ER09–1275–000; ER09–1276–000.
Applicants: Niagara Mohawk Power Corporation.
Description: New York Independent System Operator submits Original Service Agreement 1461 to FERC Electric Tariff, Original Volume 1.
Filed Date: 06/03/*2009.*
Accession Number: 20090605–0047.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, *2009.*

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES09–37–000.
Applicants: Northwestern Corporation.
Description: Application of NorthWestern Corporation for Authorization Under Section 204 of the Federal Power Act.
Filed Date: 05/29/*2009.*
Accession Number: 20090529–5130.
Comment Date: 5 p.m. Eastern Time on Friday, June 19, *2009.*

Take notice that the Commission received the following open access transmission tariff filings:

Docket Numbers: OA08–58–003.
Applicants: ISO New England Inc.
Description: Northeast Utilities Service Company submits amendments to The ISO New England Inc Transmission, Markets and Services Tariff in compliance with Order 890.
Filed Date: 06/03/*2009.*
Accession Number: 20090604–0486.
Comment Date: 5 p.m. Eastern Time on Wednesday, June 24, *2009.*

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed dockets(s). For assistance with any FERC Online service, please e-mail *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Nathaniel J. Davis, Sr.,
Deputy Secretary.
[FR Doc. E9–14466 Filed 6–18–09; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–60–000]

Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, Pascoag (RI) Utility District, Vermont Department of Public Service: Complainants v. ISO New England Inc.: Respondent; Notice of Complaint

June 12, 2009.

Take notice that on June 11, 2009, pursuant to section 206 of the Commission's Rules and Practice and Procedure, 18 CFR 385.206 and sections 206 and 306 of the Federal Power Act, 16 U.S.C. 824(e) and 825(e), Connecticut Municipal Electric Energy Cooperative, Massachusetts Municipal Wholesale Electric Company, Pascoag (RI) Utility District, and Vermont Department of Public Service (Complainants) filed a formal complaint against ISO New England Inc. (ISO–NE) challenging ISO–NE's decision to discontinue the reserve-margin ''gross-up'' for capacity credit purposes of firm power imported into New England from two hydroelectric power plants licensed to and operated by the New York Power Authority (NYPA).

The Complainants state that copies of the complaint were served on the contacts for ISO–NE as listed on the Commission's list of Corporate Officials.

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. The Respondent's answer and all interventions or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

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 July 1, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14451 Filed 6–18–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–36–000; Docket No. CP09–40–000]

Southern Natural Gas Company, Southeast Supply Header, LLC; Notice of Availability of the Environmental Assessment for the Proposed South System Expansion III Project and Joint Pipeline Expansion Phase II Project

June 12, 2009.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Southern Natural Gas Company (SNG) for the South System Expansion III Project (SSE III Project) and by Southeast Supply Header, LLC (SESH) for the Joint Pipeline Expansion Phase II Project (JPE Phase II Project) in the above-referenced dockets.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed natural gas pipeline facilities including:

SSE III Project

- The Thomaston-Griffin Branch Third Loop (Thomaston-Griffin Loop), 31.2 miles of 36-inch-diameter pipeline loop in Upson, Lamar, and Spalding Counties, Georgia;
- The South Atlanta-Austell Replacement, replacement of 10.9 miles of the existing 18-inch-diameter pipeline with 30-inch-diameter pipeline in Fulton and Clayton Counties, Georgia, and construction of the Plant McDonough Meter Station in Fulton County;
- The South Main Third Loop Line (Gwinville Loop), 12.0 miles of 36-inch-diameter pipeline loop in Jefferson Davis and Simpson Counties, Mississippi;
- The South Main Third Loop Line (Enterprise Loop), 7.7 miles of 36-inch-diameter pipeline loop in Lauderdale County, Mississippi, and Choctaw and Sumter Counties, Alabama;
- An additional 10,310 horsepower (hp) of compression and associated ancillary facilities installed at SNG's existing Bay Springs Compressor Station in Jasper County, Mississippi;
- The South Main Third Loop Line (Bay Springs Loop), 2.4 miles of 36-inch-diameter pipeline in Clarke County, Mississippi;
- The South Main Fourth Loop Line (Gallion Loop), 5.2 miles of 36-inch-diameter pipeline loop in Hale and Perry Counties, Alabama;
- The South Main Replacement (Elmore Replacement), replacement of 11.7 miles of 16-inch-diameter pipeline with 42-inch-diameter pipeline in Elmore County, Alabama; and
- An additional 7,000 hp of compression and associated ancillary facilities at the existing Ellerslie Compressor Station in Harris County, Georgia.

SNG would construct its proposed facilities in three phases beginning in the first quarter of 2010, and all facilities would be in service by the second quarter of 2012.

JPE Phase II Project

- An additional 12,891 hp (15,000 hp nominal) of compression and associated ancillary facilities at the existing Delhi Compressor Station near Delhi, Richland Parish, Louisiana; and
- An additional 12,712 hp (15,000 hp nominal) of compression and associated ancillary facilities at the existing Gwinville Compressor Station near Gwinville, Jefferson Davis County, Mississippi.

SESH would begin construction in October 2009, and proposes an in-service date in July 2010.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Copies of the EA have been mailed to Federal, State, and local agencies; public interest groups; interested individuals and affected landowners; Native American tribes; newspapers and libraries; and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below.

You can make a difference by providing us with your specific comments or concerns about the SSE III Project or the JPE Phase II Project. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are timely and properly recorded, please send in your comments so that they will be received in Washington, DC on or before July 13, 2009.

For your convenience, there are three methods which you can use to submit your comments to the Commission. In all instances please reference the project docket numbers CP09–36–000 or CP09–40–000 with your submission. The docket numbers can be found on the front of this notice. The Commission encourages electronic filing of comments and has dedicated eFiling expert staff available to assist you at 202–502–8258 or *efiling@ferc.gov*.

(1) You may file your comments electronically by using the *Quick Comment* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings*. A Quick Comment is an easy method for interested persons to submit text-only comments on a project;

(2) You may file your comments electronically by using the *eFiling* feature, which is located on the Commission's Internet Web site at *http://www.ferc.gov* under the link to *Documents and Filings.* eFiling involves preparing your submission in the same manner as you would if filing on paper, and then saving the file on your computer's hard drive. You will attach that file as your submission. New eFiling users must first create an account by clicking on ''*Sign up*'' or ''*eRegister.*'' You will be asked to select the type of filing you are making. A comment on a particular project is considered a ''Comment on a Filing;'' or

(3) You may file your comments via mail to the Commission by sending an original and two copies of your letter to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426.

Label one copy of the comments for the attention of Gas Branch 2, PJ11.2.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of

Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at 1–866–208–FERC or on the FERC Internet Web site (*http://www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number excluding the last three digits in the Docket Number field. Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at 1–866–208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission now offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries and direct links to the documents. Go to *http://www.ferc.gov/esubscribenow.htm.*

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14452 Filed 6–18–09; 8:45 am]

BILLING CODE 6717–01–P

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

DEPARTMENT OF ENERGY

Bonneville Power Administration

Central Ferry–Lower Monumental Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: BPA intends to prepare an EIS in accordance with the National Environmental Policy Act (NEPA) on the construction, operation, and maintenance of a proposed 500-kilovolt (kV) transmission line in Garfield, Columbia, and Walla Walla counties, Washington. The proposed line would extend west from a new BPA 500-kV Central Ferry Substation (separately proposed to be built in northwestern Garfield County, Washington to interconnect proposed wind projects in that area), to BPA's existing 500-kV Lower Monumental Substation in Walla Walla County, Washington. BPA is considering two routing alternatives for the proposed Central Ferry–Lower Monumental transmission line; portions of both routes would parallel existing BPA lines in the area. One routing alternative for the transmission line is about 38 miles long, and the other is about 40 miles long. The proposed transmission line is needed to increase transmission capacity to respond to requests for transmission service in this area.

With this Notice of Intent, BPA is initiating the public scoping process for the EIS. BPA is requesting comments about potential environmental impacts that it should consider as it prepares the EIS for the proposed project, as well as comments on the proposed routes for the transmission line and suggestions about other route options that may meet the technical requirements of the transmission system.

In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment to avoid or minimize potential harm to or within any affected floodplains and wetlands. The assessment will be included in the EIS.

DATES: Written scoping comments are due to the address below no later than August 3, 2009. Comments may also be made at the EIS scoping meeting to be held on July 13, 2009, from 4 p.m. to 7 p.m. at the addresses below.

ADDRESSES: Send letters with comments and suggestions on the proposed scope of the Draft EIS, and requests to be placed on the project mailing list, to Bonneville Power Administration, Public Affairs Office—DKE–7, P.O. Box 14428, Portland, OR 97293–4428, or by fax to (503) 230–3285. You also may call BPA's toll free comment line at (800) 622–4519 and leave a message (please include the name of this project); or submit comments online at *http://www.bpa.gov/comment.* BPA will post all comment letters in their entirety on BPA's Web site at *http://www.bpa.gov/comment.*

On Monday, July 13, 2009, an open-house style scoping meeting will be held from 4 p.m. to 7 p.m. at Starbuck School Gymnasium in Starbuck, Washington. At this informal meeting, we will provide maps and other information about the project and have members of the project team available to answer questions and accept oral and written comments. You may stop by anytime during the open house.

FOR FURTHER INFORMATION CONTACT: Tish Eaton, Environmental Coordinator, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 503–230–3469; or e-mail *tkeaton@bpa.gov*. You may also contact Theresa Berry, Project Manager, Bonneville Power Administration—TEP–3, P.O. Box 3621, Portland, Oregon 97208–3621; toll-free telephone 1–800–282–3713; direct telephone 360–619–6313; or e-mail *tmberry@bpa.gov*. Additional information can be found at BPA's Web site: *http://www.efw.bpa.gov*.

SUPPLEMENTARY INFORMATION: In 2008, BPA conducted a Network Open Season (NOS) process to help manage its list of requests for long-term transmission service. During the NOS process, utilities and power generators (including wind generators and power marketers) requested the use of BPA's transmission system to transmit their power. To determine if BPA could offer the service requested, BPA studied the transmission system and identified where existing capacity was available and where the system needed upgrades. The studies found that there was not enough available transmission capacity to accommodate all requests for long-term service from the Lower Snake area in southeast Washington to load centers west of the Cascades and to major transmission lines serving the regions growing energy needs. Wind generation facilities built and proposed in this area will increase the amount of power being produced in southeast Washington. Further studies revealed that building a new 500-kV line from a point along BPA's existing Little Goose-Lower Granite lines to BPA's Lower Monumental Substation would allow BPA to accommodate the requests for transmission service from proposed wind generation facilities in this area.

BPA must respond to these requests for transmission service under its Open Access Transmission Tariff. This tariff, which is generally consistent with the Federal Energy Regulatory Commission's *pro forma* open access tariff, has procedures that provide access to BPA's transmission system for

all eligible customers, consistent with all BPA requirements (including the availability or development of sufficient transmission capacity) and subject to an environmental review under NEPA. The proposed Central Ferry–Lower Monumental Transmission Line Project would respond to these requests for transmission service. BPA, therefore, will prepare an EIS under NEPA to assist the agency as it decides whether to build the proposed project, and if a decision is made to build a line, which alternative transmission line route should be constructed.

BPA will be the lead agency for preparation of the EIS. In furtherance of existing cooperative agreements between BPA and the State of Washington, the Washington Energy Facility Site Evaluation Council (Washington EFSEC) also will participate in preparation of the EIS. Among other things, this state agency will assist BPA in evaluating alternative transmission line routes and identifying state interests that should be addressed in the EIS. In addition, cooperating agencies for the EIS may be identified as the proposed project proceeds through the NEPA process.

Alternatives Proposed for Consideration. For the proposed 500-kV transmission line, BPA will consider and evaluate two routing alternatives in the EIS. One routing alternative for the transmission line is about 38 miles long, and the other is about 40 miles long. Both alternatives would require new transmission line right-of-way to allow adequate system reliability spacing of the proposed line from existing 500-kV transmission lines in the area. BPA proposes to construct the new line using lattice steel towers for both routing alternatives.

Both routing alternatives would originate at a new 500-kV substation, referred to as the Central Ferry Substation, that BPA is separately proposing to build in northwestern Garfield County, Washington, at a point along BPA's existing Little Goose-Lower Granite lines approximately two miles southeast of the Snake River near the Port of Central Ferry, Washington. The Central Ferry Substation is being independently proposed to respond to requests received by BPA for interconnection of proposed wind projects in the area to BPA's existing transmission system.

Both routing alternatives also would terminate at the existing BPA 500-kV Lower Monumental Substation, which is located at Lower Monumental Dam on the Snake River in Walla Walla County, Washington. Both routing alternatives would avoid crossing existing BPA 500-kV lines and the Snake River by remaining to the south of these features. The following describes the general locations of the two routing alternatives:

- *North Alternative:* This routing alternative is approximately 40 miles in length. From the new Central Ferry Substation, this route would proceed southwesterly and westerly for about 12 miles. This portion of the route would run parallel to and about 1200 feet to one half-mile south of BPA's existing Little Goose—Lower Granite lines. At this point, the route would angle away from the existing Little Goose—Lower Granite lines and proceed in a southwesterly direction for about 6 miles before crossing the Tucannon River directly north of the Town of Starbuck. From the Tucannon River crossing, the route would continue southwest and west for about 3 miles before angling northwest for about 5 miles to a point approximately 1500 feet south of BPA's two existing Lower Monumental—Little Goose lines. From this point, the route would proceed west for about 14 miles to BPA's existing Lower Monumental Substation, with much of this portion of the route running parallel to and approximately 1500 feet south of these existing lines.
- *South Alternative:* This routing alternative is approximately 38 miles in length. From the new Central Ferry Substation, this route would proceed southwesterly for about 3 miles, with this portion of the route running parallel to and approximately 1200 feet south of BPA's existing Little Goose—Lower Granite lines. At this point, instead of following these existing lines as they angle to the west, the route would continue southwesterly and then westerly for about 15 miles before crossing the Tucannon River directly north of the Town of Starbuck. From the Tucannon River crossing, the route would continue westerly for about 20 miles to BPA's existing Lower Monumental Substation.

BPA is also considering the No Action Alternative, that is, not building the proposed transmission line. Other alternatives may be identified through the scoping process.

Public Participation and Identification of Environmental Issues. The potential environmental issues identified for most transmission line projects include land use, socioeconomics, cultural resources, visual resources, electric and magnetic field issues, sensitive plants and animals, soil erosion, wetlands, floodplains, and fish and water resources. BPA has established a 45-day scoping period during which tribes, affected landowners, concerned citizens, special interest groups, local and federal governments, and any other interested parties are invited to comment on the scope of the proposed EIS, including potential routing alternatives to be considered and environmental impacts to be evaluated. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold public meetings to hear comments. The Draft EIS is expected to be published in summer 2010. BPA will consider and respond to comments received on the Draft EIS in the Final EIS. The Final EIS is expected to be published in spring-summer 2011. BPA's decision will be documented in a Record of Decision that will follow the Final EIS.

Issued in Portland, Oregon, on June 9, 2009.

Stephen J. Wright,

Administrator and Chief Executive Officer.

[FR Doc. E9–14448 Filed 6–18–09; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM08–11–000]

North American Electric Reliability Corporation; Notice of Filing

June 12, 2009.

Take notice that on May 29, 2009, the North American Electric Reliability Corporation (NERC) submitted modifications to Violation Severity Levels (VSLs) for three revised Facilities Design, Connections, and Maintenance (FAC) Reliability Standards: FAC–010–2—System Operating Limits Methodology for the Planning Horizon; FAC–011–2—System Operating Limits Methodology for the Operations Horizon; and FAC–014–2—Establish and Communicate System Operating Limits in compliance with Order No. 722 issued on March 20, 2009, 126 FERC ¶ 61,255 (2009).

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 July 6, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–14450 Filed 6–18–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2005–0558; FRL–8421–1]

Coppers Amendment to the Reregistration Eligibility Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's decision to modify certain provisions that were specified in the 2006 Reregistration Eligibility Decision (RED) for the copper pesticides. EPA conducted this reassessment of the Coppers RED in response to public comments received during the comment period, and updated information that would impact product labeling. Based on the new information received, and in a continuing effort to mitigate risk, the Agency has made certain modifications in the Coppers RED.

FOR FURTHER INFORMATION CONTACT: Rosanna Louie, Special Review and Reregistration Division (7508P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001; telephone number: (703) 308–0037; fax number: (703) 308–8090; e-mail address: *louie.rosanna@epa.gov*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

This action is directed to the public in general, and may be of interest to a wide range of stakeholders including environmental, human health, farm worker and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Copies of This Document and Other Related Information?

1. *Docket.* EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2005–0558. Publicly available docket materials are available either in the electronic docket at *http://www.regulations.gov*, or, if only available in hard copy, at the Office of Pesticide Programs (OPP) Regulatory Public Docket in Rm. S–4400, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA. The hours of operation of this Docket Facility are from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Docket Facility telephone number is (703) 305–5805.

2. *Electronic access.* You may access this **Federal Register** document electronically through the EPA Internet under the ''**Federal Register**'' listings at *http://www.epa.gov/fedrgstr.*

II. Background

A. What Action Is the Agency Taking?

Section 4 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) directs EPA to reevaluate existing pesticides to ensure that they meet current scientific and regulatory standards. In 2006, EPA issued a RED for coppers under section 4(g)(2)(A) of FIFRA. In response to a notice of availability published in the **Federal Register** of August 9, 2006 (71 FR 45550) (FRL–8085–4), the Agency received substantive comments and information from commenters. The amended Coppers RED reflects changes resulting from Agency consideration of these comments received on the RED, as well as efforts by the Agency to appropriately mitigate overall risk. The RED amendment for coppers concludes EPA's reregistration eligibility decision-making process for this pesticide.

A total of 46 submissions were received, which included comments from various growers that use copper products, university extension services, registrants, and publicly-owned treatment works facilities. Comments received during the public comment period included information on application rates, copper use in aquatic areas and water treatment facilities, and human health exposures. In consideration of these comments, and other decisions that occurred after the RED was published, the RED has been updated to reflect current product labeling requirements. Appendix A, which is a summary of the use sites and application rates eligible for reregistration, has been updated based on input received from stakeholders. The label table has also been revised to include modifications to some of the restricted entry intervals after copper pesticide applications, labeling language for spray drift management requirements, and personal protective equipment requirements for workers who handle and apply copper pesticides.

B. What Is the Agency's Authority for Taking This Action?

Section 4(g)(2) of FIFRA, as amended, directs that, after submission of all data concerning a pesticide active ingredient, ''the Administrator shall determine whether pesticides containing such active ingredient are eligible for reregistration,'' before calling in product specific data on individual end-use products and either reregistering products or taking other ''appropriate regulatory action.''

List of Subjects

Environmental protection, Pesticides and pests, Coppers.

Dated: June 6, 2009.

Richard P. Keigwin, Jr.,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. E9–14336 Filed 6–18–09; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8594–5]

Environmental Impacts Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–1399 or *http://www.epa.gov/compliance/nepa/.*

Weekly receipt of Environmental Impact Statements

Filed 06/08/2009 Through 06/12/2009.

Pursuant to 40 CFR 1506.9.

EIS No. 20090188, Draft EIS, AFS, AZ, Pinaleno Ecosystem Restoration Project, Proposed On-the-Ground Treatments to Improve Forest Health and Improve or Protect Red Squirrel Habitat, Coronado National Forest, Graham County, AZ, *Comment Period Ends:* 08/04/2009, *Contact:* Craig Wilcox, 928–348–1961.

EIS No. 20090189, Draft EIS, AFS, CA, Beaverslide Timber Sale and Fuel Treatment Project, Proposing to Harvest Commercial Timber and Treat Hazardous Fuels, Six Rivers National Forest, Mad River Ranger District, Trinity County, CA, *Comment Period Ends:* 08/04/2009, *Contact:* Keith A. Menasco, 928–774–6594.

EIS No. 20090190, Draft EIS, AFS, OR, Wallowa-Whitman National Forest Travel Management Plan, Designate Roads Trails and Areas for Motor Vehicle User, Baker, Grant, Umatilla, Union and Wallowa Counties, OR, *Comment Period Ends:* 08/17/2009, *Contact:* Cindy Whitlock, 541–962–8501.

EIS No. 20090191, Final EIS, NOA, 00, Amendment 1 to the Consolidated Highly Migratory Species (HMS) Fishery Management Plan, (FMP), Updating and Revising Essential Fish Habitat (EFH) for Atlantic Highly Migratory Species (HMS) consider additional Habitat Area of Particular Concern (HAPC) and Analyze Fishing Impacts, Chesapeake Bay, MD, Delaware Bay, DE, Great Bay, NJ and Outer Bank off NC, *Wait Period Ends:* 07/20/2009, *Contact:* Margo Schulze-Haugen 301–713–2347.

EIS No. 20090192, Draft EIS, FHW, ID, Idaho 16, I–84 t0 Idaho 44 Environmental Study, Proposed Action is to Increase the Transportation Capacity, Funding, Ada and Canyon Counties, ID, *Comment Period Ends:* 08/07/2009, *Contact:* Ross Blanchard, 203–334–9180.

EIS No. 20090193, Final EIS, AFS, WI, Camp Four Vegetation Project, Proposes Vegetation and Road Management Activities, Desired Future Condition (DFC), Medford-Park Falls Ranger District, Chequamegon-Nicolet National Forest, Price County, WI, *Wait Period Ends:* 07/20/2009, *Contact:* Ann Hoefferle, 715–748–4878 Ext 24.

EIS No. 20090194, Final EIS, AFS, CA, Moonlight and Wheeler Fires Recovery and Restoration Project, Analysis of the No-Action and Action Alternatives, Mt. Hough Ranger District, Plumas National Forest, Plumas County, CA, *Wait Period Ends:* 07/20/2009, *Contact:* Rich Bednarski, 530–283–7641.

EIS No. 20090195, Final EIS, COE, LA, Mississippi River-Gulf Outlet (MRGO), Louisiana, and Lake Borgne Wetland Creation and Shoreline Protection Project, Proposes to Construct Shoreline Protection Features Along the Lake Borgne Shoreline to Restore and Nourish Wetlands, Lake Borgne, LA, *Wait Period Ends:* 07/20/2009, *Contact:* Dr. William P. Klein, Jr., 504–862–2540.

Dated: June 16, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–14462 Filed 6–18–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–8594–6]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202–564–7146.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 17, 2009 (74 FR 17860).

Draft EISs

EIS No. 20090032, ERP No. D1–FHW–F40446–IN, I–69 Evansville to Indianapolis, Indiana Projec t, Section 3, Washington to Crane NSWC (US 50 to US 231), Daviess, Greene, Knox and Martin Counties, IN.

Summary: While EPA has no objections to the proposed action, it did request clarification on some air quality, floodplain and watershed/wetland issues. Rating LO.

EIS No. 20090061, ERP No. D–AFS–L65568–OR, D-Bug Hazard Reduction Timber Sales Project, To Lessen the Fuel and Safety Hazards Associated with the On-going Outbreak of Mountain Pine Beetles, Diamond Lake Ranger District, Umpqua National Forest, Douglas County, OR.

Summary: EPA does not object to the proposed project. Rating LO.

EIS No. 20090101, ERP No. D–AFS–K65360–CA, Lake Tahoe Basin Management Unit South Shore Fuel Reduction and Healthy Forest Restoration, To Manage Fuel Reduction and Forest Health in the Wildland Urban Intermit (WUI), El Dorado County, CA.

Summary: EPA expressed environmental concerns about water quality monitoring, cumulative watershed effects, and impacts to stream environment zones (SEZs). EPA recommended consideration of an alternative that further reduces adverse effects on SEZs and watersheds already over the cumulative watershed effects threshold. Rating EC2.

EIS No. 20090112, ERP No. D–NPS–K65362–00, Long Walk National Historic Trail Feasibility Study, To Evaluate the Suitability and Feasibility of Designating the Routes, Implementation, Apache, Coconino, Navajo Counties, AZ; Bernalillo, Cibola, De Baca, Guadalupe, Lincoln, McKinley, Mora, Otero, Santa Fe, Sandoval, Torrance, Valencia Counties, NM.

Summary: EPA does not object to the preferred plan of action. Rating LO.

EIS No. 20090117, ERP No. D–COE–E39078–FL, C–111 Spreader Canal Western Project, To Restore Ecosystem Function in Taylor Slough and Florida Bay Areas, Central and Southern Florida Project, Comprehensive Everglades Restoration Plan (CERP), Everglades National Park, Miami-Dade County, FL.

Summary: While EPA has no objections to the proposed action, it did request clarification of some water quality issues. Rating LO.

EIS No. 20090125, ERP No. D–SFW–K99042–AZ, Town of Marana Habitat Conservation Plan, Issuance of an Incidental Take Permit (ITP) to Authorize the Incidental Take of Species Protected by the Endangered Species Act (ESA), Pima County, AZ.

Summary: EPA expressed environmental objections due to the inclusion of incidental take coverage of

bank stabilization activities for the remaining unmodified banks of the Santa Cruz River. Rating EO2.

EIS No. 20090056, ERP No. DB–TPT–K61154–CA, Presidio Trust Management Plan (PTMP), Updated Information on the Preferred Alternative for the Main Post District of the Presidio of San Francisco, Implementation, City and County of San Francisco, CA.

Summary: EPA expressed environmental concerns about air emissions from demolition and construction activities, and recommended the Final EIS provide emissions projections for these activities and additional information on mitigation measures. Rating EC2.

EIS No. 20080489, ERP No. DR–DOE–C06012–NY, West Valley Demonstration Project and Western New York Nuclear Service Center Decommissioning and/or Long-Term Stewardship, (DOE/EIS–0226–D Revised) City of Buffalo, Eric and Cattaraugus Counties, NY.

Summary: EPA expressed environmental concerns about air quality, sole source aquifer and surface water impacts. Rating EC1.

Final EISs

EIS No. 20090163, ERP No. F–NPS–J61113–SD, Minuteman Missile National Historic Site, General Management Plan, Implementation, Jackson and Pennington Counties, SD.

*Summary:*No formal comment letter was sent to the preparing agency.

Dated: June 16, 2009.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E9–14463 Filed 6–18–09; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted for Review to the Office of Management and Budget, Comments Requested

June 11, 2009.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act (PRA) of 1995, 44 U.S.C. 3501–3520. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written Paperwork Reduction Act (PRA) comments should be submitted on or before July 20, 2009. If you anticipate that you will be submitting PRA comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the FCC contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via fax at 202–395–5167 or the Internet at *Nicholas_A._Fraser@omb.eop.gov* and to *Judith-B.Herman@fcc.gov,* Federal Communications Commission, or an e-mail to *PRA@fcc.gov.* To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page *http://reginfo.gov/public/do/PRAMain,* (2) look for the section of the Web page called ''Currently Under Review'', (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, and (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB Control Number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith B. Herman at 202–418–0214 or via the Internet at *Judith-B.Herman@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0398.

Title: Sections 2.948 and 15.117(g)(2)—Equipment Authorization Measurement Standards.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 320 respondents; 320 responses.

Estimated Time per Response: 5–30 hours.

Frequency of Response: On occasion, one time and every three year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. sections 4(i), 302, 303(c), 303(f), 303(g), 303(r) and 309(a).

Total Annual Burden: 9,100 hours.

Total Annual Cost: N/A.

Privacy Act Impact Assessment: N/A.

Nature and Extent of Confidentiality: There is a minimal exemption from the Freedom of Information Act (FOIA), 5 U.S.C. 552(b)(4) and 47 CFR 0.459(d) of the Commission's rules that is granted for trade secrets, which may be submitted to the Commission as part of the documentation of the test results. No other assurances of confidentiality are provided to respondents.

Needs and Uses: The Commission will submit this information collection (IC) to the OMB as an extension during this comment period to obtain the full three-year clearance from them. There is no change in the Commission's estimated respondents/responses and/or total annual burden hours.

The Commission established uniform technical standards for various non-licensed equipment operating under the guidelines established in 47 CFR parts 2 and 15 of FCC rules, which include personal computers, garage door openers, baby monitors, microwave ovens, etc. In order to ensure that technical standards are applied uniformly to non-licensed equipment, the Commission requires manufacturers to follow the standardized measurement procedures and practices:

(a) 47 CFR part 2 of the Commission's rules requires each Electro-Magnetic Compatibility (EMC) testing facility that performs equipment testing in support of any request for equipment authorization to file a test site description, either with the Commission or with a Commission-approved accrediting body.

(b) The test site description and the supporting information documents that the EMC testing facility complies with

the testing standards used to make the measurements that support any request for equipment authorization.

(c) In addition, the referenced 47 CFR part 15 rules require that equipment manufacturers file information concerning the testing of TV receivers, which tune to UHF channels, to show that the UHF channels provide approximately the same degree of tuning accuracy with approximately the same expenditure of time and effort.

The Commission or the accrediting body, e.g., EMC testing facility, use the information from these test sites and the supporting documentation, which accompany all requests for equipment authorization:

(a) To ensure that the data are valid and that proper testing procedures are used;

(b) To ensure that potential interference to radio communications is controlled; and

(c) To investigate complaints of harmful interference or to verify the manufacturer's compliance with 47 CFR 2.948 and 15.117(g)(2) of the Commission's rules.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E9–14483 Filed 6–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CG Docket 03–123; DA 09–1318]

Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In this document, the Commission reminds telecommunications relay services (TRS) providers and state TRS administrators that they must submit their annual consumer complaint log summaries. In addition, the Commission reminds TRS providers and state administrators of their ongoing obligations to submit to the Commission a contact person or office for TRS consumer information and complaints and to notify the Commission of any substantive changes to their TRS programs.

DATES: Complaint logs are due on or before July 1, 2009.

ADDRESSES: State Complaint Log Summary filings must reference CG Docket No. 03–123. Submissions may be filed using: (1) The Commission's Electronic Comment Filing System (ECFS), or (2) by filing paper copies.

- *Electronic Filers:* Submissions may be filed electronically using the Internet by accessing the ECFS: *http://www.fcc.gov/cgb/ecfs/*. Filers should follow the instructions provided on the Web site for submitting comments.
- For ECFS filers, if multiple docket or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to *ecfs@fcc.gov*, and include the following words in the body of the message, ''get form.'' A sample form and directions will be sent in response.
- *Paper Filers:* Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW., Washington DC 20554.

FOR FURTHER INFORMATION CONTACT: For further information regarding this Public Notice, contact Arlene Alexander, Consumer and Governmental Affairs Bureau, Disability Rights Office (202) 418–0581 (voice), (202) 418–0183 (TTY), or e-mail *Arlene.Alexander@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's document DA 09–1318. The full text of DA 09–1318 and subsequently filed documents in this matter are available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. They may also be purchased from the Commission's duplicating contractor at Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554; the contractor's Web site, *http://www.bcpiweb.com*; or by calling (800) 378–3160. DA 09–1318 and subsequently filed documents in this matter may also be found by searching ECFS at *http://www.fcc.gov/cgb/ecfs* (insert CG Docket No. 03–123 into the Proceeding block).

To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to *fcc504@fcc.gov* or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY). DA 09–1318 can also be downloaded in Word or Portable Document Format (PDF) at: *http://www.fcc.gov/cgb/dro/trs.html.*

Synopsis

The Commission reminds TRS providers that they must submit their annual consumer complaint log summaries for the 12-month period ending May 31, 2009, on or before Wednesday, July 1, 2009, pursuant to 47 CFR 64.604(c)(1) of the Commission's rules. State TRS programs should report all complaints made to the state agency, as well as those made to the state's TRS provider. TRS providers that provide interstate traditional TRS, interstate Speech-to-Speech (STS), interstate captioned telephone services (CTS), IP CTS, IP Relay, or Video Relay Service (VRS) are also required to submit complaint log summaries. Complaint log summaries shall include, at a minimum, the total number of interstate relay calls by type of TRS, the number of complaints received that allege a violation of the federal TRS mandatory minimum standards, the date of the complaint, the nature of the complaint, the date of its resolution, and an explanation of the resolution.

In addition, TRS providers and state administrators are also reminded that, pursuant to 47 CFR 64.604(c)(2) of the Commission's rules, they are required to submit to the Commission a contact person or office for TRS consumer information and complaints. The submission shall include the name and address of the state or provider person or office that receives complaints, grievances, inquiries, and suggestions; the voice, TTY, and fax numbers for that office; the email address; and the physical address to which correspondence should be sent. Any changes in contact information for certified state TRS programs and/or interstate TRS providers should be sent to *TRS_POC@fcc.gov*.

Finally, the Commission reminds TRS providers and state administrators that pursuant to 47 CFR 64.606(f)(1) of the Commission's rules, they are required to notify the Commission of any substantive changes in their TRS programs within 60 days of when they occur, and must certify that the state TRS program continues to meet federal minimum standards after implementing the substantive change. Notices of substantive changes in TRS Programs must reference CG Docket No. 03–123.

Federal Communications Commission.

Suzanne M. Tetreault,

Acting Deputy Chief, Consumer and Governmental Affairs Bureau.

[FR Doc. E9–14473 Filed 6–18–09; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: Federal Maritime Commission.

TIME AND DATE: June 24, 2009—10 a.m.

PLACE: 800 North Capitol Street, NW., First Floor Hearing Room, Washington, DC.

STATUS: The meeting will be in Open Session.

Matters To Be Considered

Open Session

1. Docket No. 02–15 Passenger Vessel Financial Responsibility.

2. *FMC Agreement No. 201201:* Port of Seattle/Terminal Operator Agreement.

3. Marine Terminal Agreements Exemption at 46 CFR 535.308.

4. FY 2009 Budget Status Update.

CONTACT PERSON FOR MORE INFORMATION: Karen V. Gregory, Secretary, (202) 523–5725.

Karen V. Gregory,

Secretary.

[FR Doc. E9–14575 Filed 6–17–09; 4:15 pm]

BILLING CODE 6730–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0284]

Agency Information Collection Activities; Proposed Collection; Comment Request; Data.gov Information Collection; OMB Control No. 3090–0284

AGENCY: General Services Administration (GSA).

ACTION: Notice of a request for comments regarding a new information collection.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. Chapter 35), this document announces that GSA is planning to submit a request to replace an emergency Information Collection Request (ICR) to the Office of Management and Budget (OMB). Before submitting this ICR to OMB for review and approval, GSA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before August 18, 2009.

ADDRESSES: Submit your comments regarding this collection of information to: *datagov@gsa.gov* or to Marion Royal at the information provided below. Please cite Data.gov Information Collection OMB Control No. 3090–0284 in all correspondence.

FOR FURTHER INFORMATION CONTACT: Marion Royal, General Services Administration, Office of Governmentwide Policy, 1800 F Street, NW., Room 2018, Washington, DC 20405–0001; telephone number: 202–208–4643; fax number: 202–501–6455; e-mail address: *datagov@gsa.gov.*

SUPPLEMENTARY INFORMATION:

What Information Is GSA Particularly Interested in?

Pursuant to section 3506(c)(2)(A) of the PRA, GSA specifically solicits comments and information to enable it to:

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

(ii) evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) enhance the quality, utility, and clarity of the information to be collected; and

(iv) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. In particular, GSA is requesting comments from very small businesses (those that employ less than 25) on examples of specific additional efforts that GSA could make to reduce the paperwork burden for very small businesses affected by this collection.

What Should I Consider When I Prepare My Comments for GSA?

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible and provide specific examples.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Offer alternative ways to improve the collection activity.

6. Make sure to submit your comments by the deadline identified under **DATES**.

7. To ensure proper receipt by GSA, be sure to identify the ICR title on the first page of your response. You may also provide the **Federal Register** citation.

What Information Collection Activity or ICR Does This Apply to?

Title: Data.gov Information Collection.

OMB Control Number: 3090–0284.

Abstract: Data.gov is inspired by the President's program for ''Open Government'' and ''Transparency''. In response to the President's direction to improve the transparency of government, the Federal Chief Information Officer (CIO) Council has created a Web site/portal that will improve public access to a wide variety of U.S. Government data. Data.gov is a public-friendly website that provides descriptions of the Federal datasets, information on how to access the

datasets, points of contact information, metadata information, and links to publicly accessible applications that leverage the datasets. This information collection request for a generic clearance is a replacement of the emergency ICR approved by OMB. It is being submitted in order to fulfill the public feedback aspects of this important initiative. Data.gov visitors will be provided opportunities to provide feedback and ratings in the spirit of the President's open government and transparency initiative. Examples of feedback mechanisms are:

(1) A five-star rating system to give visitors information about which datasets other visitors found most useful and interesting on the Data.gov Web page,

(2) a ''Suggest Other Datasets'' entry page for the public to submit ideas for datasets with an optional contact e-mail address provided for those visitors wishing to identify themselves,

(3) a ''Contact Us'' entry page with an optional contact e-mail address for those visitors wishing to identify themselves,

(4) pages for visitors to advise how they leverage the datasets in new and different ways to build applications, conduct analysis, and perform research,

(5) pages for visitors to rate the benefit of the reported new solutions, *etc.*

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average up to 500 hours per year. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements which have subsequently changed; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The estimated annual burden request is summarized here:

Affected entities: Visitors to Data.gov.

Estimated total number of potential respondents: 22,500.

Estimated total number of potential responses: 22,500.

Frequency of response: Occasionally.

Estimated total annual burden hours: 500 hours.

Estimated total annual costs: No cost to the public; no additional government resources.

What Is the Next Step in the Process for This ICR?

GSA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. At that time, GSA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: June 12, 2009.

Casey Colemen,

Chief Information Officer.

[FR Doc. E9–14493 Filed 6–18–09; 8:45 am]

BILLING CODE 6820–WY–P

GENERAL SERVICES ADMINISTRATION

[OMB Control NO. 3090–00XX]

Office of Facilities Management and Program Services; Submission for OMB Review; Background Check Investigations for Child Care Workers

AGENCY: Office of Facilities Management and Program Services, Public Building Service (PBS), U.S. General Services Administration (GSA).

ACTION: Notice of request for comments regarding a new OMB information collection.

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 the new information collection requirement regarding the collection of personal data for background check investigations for child care workers accessing GSA owned and leased controlled facilities.

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: July 20, 2009.

FOR FURTHER INFORMATION CONTACT: Ms. Layna Koentopf, Program Analyst, Building Security and Policy Division, GSA, 1800 F Street, NW., Washington, DC 20405; or telephone (202) 208–1585. Please cite OMB Control No. 3090–00XX, Background Check Investigations for Child Care Workers.

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), U.S. General Services Administration, 1800 F Street, NW., Room 4041, Washington, DC 20405. Please cite Background Check Investigations for Child Care Workers, in all correspondence.

SUPPLEMENTARY INFORMATION:

A. Purpose

Homeland Security Presidential Directive (HSPD) 12 ''Policy for a Common Identification Standard for Federal Employees and Contractors'' requires the implementation of a governmentwide standard for secure and reliable forms of identification for Federal employees and contractors. OMB's implementing instructions requires all contract employees requiring routine access to Federally controlled facilities for greater than six (6) months to receive a background investigation. The minimum background investigation is the National Agency Check with Written Inquiries or NACI.

However, there is no requirement in the law or HSPD–12 that requires child care employees to be subject to the NACI since employees of child care providers are neither government employees nor government contractors. Instead, the child care providers are required to complete the criminal history background checks mandated in the Crime Control Act of 1990, Public Law 101–647, dated November 29, 1990, as amended by Public Law 102–190, dated December 5, 1991. These statutes require that each employee of a child care center located in a Federal building or in leased space must undergo a background check.

According to GSA policy, child care workers (as described above) will need to submit the following:

1. An original signed copy of a *Basic National Agency Check Criminal History,* GSA Form 176; and

2. Two sets of fingerprints on FBI Fingerprint Cards, for FD–258.

This information was previously collected on either the old Federal Protective Service 176 Form or the SF85P. This is a request to replace the form with the GSA Form 176. The new GSA form will be less of a public burden.

Please Note: The original request to review and approve the new information collection requirement regarding the collection of personal data for background check investigations was for both temporary contractors and child care workers accessing GSA owned and leased controlled facilities. However, through discussions with OMB a more streamlined process will be developed for conducting background checks on temporary contractors. GSA is therefore pulling the request for review and approval of the collection of personal data for background check investigations of temporary contractors, form GSA 176T, presented in the **Federal Register** publication of February 17, 2009, 74 FR 7439. GSA is proceeding with the request for review and approval for background check investigations of child care workers, form GSA 176C—to be referred to as form GSA 176, Background Check Investigations for Child Care Workers.

B. Annual Reporting Burden

Respondents: 3,060.

Responses per Respondent: 1.

Hours per Response: 1.

Total Burden Hours: 3,060.

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 Background Check Investigations for Child Care Workers, in all correspondence.

Dated: June 12, 2009.

Casey Coleman,

Chief Information Officer, General Services Administration.

[FR Doc. E9–14468 Filed 6–18–09; 8:45 am]

BILLING CODE 6820–23–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0076]

Federal Acquisition Regulation; Submission for OMB Review; Novation/Change of Name Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for 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 Novation/Change of Name Requirements. A request for public comments was published in the **Federal Register** at 74 FR 18716, April 24, 2009. 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 July 20, 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), OMB Desk Officer, 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. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Ms. Beverly Cromer, Procurement Analyst, Contract Policy Division, GSA, (202) 501–1448.

A. Purpose

When a firm performing under Government contracts wishes the Government to recognize (1) a successor in interest to these contracts, or (2) a name change, it must submit certain documentation to the Government.

B. Annual Reporting Burden

Respondents: 1,000.

Responses per Respondent: 1.

Annual Responses: 1,000.

Hours per Response: .458.

Total Burden Hours: 458.

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. 9000–0076, Novation/Change of Name Requirements, in all correspondence.

Dated: June 16, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–14469 Filed 6–18–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Pandemic Influenza Antivirals—Amendment

AGENCY: Department of Health and Human Services, Office of the Secretary.

Subject: Pandemic Influenza Antivirals—Amendment.

Authority: 42 U.S.C. 247d–6d.

ACTION: Notice of amendment (to the October 10, 2008 Declaration under the Public Readiness and Emergency Preparedness Act).

SUMMARY: Amendment to declaration pursuant to section 319F–3 of the Public Health Service Act (42 U.S.C. 247d–6d) to provide targeted liability protections for pandemic countermeasures based on the Acting Secretary's April 26 determination, under section 319F–3(b) of the Act, that the risk that the spread of H1N1 swine influenza viruses (now known as 2009 H1N1 Influenza A, or 2009 H1N1 influenza) and resulting disease constitutes a public health emergency.

DATES: This notice and the attached amendment are effective as of April 26, 2009.

FOR FURTHER INFORMATION CONTACT: RADM W.C. Vanderwagen, Assistant Secretary for Preparedness and Response, Office of the Secretary, Department of Health and Human Services, 200 Independence Avenue, SW., Washington, DC 20201, Telephone (202) 205–2882 (this is not a toll-free number).

HHS Secretary's Amendment to the Declaration for the Use of the Public Readiness and Emergency Preparedness Act for the Influenza Antivirals Oseltamivir Phosphate (Tamiflu®) and Zanamivir (Relenza®) Dated October 10, 2008

Whereas the October 10, 2008 declaration for Oseltamivir Phosphate (Tamiflu(®)) and Zanamivir (Relenza®) (''Original Declaration'') applies to administration of the aforementioned covered countermeasures to address the threat of or actual human influenza that results from the infection of humans with highly pathogenic avian influenza A viruses or other highly pathogenic influenza viruses causing a pandemic following exposure to the viruses;

Whereas the current detection of H1N1 swine flu in Mexico and the United States may have the potential to evolve into an influenza strain capable of causing a pandemic of human influenza;

Whereas the aforementioned covered countermeasures may be effective to protect persons from either the threat of H1N1 swine influenza, or to treat persons with H1N1 swine influenza;

Whereas the findings made by the Secretary in the Original Declaration continue to apply generally, and apply with equal force as to swine influenza;

Whereas in accordance with section 319F–3(b)(6) of the Act (42 U.S.C. 247d–6d(b), I have considered the desirability of encouraging the design, development, clinical testing or investigation, manufacturing, labeling, distribution, formulation, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing or approval, and use of additional covered countermeasures with respect to the category of disease in section II of the Original Declaration, as amended, and have found it desirable to encourage such activities for these additional covered countermeasures, and;

Whereas to encourage the design, development, clinical testing or investigation, manufacturing and product formulation, labeling, distribution, packaging, marketing, promotion, sale, purchase, donation, dispensing, prescribing, administration, licensing or approval, and use of medical countermeasures with respect to the category of disease described in section II of the Original Declaration, as amended, it is advisable, in accordance with section 319F–3(a) and (b) of the Act, to provide immunity from liability for covered persons, as that term is defined at section 319F–3(i)(2) of the Act, and to include as such covered persons such other qualified persons as I have identified in section VI of the Original Declaration, as amended;

Therefore pursuant to section 319F–3(b) of the Act, I have determined that the risk that the spread of H1N1 swine influenza viruses and resulting disease constitutes a public health emergency. In order to clarify that the Original Declaration applies to H1N1 swine flu influenza, as well as other influenza strains which originate from animals and which have pandemic potential, the Original Declaration, is hereby amended as follows:

Strike the current section II, ''Category of Disease,'' in its entirety and replace as follows:

II. Category of Disease (As Required by Section 319F–3(b)(2)(A) of the Act)

The category of disease, health condition, or threat to health for which I am recommending the administration or use of the Covered Countermeasures is the threat of or actual human influenza that results from the infection of humans with highly pathogenic avian H5N1 influenza A viruses or other animal influenza A viruses (including, but not limited to, H1N1 swine influenza) that are, or may be capable of developing into, a pandemic strain.

In section VIII, strike the section in its entirety and replace it with the following: ''This Declaration has been amended. The Original Declaration was published in the **Federal Register** at 73 FR 61861. This is the first amendment to the Original Declaration. Any future amendment to this Declaration will be published in the **Federal Register**, pursuant to section 319F–3(b)(4) of the Act.''

All other provisions of the Original Declaration remain in full force.

This amendment to the Declaration will be published in the **Federal Register**, pursuant to section 319F–3(b)(4) of the Act.

Dated: June 11, 2009.

Kathleen Sebelius,

Secretary.

[FR Doc. E9–14412 Filed 6–18–09; 8:45 am]

BILLING CODE 4150–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Toxicology Program (NTP); Office of Liaison, Policy and Review; Meeting of the Scientific Advisory Committee on Alternative Toxicological Methods (SACATM): Amended Notice

AGENCY: National Institute of Environmental Health Sciences (NIEHS), National Institutes of Health (NIH).

ACTION: Availability of public video casting of meeting.

SUMMARY: This notice announces the availability of public video casting of the SACATM meeting on June 25–26, 2009. The meeting will be held at the Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203 and video cast through a link on the SACATM Web site (*http://ntp.niehs.nih.gov/go/7441*). Information regarding the meeting was announced in the **Federal Register** (74 FR 19562) published on April 29, 2009 and available on the NTP Web site (*http://ntp.niehs.nih.gov/go/32822*).

DATES: The SACATM meeting will be held on June 25 and 26, 2009. The meeting is scheduled from 8:30 a.m. to approximately 5:30 p.m. on June 25 and 8:30 a.m. until adjournment on June 26, 2009

ADDRESSES: The SACATM meeting will be held at the Hilton Arlington Hotel, 950 North Stafford Street, Arlington, VA 22203 [hotel: (703) 528–6000)].

SUPPLEMENTARY INFORMATION:

Archived Video of the Meeting

Following the meeting, the archived video of the meeting will be available on the SACATM meeting Web page (*http://ntp.niehs.nih.gov/go/7441*).

Dated: June 12, 2009.

John R. Bucher,

Associate Director, National Toxicology Program.

[FR Doc. E9–14502 Filed 6–18–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Evaluation of the Community Healthy Marriage Initiative—Impact Evaluation—Wave 2.

OMB No.: 0970–0322.

Description: The Administration for Children and Families (ACF), U.S. Department of Health and Human Services (HHS), is conducting a demonstration and evaluation called the Community Healthy Marriage Initiative (CHMI). Demonstration programs have been funded through Healthy Marriage and Responsible Fatherhood grants authorized under section 403(a)(2) of the Social Security Act to support healthy marriage directly and to

encourage community changes that increase support for healthy marriages and improve child and family wellbeing.

The objective of the evaluation is to: (1) Assess the implementation of community interventions designed to provide marriage education by examining the way the projects operate and by examining child support outcomes among low-income families in the community; and (2) evaluate the community impacts of these interventions on marital stability and satisfaction, child well-being and child support outcomes among low income families.

The purpose of this information collection is to conduct a follow-up survey of respondents from Wave 1 who live in the communities where CHMI demonstrations are operating, and a survey of CHMI program participants. The impact evaluation will assess the effects of community healthy marriage initiatives by comparing family and child well-being outcomes in the CHMI communities with similar outcomes in comparison communities that are well matched to the demonstration project sites.

Respondents: Community members and program participants in CHMI treatment and comparison communities.

ANNUAL BURDEN ESTIMATE

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per respondent	Estimated annual burden hours
Wave 2 Survey	4,120	1	.75	3,090

Estimated Total Annual Burden Hours: 3,090.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: OPRE Reports Clearance Officer. All requests should be identified by the title of the information collection. E-mail address: *OPREinfocollection@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: 202–395–6974, Attn: Desk Officer for the Administration for Children and Families.

Dated: June 11, 2009.

Seth F. Chamberlain,

OPRE Reports Clearance Officer.

[FR Doc. E9–14181 Filed 6–18–09; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30Day-09–09AN]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–5960 or send an e-mail to *omb@cdc.gov*. Send written comments to CDC Desk Officer, Office of Management and Budget, Washington, DC or by fax to (202) 395–6974. Written comments should be received within 30 days of this notice.

Proposed Project

National Youth Physical Activity and Nutrition Study (NYPANS)—New—National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The prevalence of obesity among adolescents aged 12 to 19 more than tripled in the past 20 years, increasing from 5% in 1980 to 17.6% in 2006. Obese young people are more likely than children of normal weight to become overweight or obese adults, and are therefore more at risk for associated adult health problems, including heart disease, type 2 diabetes, stroke, several types of cancer, and osteoarthritis. However, healthy lifestyle habits, including healthy eating and physical activity, can lower the risk of becoming obese and developing related diseases.

CDC proposes to conduct a study involving a nationally representative sample of students attending public and private schools in grades 9–12. CDC will collect information from students in Spring 2010. The primary information collection will include a paper-and-pencil survey, a standardized protocol to measure height and weight, and telephone interviews to elicit 24-hour dietary recalls among a subsample of respondents. Information supporting the study also will be collected from school administrators and teachers.

The study will: (1) Provide nationally representative data on behaviors and behavioral determinants related to physical activity and nutrition; (2) provide data to help improve the clarity and strengthen the validity of questions on the Youth Risk Behavior Survey (OMB No. 0920–0493, exp. 11/30/2011), which has been conducted biennially since 1991; and (3) improve understanding of the associations among behaviors and behavioral determinants related to physical activity and nutrition, and their association with body mass index.

Study results will be used to develop more effective interventions for stemming the increase of obesity among adolescents, and will have implications for policy and program development for obesity prevention programs.

There are no costs to respondents except their time. The total estimated burden hours are 7,781.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hours)
State Education Agency Contacts	State Recruitment Script	17	1	30/60
School District Contacts	District Recruitment Script	80	1	30/60
School Administrators	School Recruitment Script	133	1	30/60
Teachers	Data Collection Checklist and Make-up Form	400	1	15/60
Students	NYPANS Questionnaire	8,000	1	45/60
	Height and Weight Record Form	8,000	1	3/60
	Student Contact Form	1,200	1	2/60
	24–Hour Dietary Recall Interview Script	750	3	30/60

Dated: June 15, 2009.

Maryam I. Daneshvar,

Acting Reports Clearance Officer, Centers for Disease Control and Prevention.

[FR Doc. E9–14411 Filed 6–18–09; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Head Start Eligibility Verification.

OMB No.: New Collection.

Description: The requirements for establishing proof of eligibility for the enrollment of children in Head Start programs are documented in 45 CFR 1305.4(e). Each child's record must include a signed document by an employee identifying those documents which were reviewed to determine eligibility. Presently there is no uniform document which the employee must sign. This form will be used to facilitate an efficient and accurate determination of childrens' eligibility for Head Start enrollment.

Respondents: Head Start grantees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Eligibility Verification	1,600	750	0.08	96,000

Estimated Total Annual Burden Hours: 96,000.

In compliance with the requirements of Section 506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Administration, Office of Information Services, 370 L'Enfant Promenade, SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. E-mail address: *infocollection@acf.hhs.gov.* All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: June 16, 2009.

Janean Chambers,

Reports Clearance Officer.

[FR Doc. E9–14482 Filed 6–18–09; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0262]

Clinical Trials Transformation Initiative (U19)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of grant funds to support the Clinical Trials Transformation Initiative (CTTI). The goal of CTTI is to support modernization of the clinical trial enterprise by identifying practices that will enhance human subject protection, boost the quality of information derived from clinical trials, and make the research process more efficient.

DATES: Important dates are as follows:

1. The application is due by: July 6, 2009.

2. The anticipated start date is in: September 2009.

FOR FURTHER INFORMATION CONTACT:

Programmatic/Review Contact: Melissa Robb, Office of the Commissioner, Food and Drug Administration, 5600 Fishers Lane, rm. 14B–45, Rockville, MD 20857, 301–827–1516, *Melissa.robb@fda.hhs.gov*

Grants Management Contact: Gladys M. Bohler, OAGS, Food and Drug Administration, 5630 Fishers Lane, rm. 2105, Rockville, MD 20857, 301–827–7168, *gmbohler@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Funding Opportunity Description

Funding Opportunity Number: RFA–FD–09–011

Catalog of Federal Domestic Assistance Number: 93.103

A. Background

The Critical Path Initiative, launched by FDA in 2004, has the objective of helping modernize the development, evaluation, manufacture, and use of FDA-regulated products. Through nationwide collaboration with other Federal, academic, scientific, and industry organizations, the initiative seeks to develop new tools to facilitate innovation in FDA-regulated product development. Examples of tools include novel biomarkers, laboratory assays, genetic tests, and state-of-the art information technologies, etc. In this initiative, FDA plays the role of a facilitator in the creation of partnerships and collaborations to support specific scientific projects.

FDA and Duke University's Department of Translational Medicine Institute (DTMI) co-founded CTTI. CTTI's goal is to systematically modernize the clinical trial process, a goal shared by FDA's Critical Path Initiative. CTTI is made up of a broad representation of member organizations including government, industry, patient advocacy groups, professional societies, and academia. The participants are working together to identify practices that through broad adoption will increase the quality and efficiency of clinical trials.

CTTI is generating evidence about how to improve the design and execution of clinical trials. Projects about design will address principles generally applicable to clinical trials to ensure that they are fit to accomplish their intended purpose.

B. Research Objectives

The goals of this program are to develop an administrative and scientific infrastructure to support the creation and execution of a series of projects under the auspices of CTTI, to complement the goals of FDA's Critical Path Initiative.

This funding opportunity will use a cooperative agreement award mechanism (U19). In the cooperative agreement mechanism, the Project Director/Principal Investigator (PD/PI) retains the primary responsibility and dominant role for planning, directing, and executing the proposed project, with FDA staff being substantially involved as a partner with the PD/PI. Substantive involvement includes, but is not limited to, the following: (1) FDA will work closely with the DTMI throughout the lifetime of this program and throughout all phases of planning, implementation, conduct and reporting of this program and all related projects; (2) FDA will appoint project officer (s) for the task(s) associated with this program and related projects; (3) FDA will identify appropriate staff to provide strategic and scientific input, as needed, throughout the life of this program and related projects.

C. Eligibility Information

This is a sole source award to DTMI located within Duke University to support the CTTI. Only one award will be made to the DTMI to support the CTTI.

II. Award Information/Funds Available

A. Award Amount

FDA anticipates providing up to $1.5 million (direct and indirect costs combined) during fiscal year 2009 to support research and related efforts of identified projects that are part of the Critical Path Initiative.

B. Length of Support

Subject to the availability of Federal funds and successful performance of the funding opportunity announcement (FOA) stated goals and objectives, 4 additional years of support may be available depending on annual appropriations. This award will be funded based on the quality of the application received and is subject to availability of Federal funds to support the program.

III. How to Submit a Paper Application

To submit a paper application in response to this FOA, applicants should first review the full announcement located at *http://www.fda.gov/ScienceResearch/SpecialTopics/CriticalPathInitiative/SpotlightonCPIProjects/ucm083241.htm*. Persons interested in applying for a grant may obtain application forms and instructions at *http://grants.nih.gov/grants/forms.htm*. For paper submissions, the following steps are required:

- Step 1: Obtain a Dun and Bradstreet Data Universal Numbering System (DUNS) Number
- Step 2: Register with Central Contractor Registration (CCR)

Instructions on how to complete these steps can be found at *http://www07.grants.gov/applicants/organization_registration.jsp*

Submit paper applications to: Gladys M. Bohler, OAGS/GAAT, Food and Drug Administration, 5630 Fishers Lane (HFA–500), rm. 2105, Rockville, MD 20874.

Dated: June 15, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–14436 Filed 6–18–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Child Support Enforcement

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice to administratively impose a matching requirement.

CFDA Number: 93.564.

Legislative Authority

Section 1115 of the Social Security Act [42 U.S.C. 1315] provides funds for experimental, pilot or demonstration projects that are likely to assist in promoting the objectives of Part D of the Title IV. The projects must be designed to improve the financial well-being of children or otherwise improve the operation of the child support program. Projects may not permit modifications in the child support program that would have the effect of disadvantaging children in need of support.

SUMMARY: The Office of Child Support Enforcement (OCSE) in the Administration for Children and Families (ACF) hereby gives notice to the public that a matching requirement of five percent (5%) will be administratively imposed upon awards made under competitions governed by the following ''Section 1115'' funding opportunities in Fiscal Year 2009.

Funding opportunity No.	Funding opportunity title	CFDA No.
HHS–2009–ACF–OCSE–FD–0093	Partnership to Strengthen Families—Child Support Enforcement/Temporary Assistance for Needy Families—University Partnership Demonstration Project.	93.654
HHS–2009–ACF–OCSE–FD–0095	Projects to Address the Sudden and Prolonged Effect of the Economic Downturn on the IV–D Caseload and Program Operations.	93.654
HHS–2009–ACF–OCSE–FD–0098	Health Care/Medical Support in Child Support Enforcement: Reform Strategy Grants.	93.654

Historically, the imposition of a matching requirement on awards under this program resulted in an increased level of commitment to the project and its success and sustainability, without creating an undue financial burden on the grantee.

Section 1115 funds awarded to each project will represent 29 percent (29%) of the total project costs. The total approved project cost is the sum of the ACF grant award under Section 1115, regular Federal Financial Participation (FFP), and the State share. For the purposes of the demonstration projects, the total expenditures will be treated as State expenditures under Title IV–D that will be reimbursed by the regular Title IV–D FFP match of 66 percent (66%). Applicants must prepare a formal budget on the required standard forms, as listed in *Section IV.2, Content and Form of Application Submission* of the funding opportunity announcements.

Grantees must provide at least five percent (5%) of the total approved project cost. This non-Federal, i.e., State share, may be met by cash, incentive funds (awarded under section 458 of the Social Security Act), or in-kind contributions. The five percent (5%) match may be provided through in-kind contributions, as allowed by section 1115(a)(2)(A) of the Social Security Act. For example, if an applicant's total project budget is $150,000, this would be made up of three funding sources: Section 1115 funds (29% = $43,500), cost sharing (5% = $7,500) and regular Title IV–D Federal Financial Participation/FFP (66% = $99,000).

Title IV–D applicants that anticipate satisfying the matching requirement through in-kind contributions, or the use of incentive funds awarded under section 458 of the Social Security Act, must request prior approval as part of the required budget justification (see *Section IV.2. Budget and Budget Justification* in the published funding opportunity announcements) in accordance with section 1115(a)(2)(A) of the Social Security Act. Costs borne by matching contributions are subject to the regulations governing allowability found under and 45 CFR 92.24.

Eligible applicants for these Section 1115 demonstration project grants are State (including the District of Columbia, Guam, Puerto Rico, and the Virgin Islands) Title IV–D agencies or the umbrella agencies of the IV–D program.

Planned ACF funding opportunity announcements may be found at the HHS Grants Forecast Web site at *http://www.hhs.gov/grantsforecast/*. The HHS's Grants Forecast is a database of planned funding opportunities proposed by its operating divisions, including ACF. Each Forecast record contains actual or estimated dates and funding levels for awards that an operating division intends to award during the fiscal year. ACF's publicly published funding opportunity announcements are available on *http://www.Grants.gov,* where applicants may also apply for funding electronically, and on the ACF Grant Opportunities Web page at *http://www.acf.hhs.gov/grants/.*

FOR FURTHER INFORMATION CONTACT: Myles Schlank, Office of Child Support Enforcement, 370 L'Enfant Promenade, SW., Washington, DC 20047. Telephone: 202–401–9329, e-mail: *myles.schlank@acf.hhs.gov.*

Dated: June 15, 2009.

Robert Cohen,

Acting Commissioner, Program Office: Child Support Enforcement.

[FR Doc. E9–14363 Filed 6–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Eligibility Guidelines

AGENCY: Health Resources and Services Administration (HRSA), HHS.

ACTION: Response to solicitation of comments on amendment to program follow-up period and publication of amended Program Eligibility Guidelines.

SUMMARY: This notice finalizes an amendment to the eligibility guidelines proposed on March 4, 2009 in the **Federal Register** (74 FR 9407). The purpose of this notice was to solicit comments on the amendment to the Program Eligibility Guidelines proposed by HRSA concerning the Reimbursement of Travel and Subsistence Expenses Program follow-up period.

FOR FURTHER INFORMATION CONTACT: Richard Durbin, Director, Division of Transplantation, Healthcare Systems Bureau, Health Resources and Services Administration, Parklawn Building, Room 12C–06, 5600 Fishers Lane, Rockville, Maryland 20857; telephone (301) 443–7577; fax (301) 594–6095; or E-mail: *rdurbin@hrsa.gov*.

SUPPLEMENTARY INFORMATION: In the existing Program eligibility guidelines, under the *Qualifying Expenses Section,* the first paragraph states:

> ''For the purposes of the Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Program, qualifying expenses presently include only travel, lodging, and meals and incidental expenses incurred by the donor and/or his/her accompanying person(s) as part of:
> (1) Donor evaluation, clinic visit or hospitalization,
> (2) Hospitalization for the living donor surgical procedure, and/or
> (3) Medical or surgical follow-up clinic visit or hospitalization within 90 days following the living donation procedure.''

HRSA proposed amending the first bullet of this paragraph to read: ''(1) Donor evaluation, and/or''. In addition, HRSA proposed amending the third bullet of this paragraph to read: ''(3) Medical or surgical follow-up clinic visit or hospitalization within two calendar years or beyond—if exceptional circumstances exist—following the living donation procedure.'' The purpose of this proposed change was to bring the NLDAC follow-up period in line with the OPTN policies of a 2-year follow-up of living organ donors.

HRSA received six public comments on this request. All the respondents

support HRSA's proposed amendment. HRSA wishes to thank everyone who reviewed this request even if a formal response was not sent to HRSA.

Through this notice, HRSA approves the amendment to the Reimbursement of Travel and Subsistence Expenses Program Eligibility Guidelines as published in the **Federal Register**. This document also corrects a mistake included in the previous version of the Guidelines concerning the proper decision-maker on financial hardship determinations. Finally, HRSA notes that the grantee has the authority to make operational decisions in implementing the Program, such as setting filing deadlines.

The amended eligibility criteria are included in this document. The amended eligibility criteria guidelines document is also available at *http://www.livingdonorassistance.org*.

National Living Donor Assistance Center (NLDAC) Program Eligibility Guidelines as Amended

Section 3 of the Organ Donation and Recovery Improvement Act (ODRIA), 42 U.S.C. 274f, establishes the authority and legislative parameters to provide reimbursement for travel and subsistence expenses incurred towards living organ donation. HRSA awarded a cooperative agreement to the Regents of the University of Michigan (Michigan), which partnered with the American Society of Transplant Surgeons (ASTS), to establish the National Living Donor Assistance Center (NLDAC) to operate this Program.

As provided for in the statutory authorization, this Program is intended to provide reimbursement only in those circumstances when payment cannot reasonably be covered by other sources of reimbursement. The NLDAC, under Federal law, cannot provide reimbursement to any living organ donor for travel and other qualifying expenses if the donor can receive reimbursement for these expenses from any of the following sources:

(1) any State compensation program, an insurance policy, or any Federal or State health benefits program;

(2) an entity that provides health services on a prepaid basis; or

(3) the recipient of the organ.

In response to public solicitation of comments, a threshold of income eligibility for the recipient of the organ is 300 percent of the Department of Health and Human Services (HHS) Poverty Guidelines in effect at the time of the eligibility determination. The Program assumes that recipients whose income exceeds this level will have the ability to reimburse the living organ donor for the travel and subsistence expenses and any other qualifying expenses that can be authorized by the Secretary of HHS. The Program provides an exception to this rule for financial hardships. A transplant social worker, or appropriate transplant center representative, based on a complete recipient evaluation, can provide an official statement, notwithstanding the recipient's income level, that the recipient of the organ would face significant financial hardship if required to pay for the qualifying living organ donor expenses. A recipient's financial hardship is defined as circumstances in which the recipient's income exceeds 300 percent of the HHS Poverty Guidelines in effect at the time of the eligibility determination, but the individual will have difficulty paying the donor's expenses due to other significant expenses. Whether or not hardship exists in a particular case requires a fact-specific analysis; examples of significant expenses include circumstances such as paying for medical expenses not covered by insurance or providing significant financial support for a family member not living in the household (e.g., elderly parent). Waiver requests by the transplant center, on behalf of the donor, shall be made in writing and shall clearly describe the circumstances for the waiver request. The NLDAC will review waiver requests and make a recommendation to HRSA to either approve or deny the request. HRSA will make the final determination and communicate its final determination to the NLDAC. The NDLAC will notify the transplant center of the final determination. HRSA's determination will not be subject to appeal.

All persons who wish to become living organ donors are eligible to receive reimbursement for their travel and qualified expenses if they cannot receive reimbursement from the sources outlined above and if all the requirements outlined in the *Criteria for Donor Reimbursement Section* are satisfied. However, because of the limited funds available, prospective living donors who are most likely not able to cover these expenses will receive priority.

The ability to cover these expenses is determined based on an evaluation of (1) the donor and recipient's income, in relation to the HHS Poverty Guidelines (described in Table 1.1 below), and (2) financial hardship. As a general matter, income refers to the donor or recipient's total household income. A donor may be able to demonstrate financial hardship, even if the donor's income exceeds 300 percent of the HHS Poverty Guidelines, if the donor will have difficulty paying the qualifying expenses due to other significant expenses. Although all requests will be reviewed on a case-by-case basis, examples of significant expenses include circumstances such as providing significant financial support for a family member not living in the household (e.g., elderly parent), loss of income due to donation process. Waiver requests by the transplant center, on behalf of the donor, shall be made in writing and shall clearly describe the circumstances for the waiver request. The NLDAC will review waiver requests and make a recommendation to HRSA to either approve or deny the request. HRSA will make the final determination and communicate its final determination to the NLDAC. The NDLAC will notify the transplant center of the final determination. HRSA's determination will not be subject to appeal.

Donors will be given preference in the following order of priority:

Preference Category 1: The donor's income and the recipient's income are each 300 percent or less of HHS Poverty Guidelines in effect at the time of the eligibility determination in their respective states of primary residence.

Preference Category 2: Although the donor's income exceeds 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination, the donor demonstrates financial hardship. The recipient's income is at or below 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination.

Preference Category 3: Any living organ donor, regardless of income or financial hardship, if the recipient's income is at or below 300 percent of the HHS Poverty Guidelines in effect in the recipient's State of primary residence at the time of the eligibility determination.

Preference Category 4: Any living organ donor, regardless of income or financial hardship, if the recipient (with income above 300 percent of the HHS Poverty Guidelines in effect in the State of primary residence at the time of the eligibility determination) demonstrates financial hardship.

HRSA reserves the right for the grantee to prioritize those most in financial need (based on income or other specified factors) if it receives large numbers of applications concerning donors meeting preference category 1.

The HHS Poverty Guidelines for 2009 (**Federal Register**, Vol. 74, No. 14,

January 23, 2009, pp. 4199–4201) are shown in the table below.

2009 HHS POVERTY GUIDELINES

Persons in family or household	48 Contiguous States and DC	Alaska	Hawaii
1	$10,830	$13,530	$12,460
2	14,570	18,210	16,760
3	18,310	22,890	21,060
4	22,050	27,570	25,360
5	25,790	32,250	29,660
6	29,530	36,930	33,960
7	33,270	41,610	38,260
8	37,010	46,290	42,560
For each additional person, add	3,740	4,680	4,300

Source: FEDERAL REGISTER, Vol. 74, No. 14, January 23, 2009, pp. 4199–4201.

These guidelines are updated periodically.

Criteria for Donor Reimbursement

1. Any individual who in good faith incurs travel and other qualifying expenses toward the intended donation of an organ.
2. Donor and recipient of the organ are U.S. citizens or lawfully admitted residents of the U.S.
3. Donor and recipient have primary residences in the U.S. or its territories.
4. Travel is originating from the donor's primary residence.
5. Donor and recipient certify that they understand and are in compliance with Section 301 of NOTA (42 U.S.C. 274e) which states in part ''* * * It shall be unlawful for any person to knowingly acquire, receive, or otherwise transfer any human organ for valuable consideration for use in human transplantation if the transfer affects interstate commerce.''
6. The transplant center where the donation procedure occurs certifies to its status of good standing with the Organ Procurement and Transplantation Network (OPTN).

Qualifying Expenses

For the purposes of the Reimbursement of Travel and Subsistence Expenses toward Living Organ Donation Program, *qualifying expenses* presently include only travel, lodging, and meals and incidental expenses incurred by the donor and/or his/her accompanying person(s) as part of:

(1) Donor evaluation and/or

(2) Hospitalization for the living donor surgical procedure, and/or

(3) Medical or surgical follow-up, clinic visits, or hospitalization within 2 calendar years following the living donation procedure (or beyond the 2-year period if exceptional circumstances exist).

The Program will pay for a total of up to five trips; three for the donor and two for accompanying persons. However, in cases in which the transplant center requests the donor to return to the transplant center for additional visits as a result of donor complications or other health related issues, NLDAC may provide reimbursement for the additional visit(s) for the donor and an accompanying person. The accompanying persons need not be the same in each trip.

The total Federal reimbursement for qualified expenses during the donation process for the donor and accompanying individuals shall not exceed $6,000.00. Reimbursement for qualifying expenses shall be provided at the Federal per-diem rate, except for hotel accommodation, which shall be reimbursed at no more than 150 percent of the Federal per diem rate.

For donor and recipient pairs participating in a paired exchange program, the applicable eligibility criteria for the originally intended recipient shall be considered for the purpose of reimbursement of qualifying donor expenses even though the final recipient of the donated organ may not be the recipient identified in the original donor-recipient pair.

Maximum Number of Prospective Donors per Recipient

- *Kidney:* one donor at a time with a maximum of three donors
- *Liver:* one donor at a time with a maximum of five donors
- *Lung:* two donors at a time with a maximum of six donors

Special Provisions

Many factors may prevent the intended and willing donor from proceeding with the donation. Circumstances that would prevent the transplant or donation from proceeding include: Present health status of the intended donor or recipient, perceived long-term risks to the intended donor, justified circumstances such as acts of God (e.g., major storms or hurricanes), or a circumstance when an intended donor proceeds toward donation in good faith, subject to a case-by-case evaluation by the NLDAC, but then elects not to pursue donation. In such cases, the intended donor and accompanying persons may receive reimbursement for qualified expenses incurred as if the donation had been completed. Under Program policy, a form will be filed with the Internal Revenue Service (IRS) reporting funds disbursed as income for expenses not incurred.

Dated: June 10, 2009.

Mary K. Wakefield,

Administrator.

[FR Doc. E9–14425 Filed 6–18–09; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HOMELAND SECURITY

Science and Technology Directorate; Notice of Public Meeting of the Project 25 Compliance Assessment Program Governing Board

AGENCY: Science and Technology Directorate, Department of Homeland Security.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Homeland Security's (DHS) Office for Interoperability and Compatibility (OIC) will hold a public meeting of its Project 25 (P25) Compliance Assessment Program (CAP) Governing Board (GB). The P25 CAP GB is composed of public sector officials who are involved in the procurement of P25 equipment. The purpose of the meeting is to collect comments from individual P25 CAP GB members on the proposed Compliance

Assessment Bulletins (CABs). Additionally, comments are sought on the inclusion of tests for the P25 Inter-Radio Frequency Subsystem Interface (ISSI) in the P25 CAP process.

The proposed CABs will be posted on *http://www.safecomprogram.gov.* Public comments on these documents and the Program are encouraged and will be collected through the Web site prior to the meeting. Public comments will also be received during the session, as time permits. DHS OIC will post details of the meeting, including the agenda, ten business days in advance of the meeting at *http://www.safecomprogram.gov.* The

SUPPLEMENTARY INFORMATION in this Notice provides background information on the P25 suite of standards and the establishment of the P25 CAP.

DATES: The meeting will take place on Tuesday, June 23, 2009, from 1 p.m. to 2 p.m. (EST).

ADDRESSES: The session will take place via conference call. To participate, please send an e-mail to *Jen_Menaker@sra.com* by June 22, 2009, for access information.

FOR FURTHER INFORMATION CONTACT: Luke Berndt, Department of Homeland Security, Science and Technology Directorate, Office for Interoperability and Compatibility, Washington Navy Yard, 245 Murray Lane, SW., Building #410, Washington, DC 20528. Telephone: (202) 254–5332. E-mail: *Luke.Berndt@hq.dhs.gov.*

SUPPLEMENTARY INFORMATION: Emergency responders—emergency medical technicians, fire personnel, and law enforcement officers—need to seamlessly exchange communications across disciplines and jurisdictions in order to successfully respond to day-to-day incidents and large-scale emergencies. P25 focuses on developing standards that allow radios and other components to interoperate, regardless of the manufacturer. In turn, these standards enable emergency responders to seamlessly exchange critical communications with other disciplines and jurisdictions.

An initial goal of P25 is to specify formal standards for interfaces between the components of a land mobile radio (LMR) system. LMR systems are commonly used by emergency responders in portable handheld and mobile vehicle-mounted devices. Although formal standards are being developed, no process is currently in place to confirm that LMR equipment advertised as P25-compliant meets all aspects of P25 standards.

To address discrepancies between P25 standards and industry equipment, Congress passed legislation calling for the creation of the P25 CAP. The P25 CAP is a partnership between the DHS Command, Control and Interoperability Division; the U.S. Department of Commerce's National Institute of Standards and Technology; industry; and the emergency response community.

The P25 CAP provides an independent process for evaluating P25 equipment for standards compliance and interoperability across manufacturers. By providing manufacturers with a method to test their equipment for compliance with P25 standards, the P25 CAP helps emergency response officials make informed purchasing decisions.

The P25 CAP requires test laboratories to demonstrate their competence through a rigorous and objective assessment process. Such a process promotes the user community's confidence in, and acceptance of, test results from DHS-recognized laboratories. All equipment suppliers that participate in the P25 CAP must use recognized laboratories to conduct performance, conformance, and interoperability tests on their products. P25 equipment suppliers will release Summary Test Reports and Suppliers Declarations of Compliance based on testing from laboratories recognized by DHS. This documentation will assure the public that P25 equipment complies with established standards.

Created by DHS OIC, CABs describe how the P25 CAP operates and address issues related to the Program. The scope of a CAB can range from policy to guidance, covering issues such as specific test standards to be used for a particular P25 interface, or P25 LMR Request for Proposal guidance. During the upcoming meeting, updates to two CABs will be discussed. The CAB updates are as follows:

- Summary Test Report Requirements—This CAB has been updated to include the identification of which vocoder is present in the product being tested. The format of the document has been restructured in order to accommodate additional P25 interfaces that will be added to the Program in the future.
- Supplier's Declaration of Compliance Requirements—This CAB has been updated to include the identification of which vocoder is present in the product being tested.

Draft versions of these two CABs are available at: *http://www.safecomprogram.gov.* Public comments on the updates to these documents are encouraged and can be submitted through the Web site prior to the meeting.

There will be additional discussion on the creation of a new CAB regarding the inclusion of the ISSI interface in the Program. Discussion will focus on the timeline for inclusion of the interface as well as which tests should be required. Public comments on this topic can be submitted through the Web site prior to the meeting. Public comments will also be received during the session, as time permits.

More information about the P25 CAP is available at *http://www.safecomprogram.gov.*

Dated: June 8, 2009.

Bradley I. Buswell,

Under Secretary (Acting), Science and Technology Directorate, U.S. Department of Homeland Security.

[FR Doc. E9–14491 Filed 6–18–09; 8:45 am]

BILLING CODE 9110–9F–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 30-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0097; FEMA Form—None.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted the information collection abstracted below to the Office of Management and Budget for review and clearance in accordance with the requirements of the Paperwork Reduction Act of 1995. The submission describes the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort and resources used by respondents to respond) and cost, and includes the actual data collection instruments FEMA will use.

DATES: Comments must be submitted on or before July 20, 2009.

ADDRESSES: Submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the Desk Officer for the Department of Homeland Security, Federal Emergency Management Agency, and sent via

electronic mail to *oira.submission@omb.eop.gov* or faxed to (202) 395–5806.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be made to Director, Records Management Division, 1800 South Bell Street, Arlington, VA 20598–3005, facsimile number (202) 646–3347, or e-mail address *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION:

Collection of Information

Title: Citizen Corps Affiliate Programs and Organizations Application.

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0097.

Form Titles and Numbers: FEMA Form—None.

Abstract: Citizen Corps Affiliate Programs and Organizations offer communities resources for public education, outreach, and training; represent volunteers interested in helping to make their community safer; or offer volunteer service opportunities to support first responders, disaster relief activities, and community safety efforts. Providing formal recognition to these programs and similar organizations through Affiliation with Citizen Corps, the program reaches a broader audience which can assist in reaching the goal of having every American participate in making their communities and families safer.

Affected Public: ''Not-for-profit Institutions''.

Estimated Number of Respondents: 8.

Frequency of Response: On occasion.

Estimated Average Hour Burden per Respondent: 4.

Estimated Total Annual Burden Hours: 32.

Estimated Cost: There is no annual reporting or recordkeeping cost associated with this collection.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–14477 Filed 6–18–09; 8:45 am]

BILLING CODE 9111–05–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA–2009–0001]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice; 60-day notice and request for comments; revision of a currently approved information collection; OMB No. 1660–0087; No Forms.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed revision of a currently approved information collection. In accordance with the Paperwork Reduction Act of 1995, this Notice seeks comments concerning the revision of the Preparedness Comprehensive Assessment Support Tool (PrepCAST) (formerly known as the National Incident Management System Compliance Assistance Support Tool (NIMSCAST)). PrepCAST is a self-assessment tool for State, territorial, Tribal, and local governments to evaluate and report on their jurisdiction's achievement with regard to the National Incident Management System (NIMS) implementation activities relating to the preparedness of the respondent to react to emergency incidents. PrepCAST will also collect preparedness data using the Targeted Capabilities List (TCL) framework.

DATES: Comments must be submitted on or before August 18, 2009.

ADDRESSES: To avoid duplicate submissions to the docket, please use only one of the following means to submit comments:

(1) *Online.* Submit comments at *http://www.regulations.gov* under docket ID FEMA–2009–0001. Follow the instructions for submitting comments.

(2) *Mail.* Submit written comments to Office of Chief Counsel, Regulation and Policy Team, DHS/FEMA, 500 C Street, SW., Room 835, Washington, DC 20472–3100.

(3) *Facsimile.* Submit comments to (703) 483–2999.

(4) *E-mail.* Submit comments to *FEMA-POLICY@dhs.gov.* Include docket ID FEMA–2009–0001 in the subject line.

All submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at *http://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Bill Schwinn, Assessments Section Chief, Preparedness Policy, Planning, and Analysis, National Preparedness Directorate, Federal Emergency Management Agency, U.S. Department of Homeland Security, (202) 786–9595 for additional information. You may contact the Records Management Branch for copies of the proposed collection of information at facsimile number (202) 646–3347 or e-mail address: *FEMA-Information-Collections@dhs.gov.*

SUPPLEMENTARY INFORMATION: In 2003, Homeland Security Presidential Directive-8: National Preparedness (HSPD–8) called for establishing a system that would assess the Nation's overall preparedness and provide an annual status report of national preparedness. Three years later, the Post-Katrina Emergency Management Reform Act (PKEMRA) included requirements to establish a ''comprehensive system to assess, on an ongoing basis, the Nation's prevention capabilities and overall preparedness.''

The National Preparedness Directorate (NPD) within FEMA is charged with developing the Comprehensive Assessment System (CAS). The CAS will, as mandated by PKEMRA 649(c)(1–4), assess compliance with the national preparedness system, the National Incident Management System (NIMS), and other related plans; assess capability levels against target levels; assess resource needs to meet target levels; and assess the performance of training, exercises, and operations.

Collection of Information

Title: PrepCAST (formerly NIMSCAST).

Type of Information Collection: Revision of a currently approved information collection.

OMB Number: 1660–0087.

Form Titles and Numbers: No Forms.

Abstract: The PrepCAST is a standardized data collection and assessment process that effectively assesses prevention, protection,

response, and recovery capabilities at the regional, State, local, and Tribal levels In the National Incident Management System collection tool, data will be collected on the respondent's ability to meet the established NIMS Implementation Objectives. The State Preparedness Report collection tool will address questions about current capabilities that have not already been answered through other assessments and reports, focusing on level of performance of individual activities for the 37 capabilities set forth in the Target Capabilities List (TCL) 2.0. FEMA collects this data to guide policy and resource allocation decisions.

Affected Public: State, Local and Tribal Government.

Estimated Total Annual Burden Hours: 24,278 hours.

TABLE A.12—ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

Type of respondent	Form name/Form No.	Number of respondents	Number of responses per respondent	Avg. burden per response (in hours)	Total annual burden (in hours)	Avg. hourly wage rate	Total annual respondent cost
State, local or Tribal government.	National Incident Management System/No Form Number.	3926	1	5	19,630	28.60	$785,985
State, local or Tribal government.	State Preparedness Report/No Form Number.	56	1	83	4,648	28.60	186,106
Total	.....	.....	.....	.....	24,278	.....	972,091

Estimated Cost: There is no annual reporting and recordkeeping cost associated with this collection.

Comments

Comments may be submitted as indicated in the **ADDRESSES** caption above. Comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) 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.

Larry Gray,

Director, Records Management Division, Office of Management, Federal Emergency Management Agency, Department of Homeland Security.

[FR Doc. E9–14480 Filed 6–18–09; 8:45 am]

BILLING CODE 9111–46–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5280–N–23]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

DATES: *Effective Date:* June 19, 2009.

FOR FURTHER INFORMATION CONTACT: Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7262, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: June 11, 2009.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

[FR Doc. E9–14118 Filed 6–18–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5255–N–02]

Notice of Allocations, Application Procedures, Regulatory Waivers Granted to and Alternative Requirements for Emergency Assistance for Redevelopment of Abandoned and Foreclosed Homes Grantees Under the Housing and Economic Recovery Act, 2008; Revisions to Neighborhood Stabilization Program (NSP) and Technical Corrections

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of allocation method, waivers granted, alternative requirements applied, and statutory program requirements; revisions to Neighborhood Stabilization Program and technical corrections.

SUMMARY: On October 6, 2008, the Department published a notice advising the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and the waivers of regulations granted to grantees under Title III of Division B of the Housing and Economic Recovery Act of 2008, for the purpose of assisting in the redevelopment of abandoned and foreclosed homes under the Emergency Assistance for Redevelopment of

Abandoned and Foreclosed Homes heading, referred to throughout this notice as the Neighborhood Stabilization Program (NSP). This document advises the public of substantive revisions to the October 6, 2008, notice, primarily as a result of changes to NSP made by the American Recovery and Reinvestment Act of 2009. This document also makes a number of non-substantive technical corrections or clarifications to the October 6, 2008 notice.

DATES: The effective date (except as specified herein) remains as published in the **Federal Register** on October 6, 2008.

FOR FURTHER INFORMATION CONTACT: Stanley Gimont, Director, Office of Block Grant Assistance, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7286, Washington, DC 20410, telephone number 202–708–3587. Persons with hearing or speech impairments may access this number via TTY by calling the Federal Information Relay Service at 800–877–8339. FAX inquiries may be sent to Mr. Gimont at 202–401–2044. (Except for the ''800'' number, these telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: Title III of Division B of the Housing and Economic Recovery Act, 2008 (HERA) (Pub. L. 110–289, approved July 30, 2008) appropriated $3.92 billion for emergency assistance for the redevelopment of abandoned and foreclosed homes and residential properties, and provides under a rule of construction that, unless HERA states otherwise, the grants are to be considered Community Development Block Grant (CDBG) funds. The grant program under Title III is commonly referred to as the Neighborhood Stabilization Program (NSP). HERA authorizes the Secretary to specify alternative requirements to any provision under Title I of the Housing and Community Development Act of 1974, as amended, (the HCD Act) except for requirements related to fair housing, nondiscrimination, labor standards, and the environment (including lead-based paint), in accordance with the terms of section 2301 of HERA and for the sole purpose of expediting the use of grant funds. On October 6, 2008, HUD published a notice (73 FR 58330) advising the public of the allocation formula and allocation amounts, the list of grantees, alternative requirements, and waivers granted. Today's notice advises the public of substantive revisions to the October 6, 2008 notice, primarily as a result of changes to NSP made by Title XII of Division A of the American Recovery and Reinvestment Act of 2009 (the ''Recovery Act'') (Pub. L. 111–005, approved February 17, 2009). Today's notice also makes a number of non-substantive technical corrections to the October 6, 2008 publication.

Substantive Revisions

The substantive revisions made by this notice follow. The **Federal Register** page number identifies where the language to be revised can be found in the October 6, 2008, notice.

A. Section 2301(c)(3)(C) of HERA was amended to permit NSP funds to be used to establish and operate land banks for homes and residential properties that have been foreclosed upon. As a result, and to ensure consistency with section 2301(c)(3)(C) of HERA, HUD is amending the definition of ''Land Bank'' at page 58332 to read as follows:

Land bank. A land bank is a governmental or nongovernmental nonprofit entity established, at least in part, to assemble, temporarily manage, and dispose of vacant land for the purpose of stabilizing neighborhoods and encouraging re-use or redevelopment of urban property. For the purposes of NSP, a land bank will operate in a specific, defined geographic area. It will purchase properties that have been foreclosed upon and maintain, assemble, facilitate redevelopment of, market, and dispose of the land-banked properties. If the land bank is a governmental entity, it may also maintain foreclosed property that it does not own, provided it charges the owner of the property the full cost of the service or places a lien on the property for the full cost of the service.

The table of NSP eligible uses on page 58338 has also been revised to reflect this change. The corrected table of eligible NSP uses is published below. In addition, the definition of *Subrecipient* on page 58332 is revised to clarify that a land bank is a subrecipient, as follows:

Subrecipient. Subrecipient shall have the same meaning as at the first sentence of 24 CFR 570.500(c). This includes any nonprofit organization (including a unit of general local government) that a state awards funds to. The term also includes any land bank receiving NSP funds from the grantee or other subrecipient.

B. Section 2301(d)(4) of HERA, which established requirements for the disposition of revenue generated by NSP assisted activities, was repealed by the Recovery Act. As a result of this repeal, revenue generated from the use of NSP funds and received by a private individual or other entity that is not a subrecipient is not required to be returned to the grantee as was required by section 2301(d)(4). Notwithstanding the elimination of this requirement, grantees are strongly encouraged to avoid the undue enrichment of entities that are not subrecipients. For example, grantees are encouraged to structure assistance to developers that undertake acquisition and/or rehabilitation as loans rather than grants. Grantees are also encouraged to include language in agreements with entities that are not subrecipients that provides for grantees to share in any excess cash flow generated by the assisted project to the extent practicable. (Generally, excess cash flow on a real estate project is the amount of cash generated from operations, sales, or refinancing that is in excess of the amount required to provide the owner a reasonable return on its equity investment.) A further result of the repeal of this provision is that program income received after July 30, 2013 is not required to be returned to HUD for deposit in the Treasury. However, the program income requirements of the CDBG program are still applicable to income directly generated from the use of NSP funds and received by grantees or subrecipients. Accordingly, the definition of ''*Revenue for the purposes of section 2301(d)(4)*'' on page 58332, first column, of the October 6, 2008, notice is removed. In addition, Section N beginning on page 58340, second column, of the October 6, 2008 notice is revised to read as follows:

N. Alternative Requirement for Program Income Generated by Activities Assisted With Grant Funds

Requirement

1. Revenue (*i.e.*, gross income) received by a state, unit of general local government, or subrecipient (as defined at 24 CFR 570.500(c)) that is directly generated from the use of CDBG funds (which term includes NSP grant funds) constitutes CDBG program income. To ensure consistency of treatment of such program income, the definition of program income at 24 CFR 570.500(a) shall be applied to amounts received by states, units of general local government, and subrecipients.

2. Cash management. Substantially all program income must be disbursed for eligible NSP activities before additional cash withdrawals are made from the U.S. Treasury.

3. Agreements with subrecipients. States and units of general local government must incorporate in subrecipient agreements such provisions as are necessary to ensure

compliance with the requirements of this section.

C. Section 2301(d)(1) of HERA limits the purchase price of a foreclosed upon home or residential property by requiring the property to be purchased at a discount from the current market appraised value. Section Q of the October 6, 2008, notice implemented purchase discount requirements on individual purchase transactions and purchase transactions in the aggregate. HUD has received numerous expressions of concern from grantees and other interested parties that the current requirements need to be modified to permit greater flexibility in addressing local market conditions and to avoid a downward spiral in property values in neighborhoods where discounts are reflected in valuations for subsequent sales. HUD agrees that the current purchase discount requirements should be modified. Additional flexibility is needed for those situations that involve acquisition of foreclosed upon properties that cannot be purchased at the minimum discount of 5 percent required for individual transactions and the 15 percent minimum discount required for transactions in the aggregate. Many grantees have indicated that some real estate owned (REO) holders are unable or unwilling to sell a property at a price that reflects such a discount. Of more concern to many grantees is the potentially adverse impact that discounted sales prices on foreclosed properties may have on other properties in the neighborhood where the foreclosures occurred. One concern is that a property sold at a discount may be used as a comparable sale for purposes of subsequent appraisals in the neighborhood where the foreclosure occurred. Since the discount has to be taken against the current market appraised value, the use of the discounted sales price as a comparable would understate the true market value of that property. Although HUD has confirmed with representatives of the appraisal industry that such sales transactions should not be used as comparables in other appraisals, no guarantee exists that appraisers would in all cases be aware that the sales price reflected a governmentally required discount. Of further concern to many grantees is the effect of section 2301(d)(3) of HERA which provides that the sale of a foreclosed upon property that was acquired with NSP assistance to an individual as a primary residence cannot be greater than the cost to acquire and rehabilitate or redevelop such property. Thus, it is possible that the purchase discount will be reflected in two sales transactions involving the same property, i.e., the sale of the foreclosed property to the grantee and the subsequent resale of the property by the grantee to an individual as a primary residence. Again, while neither of these transactions should be used as a comparable for subsequent appraisals in the neighborhood, the grantee cannot assure that the transaction(s) will be ignored for such purpose. Based on the foregoing considerations, HUD has determined that the current requirements for purchase discounts in the aggregate impair the effective implementation of HERA and should be deleted. As a result, today's publication eliminates at page 58342, second column, the 15 percent aggregate discount requirement at Section Q.1.b of the October 6, 2008, notice. However, although section 2301(d)(1) requires that a foreclosed upon home or residential property be purchased at a discount, the level of the discount is not specified. HUD has decided to reduce the minimum individual discount requirement from 5 percent to 1 percent. HUD believes that this reduction will provide grantees with maximum flexibility to avoid the potentially adverse impact of discounts on neighborhood property values. Grantees are nonetheless encouraged to negotiate with lenders to obtain price reductions commensurate with the avoided costs of holding, marketing and selling the homes. Grantees are also encouraged to take reasonable steps to ensure disclosure of any discount/price reduction resulting from compliance with HERA or other applicable legal requirements. Such steps may include posting sales data on individual acquisitions (sales price, current market appraised value, and discount/price reduction) on the grantee's Web site, providing such data to multiple listing services, and including the information in the deed transferring title to the purchaser (if permitted under state or local laws or regulations). Grantees are also reminded that they can prohibit the use of NSP-funded acquisitions as comparables in the scope of work developed for appraisals procured in connection with subsequent acquisitions. Accordingly, the background and requirements for Section Q, Purchase Discount, at page 58342 of the October 6, 2008, notice are revised to read as follows:

Q. Purchase Discount

Background

Section 2301(d)(1) limits the purchase price of a foreclosed home, as follows: ''Any purchase of a foreclosed upon home or residential property under this section shall be at a discount from the current market appraised value of the home or property, taking into account its current condition, and such discount shall ensure that purchasers are paying below-market value for the home or property.''

To ensure that uncertainty over the meaning of this section does not delay program implementation, HUD is defining ''current market appraised value'' in this notice. In recognition of the statutory discount requirement, HUD is requiring a minimum discount of 1 percent for each residential property purchased with NSP funds. Grantees are nonetheless encouraged to negotiate with lenders to obtain price reductions commensurate with the avoided costs of holding, marketing and selling the homes.

Requirements

1. Each foreclosed-upon home or residential property shall be purchased at a discount of at least 1 percent from the current market-appraised value of the home or property.

2. An NSP grantee may not provide NSP funds to another party to finance an acquisition of tax foreclosed (or any other) properties from itself, other than to pay necessary and reasonable costs related to the appraisal and transfer of title. If NSP funds are used to pay such costs when property owned by the grantee is conveyed to a subrecipient, homebuyer, developer, or other jurisdiction, the property is NSP-assisted and subject to all program requirements, such as requirements for NSP-eligible use and benefit to income-qualified persons.

3. The address, appraised value, purchase offer amount, and discount amount of each property purchase must be documented in the grantee's program records. D. As noted in the discussion of the NSP purchase discount requirements, section 2301(d)(1) of HERA requires that the purchase price of a foreclosed upon home or residential property must reflect a discount from the current market appraised value of the property. The October 6, 2008, notice defined ''current market appraised value'' to mean the value of the property established through an appraisal made in conformity with URA appraisal requirements. HUD has determined that compliance with URA appraisal requirements is unnecessarily burdensome if the anticipated value of the proposed acquisition is estimated at $25,000 or less and the acquisition is voluntary. Consequently, if the grantee determines that the anticipated value of

the proposed acquisition is estimated at $25,000 or less and the acquisition is voluntary, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person qualified to make the valuation. The definition of ''current market appraised value'' on page 58331, third column, of the October 6, 2008 notice is revised to read as follows:

Current market appraised value. The current market appraised value means the value of a foreclosed upon home or residential property that is established through an appraisal made in conformity with the appraisal requirements of the URA at 49 CFR 24.103 and completed within 60 days prior to an offer made for the property by a grantee, subrecipient, developer, or individual homebuyer; provided, however, if the anticipated value of the proposed acquisition is estimated at $25,000 or less, the current market appraised value of the property may be established by a valuation of the property that is based on a review of available data and is made by a person the grantee determines is qualified to make the valuation.

E. The Recovery Act included several provisions concerning tenants' rights that are applicable to acquisitions under HERA. A grantee must document its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property (typically, the initial successor in interest in property acquired through foreclosure is the lender or trustee for holders of obligations secured by mortgage liens) has provided *bona fide* tenants with the notice and other protections outlined in the Recovery Act. Grantees are cautioned that NSP funds may not be used to finance the acquisition of property from the initial successor in interest that failed to comply with applicable requirements unless it assumes the obligations of such initial successor in interest with respect to *bona fide* tenants. Grantees who elect to assume such obligations are reminded that tenants displaced as a result of the NSP funded acquisition are entitled to the benefits outlined in 24 CFR 570.606. Section K, Acquisition and Relocation, on page 58339 of the October 6, 2008 notice is amended by adding the following requirements at the end thereof:

2. The following requirements apply to any foreclosed upon dwelling or residential real property that was acquired by the initial successor in interest pursuant to the foreclosure after February 17, 2009 and was occupied by a *bona fide* tenant at the time of foreclosure. The use of NSP funds for acquisition of such property is subject to a determination by the grantee that the initial successor in interest complied with these requirements.

a. The initial successor in interest in a foreclosed upon dwelling or residential real property shall provide a notice to vacate to any *bona fide* tenant at least 90 days before the effective date of such notice. The initial successor in interest shall assume such interest subject to the rights of any *bona fide* tenant, as of the date of such notice of foreclosure: (i) Under any *bona fide* lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease, except that a successor in interest may terminate a lease effective on the date of sale of the unit to a purchaser who will occupy the unit as a primary residence, subject to the receipt by the tenant of the 90-day notice under this paragraph; or (ii) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under this paragraph, except that nothing in this section shall affect the requirements for termination of any Federal- or State-subsidized tenancy or of any State or local law that provides longer time periods or other additional protections for tenants.

b.i. In the case of any qualified foreclosed housing in which a recipient of assistance under section 8 of the United States Housing Act of 1937 (42 U.S.C. 1437f) (the ''Section 8 Program'') resides at the time of foreclosure, the initial successor in interest shall be subject to the lease and to the housing assistance payments contract for the occupied unit.

ii. Vacating the property prior to sale shall not constitute good cause for termination of the tenancy unless the property is unmarketable while occupied or unless the owner or subsequent purchaser desires the unit for personal or family use.

iii. If a public housing agency is unable to make payments under the contract to the immediate successor in interest after foreclosure, due to (A) an action or inaction by the successor in interest, including the rejection of payments or the failure of the successor to maintain the unit in compliance with the Section 8 Program or (B) an inability to identify the successor, the agency may use funds that would have been used to pay the rental amount on behalf of the family—(1) to pay for utilities that are the responsibility of the owner under the lease or applicable law, after taking reasonable steps to notify the owner that it intends to make payments to a utility provider in lieu of payments to the owner, except prior notification shall not be required in any case in which the unit will be or has been rendered uninhabitable due to the termination or threat of termination of service, in which case the public housing agency shall notify the owner within a reasonable time after making such payment; or (2) for the family's reasonable moving costs, including security deposit costs.

c. For purposes of this section, a lease or tenancy shall be considered *bona fide* only if: (i) The mortgagor under the contract is not the tenant; (ii) the lease or tenancy was the result of an arms length transaction; and (iii) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.

d. The grantee shall maintain documentation of its efforts to ensure that the initial successor in interest in a foreclosed upon dwelling or residential real property has complied with the requirements under section K.2.a. and K.2.b. If the grantee determines that the initial successor in interest in such property failed to comply with such requirements, it may not use NSP funds to finance the acquisition of such property unless it assumes the obligations of the initial successor in interest specified in section K.2.a. and K.2.b. If a grantee elects to assume such obligations, it must provide the relocation assistance required pursuant to 24 CFR 570.606 to tenants displaced as a result of an activity assisted with NSP funds and maintain records in sufficient detail to demonstrate compliance with the provisions of that section.

3. The recipient of any grant or loan made from NSP funds may not refuse to lease a dwelling unit in housing with such loan or grant to a participant under the Section 8 Program because of the status of the prospective tenant as such a participant.

4. This section shall not preempt any Federal, State or local law that provides more protections for tenants.

F. HUD has determined that HUD-approved homebuyer counseling services may not be available to all grantees. To provide for such situations, section B.3.b. on page 58334 of the October 6, 2008 notice, is revised as follows to allow a grantee to submit a request for an exception to the requirement that each NSP-assisted homebuyer must receive and complete at least 8 hours of homebuyer counseling from a HUD-approved counseling agency.

b. The grantee must require each NSP-assisted homebuyer to receive and

complete at least 8 hours of homebuyer counseling from a HUD-approved housing counseling agency before obtaining a mortgage loan. If the grantee is unable to meet this requirement for a good cause (*e.g.*, there are no HUD-approved housing counseling agencies within the grantee's jurisdiction, or there are no HUD-approved housing counseling agencies within the grantee's jurisdiction that engage in homebuyer counseling), the grantee may submit a request for an exception to this requirement to the responsible HUD field office, and the HUD field office has the authority to grant an exception for good cause. The grantee must ensure that the homebuyer obtains a mortgage loan from a lender who agrees to comply with the bank regulators' guidance for non-traditional mortgages (see, Statement on Subprime Mortgage Lending issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Department of the Treasury, and National Credit Union Administration, available at *http://www.fdic.gov/regulations/laws/rules/5000-5160.html*). Grantees must design NSP programs to comply with this requirement and must document compliance in the records, for each homebuyer. Grantees are cautioned against providing or permitting homebuyers to obtain subprime mortgages for whom such mortgages are inappropriate, including homebuyers who qualify for traditional mortgage loans.

Technical Corrections

Summaries of the technical corrections made by this document follow. The **Federal Register** page number identifies where the language to be corrected can be found in the October 6, 2008 notice. The corrected text made by this notice follows.

A. On page 58334 under Section B.4.b., HUD inadvertently omitted to apply the alternative requirement for the minimum citizen comment period of 15 calendar days to substantial action plan amendments submitted subsequently to the initial NSP submission. The application of this alternative requirement to all substantial amendments is necessary to expedite the use of grant funds.

Correction

On page 58334, Section B., paragraph 4.b. should read as follows:

b. Each grantee must prepare and submit its annual Action Plan amendment to HUD in accordance with the consolidated plan procedures for a substantial amendment under the annual CDBG program as modified by this notice or HUD will reallocate the funds allocated for that grantee. HUD is providing alternative requirements to 42 U.S.C. 5304(a)(2) and waiving 91.105(c)(2), 91.105(k), 91.115(c)(2), and 91.115(i) to the extent necessary to allow the grantee to provide no fewer than 15 calendar days for citizen comment (rather than 30 days) for its initial NSP submission and any subsequent substantial NSP action plan amendment, and to require that, at the time of submission to HUD, each grantee post its approved action plan amendment and any subsequent NSP amendments on its official website along with a summary of citizen comments received within the 15-day comment period. After HUD processes and approves the plan amendment and both HUD and the grantee have signed the grant agreement, HUD will establish the grantee's line of credit in the amount of funds included in the Action Plan amendment, up to the allocation amount.

B. On page 58335 under Section E and the paragraph entitled ''Background,'' HUD erroneously included a statement that an activity may meet the HERA low- and moderate-income national objective if the assisted activity, ''Creates or retains jobs for persons whose household incomes are at or below 120 percent of median income (LMMI).'' As a result, HUD is removing on page 58335, third column, the bulleted statement that reads: ''Creates or retains jobs for persons whose household incomes are at or below 120 percent of median income (LMMI).'' If an NSP Action Plan substantial amendment included an activity that addressed the HERA low- and moderate-income national objective requirement on the basis of job creation or retention and funds have not been obligated for that activity, the grantee should submit an amendment that includes one or more new activities that comply with the NSP income eligibility requirements. If funds have already been obligated for the original activity in reliance on the October 6, 2008 notice language, the activity may be completed provided it is designed to create or retain permanent jobs and at least 51 percent of the jobs will be held by or made available to persons whose incomes are at or below 120 percent median income.

Correction

On page 58335 under Section E and the second paragraph under the section entitled ''Background,'' should read as follows:

Second, this provision also redefines and supersedes the definition of ''low- and moderate-income,'' effectively allowing households whose incomes exceed 80 percent of area median income but do not exceed 120 percent of area median income to qualify as if their incomes did not exceed the published low- and moderate-income levels of the regular CDBG program. To prevent confusion, HUD will refer to this new income group as ''middle income,'' and keep the regular CDBG definitions of ''low income'' and ''moderate income'' in use. Further, HUD will characterize aggregated households whose incomes do not exceed 120 percent of median income as ''low-, moderate-, and middle-income households,'' abbreviated as LMMH. For the purposes of NSP only, an activity may meet the HERA low- and moderate-income national objective if the assisted activity:

- Provides or improves permanent residential structures that will be occupied by a household whose income is at or below 120 percent of area median income (abbreviated as LMMH);
- Serves an area in which at least 51 percent of the residents have incomes at or below 120 percent of area median income (LMMA); or
- Serves a limited clientele whose incomes are at or below 120 percent of area median income (LMMC).

C. On page 58336, Section E., paragraph 2.e. under ''National objectives supersession and alternative requirements,'' HUD inadvertently omitted a requirement regarding the amount of grant funds to house individuals or families whose incomes do not exceed 50 percent of area median income.

Correction

On page 58336, Section E., paragraph 2.e. is added as follows:

e. Not less than 25 percent of any NSP grant shall be used for the purchase and redevelopment of abandoned or foreclosed homes or residential properties that will be used to house individuals or families whose incomes do not exceed 50 percent of area median income.

D. On page 58338, in the second column of the table of NSP-eligible uses and correlated eligible activities from the CDBG entitlement regulations, HUD inadvertently omitted 24 CFR 570.202 from the list of activities correlated with eligible use (E). HUD inadvertently omitted ''24 CFR 570'' in the citation for community-based development organizations in the list of activities eligible correlated with eligible use (E). Although the October 6, 2008 notice

indicated that rehabilitation may include counseling for those seeking to take part in the activity, HUD inadvertently omitted to clarify that housing counseling is an eligible activity delivery cost for any correlated eligible activity that requires an NSP-assisted homebuyer to complete homebuyer counseling pursuant to section B.3.b.

Correction

On page 58338, the table should read as follows:

NSP-eligible uses	Correlated eligible activities from the CDBG entitlement regulations
(A) Establish financing mechanisms for purchase and redevelopment of foreclosed upon homes and residential properties, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers.	• As part of an activity delivery cost for an eligible activity as defined in 24 CFR 570.206. • Also, the eligible activities listed below to the extent financing mechanisms are used to carry them out.
(B) Purchase and rehabilitate homes and residential properties that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes and properties.	• 24 CFR 570.201(a) Acquisition, (b) Disposition, (i) Relocation, and (n) Direct homeownership assistance (as modified below); • 570.202 eligible rehabilitation and preservation activities for homes and other residential properties. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost.
(C) Establish and operate land banks for homes and residential properties that have been foreclosed upon.	• 24 CFR 570.201(a) Acquisition and (b) Disposition. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost.
(D) Demolish blighted structures	• 24 CFR 570.201(d) Clearance for blighted structures only.
(E) Redevelop demolished or vacant properties	• 24 CFR 570.201(a) Acquisition, (b) Disposition, (c) Public facilities and improvements, (e) Public services for housing counseling, but only to the extent that counseling beneficiaries are limited to prospective purchasers or tenants of the redeveloped properties, (i) Relocation, and (n) Direct homeownership assistance (as modified below). • 24 CFR 570.202 Eligible rehabilitation and preservation activities for demolished or vacant properties. • 24 CFR 570.204 Community based development organizations. • HUD notes that any of the activities listed above may include required homebuyer counseling as an activity delivery cost.

E. On page 58338 Section J, the third column, HUD incorrectly cited the legal authority in characterizing the substance of the paragraph.

Correction

On page 58338 Section J, third column, the paragraph should read as follows:

Background

Section 2301(d)(3) of HERA directs that, if an abandoned or foreclosed-upon home or residential property is purchased, redeveloped, or otherwise sold to an individual as a primary residence, then such sale shall be in an amount equal to or less than the cost to acquire and redevelop or rehabilitate such home or property up to a decent, safe, and habitable condition. (Sales and closing costs are eligible NSP redevelopment or rehabilitation costs.) Note that the maximum sales price for a property is determined by aggregating all costs of acquisition, rehabilitation, and redevelopment (including related activity delivery costs, which generally may include, among other items, costs related to the sale of the property).

F. On page 58340, first column, under Section M and the third paragraph entitled ''Background'', HUD inadvertently included an incorrect citation for cash management requirements governing States.

Correction

On page 58340, the third paragraph after ''Background'' should read as follows:

A further complication is that HERA clearly expects grantees to earn program income under this grant program. As provided under 24 CFR 85.21 for entitlements, grantees and subrecipients shall disburse program income before requesting additional cash withdrawals from the U.S. Treasury. States are governed similarly by 24 CFR 570.489(e)(3) and 31 CFR part 205. This requirement is reflected in the regulations governing use of program income by States and units of general local government under the CDBG program. This means that a grantee that successfully and quickly deploys its program and generates program income may obligate, draw down, and expend an amount equal to its NSP allocation amount, and still have funds remaining in its line of credit.

G. On page 58347 in Attachment A to the Notice, HUD inadvertently left one grantee off the list of local governments that qualify to receive an NSP allocation and included that grantee's allocation amount in the state's allocation.

Correction

At the bottom of page 58347, the allocation amount for the State of Maryland is corrected to read: $26,704,504. A new line is inserted below the allocation for the State of Maryland and above the line for the allocation for Prince Georges County, Maryland to read:

State	Grantee name	NSP grant amount
MD	Montgomery County	$2,073,965

H. In Attachment A to the Notice, HUD only listed a single allocation for multiple Insular Areas, without indicating the allocated amount for each Insular Area. Also, without this correction, Insular Areas were unable to submit amendments by the Notice deadline.

Correction

HUD directly notified the Insular Areas to establish a January 15, 2009, deadline for submission of an NSP substantial amendment. At the end of Attachment A, the allocations for the Insular Areas are inserted as follows:

Insular area	Allocation
Virgin Islands	$579,451
Northern Marianas	364,162
Guam	100,674
American Samoa	100,000
Total	1,144,287

Additional Amendments

1. Environmental. A Finding of No Significant Impact (FONSI) with respect to the environment has been made for this Notice in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)). The FONSI is available for public inspection between 8 a.m. and 5 p.m. weekdays in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SE., Room 10276, Washington, DC 20410-0500. Due to security measures at the HUD Headquarters building, an advance appointment to review the FONSI must be scheduled by calling the Regulations Division at (202) 708-3055 (this is not a toll-free number).

2. Waivers of Alternative Requirements. Alternative requirements in this Notice and the October 6, 2008, Notice (73 FR 58330) may be waived in the same manner as regulatory requirements. Grantees must submit a written request to HUD. Upon a determination of good cause, the Assistant Secretary for Community Development and Planning or the General Deputy Assistant Secretary for Community Development and Planning may, subject to statutory limitations, waive any provision of this Notice. Each waiver must be in writing and must specify the grounds for approving the waiver.

Dated: June 11, 2009.

Nelson R. Bregón,

General Deputy Assistant Secretary, Office of Community Planning and Development.

[FR Doc. E9–14360 Filed 6–18–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Colleges and Universities Grants and Annual Reports

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Submission to the Office of Management and Budget.

SUMMARY: As required by the Paperwork Reduction Act, the Bureau of Indian Affairs (BIA) is submitting the following information collections to the Office of Management and Budget for renewal: (1) Tribal Colleges and Universities Annual Report Form, 25 CFR 41.9, OMB Control No. 1076–0105; and (2) Tribal Colleges and Universities Grant Application Form, 25 CFR 41.8, OMB Control No. 1076–0018.

DATES: Submit comments on or before July 20, 2009.

ADDRESSES: You may submit comments on the information collections to the Desk Officer for the Department of the Interior at the Office of Management and Budget, by facsimile to (202) 395–5806 or you may send an e-mail to: *OIRA_DOCKET@omb.eop.gov.* Please send a copy of your comments to Kevin Skenadore, Bureau of Indian Education, 1849 C Street, NW., Mail Stop 3609–MIB, Washington, DC 20240–0001. Facsimile to 202–208–3271.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the information collections from Chris Redman, Education Planning Specialist, Telephone (405) 605–6051, extension 305.

SUPPLEMENTARY INFORMATION:

I. Abstract

These information collections allow the Department of the Interior to provide Tribally controlled colleges and universities with financial assistance under the Tribally Controlled College Assistance Act of 1978, Public Law 95–471 (Act), and implementing regulations at 25 CFR part 41. The information collection associated with the grant application allows Bureau of Indian Education (BIE) staff to review grants to ensure that the Tribally controlled college or university is legally eligible for the grant. The information collection associated with the annual report allows BIE to obtain an accounting of amounts and purposes for which financial assistance was expended for the preceding academic year. A request for comments on this information collection request appeared in the **Federal Register** on Wednesday, March 11, 2009 (74 FR 10609). No comments were received regarding these information collections in response to the announcement.

II. Request for Comments

You are invited to send your comments on these information collections to the two locations listed in the **ADDRESSES** section. Your comments should address:

(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.

OMB has up to 60 days after publication of this document in the **Federal Register** to make a decision on the submission for renewal, but may make the decision after 30 days. Therefore, to receive the best consideration of your comments, you should submit them during the first 30-day period.

Before including your address, phone number, e-mail address or other

personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so.

III. Data

A. Tribal Colleges and Universities Annual Report Form

OMB Control Number: 1076–0105.

Title of Collection: Tribal Colleges and Universities Annual Report Form, 25 CFR 41.9.

Brief Description of Collection: This information collection is a report on how the respondent used grant funds received in accordance with Public Law 95–471. Responses are required to receive or maintain a benefit.

Type of Review: Renewal.

Respondents: Tribally controlled colleges and universities.

Number of Respondents: 25.

Estimated Time per Response: 6 hours.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 150 hours.

B. Tribal Colleges and Universities Grant Application Form

OMB Control Number: 1076–0018.

Title of Collection: Tribal Colleges and Universities Grant Application Form, 25 CFR 41.8.

Brief Description of Collection: This information collection is an application for grant funds. Responses are required to receive or maintain a benefit (*i.e.,* grants) under Public Law 95–471.

Type of Review: Renewal.

Respondents: Tribally controlled colleges and universities.

Number of Respondents: 25.

Estimated Time per Response: 6 hours.

Frequency of Response: Annually.

Total Annual Burden to Respondents: 150 hours.

Dated: June 11, 2009.

Alvin Foster,

Acting Chief Information Officer—Indian Affairs.

[FR Doc. E9–14416 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14944–B; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Tozitna, Limited, for the Native village of Tanana. The lands are in the vicinity of Tanana, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 2 N., R. 20 W.,
Secs. 5 and 8.
Containing approximately 914 acres.

T. 3 N., R. 20 W.,
Secs. 6, 7, and 9;
Secs. 13 to 16, inclusive;
Secs. 21 to 24, inclusive;
Secs. 27 and 28;
Secs. 33 and 34.
Containing approximately 8,013 acres.

T. 3 N., R. 21 W.,
Secs. 1 and 12.
Containing approximately 705 acres.

T. 4 N., R. 21 W.,
Secs. 34 and 35.
Containing approximately 1,060 acres.
Aggregating approximately 10,692 acres.

The subsurface estate in these lands will be conveyed to Doyon, Limited when the surface estate is conveyed to Tozitna, Limited. Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–14393 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–8103–10, AA–8103–61, AA–8103–62, AA–8103–68, AA–8103–69, AA–8103–71, AA–8103–72, AA–8103–73, AA–8103–94, AA–8103–96, AA–8103–97, F–19155–17, F–21902–19, F–21906–60, F–21906–75; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of McGrath, Minto, Nikolai, and Tanacross, Alaska, and are located in:

Copper River Meridian, Alaska

T. 21 N., R. 11 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,964 acres.

Fairbanks Meridian, Alaska

T. 7 N., R. 9 W.,
Secs. 1 to 36, inclusive.
Containing 22,851.64 acres.

T. 7 N., R. 10 W.,
Secs. 1 to 36, inclusive.
Containing 22,851.64 acres.

Kateel River Meridian, Alaska

T. 23 S., R. 22 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,937 acres.

T. 23 S., R. 23 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,937 acres.

T. 24 S., R. 23 E.,
Secs. 1 to 36, inclusive.
Containing approximately 23,004 acres.

T. 23 S., R. 24 E.,
Secs. 1 to 36, inclusive.
Containing approximately 22,937 acres.

T. 24 S., R. 24 E.,
Secs. 1 to 36, inclusive.
Containing approximately 23,004 acres.

T. 23 S., R. 25 E.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.

Containing approximately 11,417 acres.

Seward Meridian, Alaska

T. 29 N., R. 34 W.,
Secs. 1 to 36, inclusive.

Containing approximately 22,111 acres.

T. 30 N., R. 34 W.,
Secs. 26 to 35, inclusive.

Containing approximately 6,359 acres.

T. 29 N., R. 35 W.,
Secs. 1, 2, 11, and 12;
Secs. 13, 24, 25, and 36.

Containing approximately 4,390 acres.

T. 30 N., R. 35 W.,
Secs. 2, 3, 4, and 11;
Secs. 14 and 23;
Sec. 25, 26, 35 and 36.

Containing approximately 5,245 acres.
Aggregating approximately 233,008 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–14395 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14823–A and F–14823–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Akiachuk, Limited. The lands are in the vicinity of Akiachak, Alaska, and are located in:

Seward Meridian, Alaska

T. 12 N., R. 67 W.,
Secs. 6 and 7;
Secs. 18 and 19.

Containing approximately 2,342 acres.

T. 9 N., R. 68 W.,
Secs. 7 and 8;
Secs. 17 and 18.

Containing approximately 160 acres.

T. 11 N., R. 68 W.,
Secs. 3 to 6, inclusive.

Containing approximately 2,290 acres.

T. 12 N., R. 68 W.,
Secs. 1 to 24, inclusive;
Secs. 27 to 34, inclusive.

Containing approximately 16,935 acres.

T. 12 N., R. 69 W.,
Secs. 1 to 24, inclusive.

Containing approximately 13,377 acres.

T. 12 N., R. 70 W.,
Secs. 25, 26, and 27;
Secs. 35 and 36.

Containing approximately 2,606 acres.
Aggregating approximately 37,710 acres.

The subsurface in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Akiachuk, Limited. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Gina A. Kendall,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–14394 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–12219; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to The Aleut Corporation for 64.11 acres on Umnak Island, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9–14397 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6648–E, AA–6648–G, AA–6648–K, AA–6648–O; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Aleknagik Natives Limited. The lands are in the vicinity of Aleknagik, Alaska, and are located in:

Seward Meridian, Alaska

T. 8 S., R. 53 W.,
Sec. 13, lots 1 to 6, inclusive, SW1/4NE1/4, W1/2, SE1/4;
Secs. 24, and 25.

Containing 1,913.89 acres as shown on the plat of survey officially filed on March 30, 1987.

T. 8 S., R. 55 W.,
Secs. 16, 17 and 18;
Secs. 20 and 21.

Containing 2,537.69 acres as shown on the plat of survey officially filed on January 11, 1973, the plat of supplemental survey officially filed September 20, 1991 and the plat of dependent resurvey officially filed on March 4, 2009.

T. 9 S., R. 55 W.,
Secs. 10 and 15;
Sec. 17, those lands formally within Native Allotment Application AA–7301;
Secs. 19;
Sec. 20, lots 1 and 2;
Secs. 22 and 27;
Secs. 29 to 32, inclusive;
Sec. 34.

Containing 6,915.08 acres as shown on the plat of survey officially filed on January 11, 1973, the plat of supplemental survey officially filed on October 23, 2006, and the plat of dependent resurvey officially filed February 13, 2009.

T. 8 S., R. 56 W.,
Sec. 13.

Containing 550.39 acres as shown on the plat of survey officially filed on January 11, 1973, the plat of supplemental survey officially filed November 21, 1991 and the plat of dependent resurvey officially filed on February 13, 2009.

T. 8 S., R. 57 W.,
Sec. 27, those lands formally within Native Allotment Application AA–7301.

Containing 40 acres as shown on the plat of survey officially filed on January 11, 1973, the plats of supplemental survey officially filed August 16, 1991 and October 3, 2006, respectively.

Aggregating 11,957.05 acres.

The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Aleknagik Natives Limited. Notice of the decision will also be published four times in the Bristol Bay Times.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jason Robinson,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–14406 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–22260, F–22265; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface and subsurface estates for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc. for 69.05 acres located northwesterly of the Native village of Buckland, Alaska. Notice of the decision will also be published four times in the Arctic Sounder.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION, CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9–14405 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14902–A, F–14902–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Napaskiak, Incorporated. The lands are in the vicinity of Napaskiak, Alaska, and located in:

Seward Meridian, Alaska

T. 5 N., R. 69 W.,
Secs. 4 to 7, inclusive;
Secs. 18 and 19.

Containing approximately 3,787 acres.

T. 13 N., R. 62 W.,
Secs. 3 to 10, inclusive;
Secs. 15 to 22, inclusive;
Secs. 27 to 34, inclusive.

Containing approximately 13,962 acres.

T. 13 N., R. 63 W.,
Secs. 1 to 18, inclusive.
Containing approximately 10,572 acres.
Aggregating approximately 28,321 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Napaskiak, Incorporated. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Jennifer L. Noe,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–14404 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14828–B2, F–14877–A2, F–14877–B2, F–14935–A2; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to NANA Regional Corporation, Inc. The lands are in the vicinity of Ambler, Kobuk, and Shugnak, Alaska, and are located in:

Kateel River Meridian, Alaska

T. 20 N., R. 3 E.,
Secs. 4 to 9, inclusive;
Secs. 16, 17, and 18.
Containing approximately 5,367 acres.

T. 21 N., R. 3 E.,
Secs. 1, 12, 25, and 26;
Secs. 27 and 34.
Containing approximately 3,840 acres.

T. 21 N., R. 4 E.,
Secs. 1 to 12, inclusive.
Containing approximately 7,657 acres.

T. 21 N., R. 6 E.,
Secs. 1 to 4, inclusive;
Sec. 9 and 16.
Containing approximately 3,840 acres.

T. 16 N., R. 7 E.,
Secs. 5 to 8, inclusive;
Secs. 17 and 18.
Containing approximately 3,397 acres.

T. 20 N., R. 9 E.,
Secs. 25 and 26;
Secs. 34, 35, and 36.
Containing approximately 3,200 acres.

T. 19 N., R. 10 E.,
Secs. 10, 11, and 12;
Secs. 14 to 36, inclusive.
Containing approximately 16,040 acres.

T. 18 N., R. 11 E.,
Secs. 3 to 10, inclusive;
Secs. 15 to 21, inclusive;
Secs. 28 to 33, inclusive.
Containing approximately 12,503 acres.

T. 19 N., R. 11 E.,
Secs. 5 and 6;
Secs. 19 to 22, inclusive;
Secs. 27 to 34, inclusive.
Containing approximately 8,649 acres.

T. 20 N., R. 11 E.,
Secs. 23 to 27, inclusive;
Secs. 32 to 36, inclusive.
Containing approximately 6,035 acres.
Aggregating approximately 70,528 acres.

Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–14403 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–6673–A, AA–6673–B, AA–6673–C, AA–6673–F, AA–6673–H, AA–6673–M; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Alaska Peninsula Corporation, Successor in Interest to Kokhanok Native Corporation. The lands are in the vicinity of Kokhanok, Alaska, and are located in:

Lot 7, U.S. Survey No. 8501, Alaska.
Containing 80.37 acres.

Seward Meridian, Alaska,

T. 7 S., R. 30 W.,
Sec. 7.
Containing approximately 623 acres.

T. 8 S., R. 30 W.,
Secs. 1 and 9,
Secs. 12 to 16, inclusive.
Containing approximately 4,457 acres.

T. 7 S., R. 31 W.,
Secs. 8 to 12, inclusive.
Containing approximately 3,131 acres.

T. 7 S., R. 32 W.,
Secs. 3 and 4;
Secs. 10 and 11;
Secs. 14 to 17, inclusive;
Sec. 20;
Secs. 24 and 25;
Secs. 30 to 33, inclusive.
Containing approximately 506 acres.

T. 8 S., R. 32 W.,
Sec. 20.
Containing approximately 5 acres.

T. 10 S., R. 32 W.,
Secs. 13 and 24.

Containing approximately 1,280 acres.

T. 8 S., R. 33 W.,
Secs. 7, 10, and 11;
Secs. 14 and 15.

Containing approximately 128 acres.
Aggregating approximately 10,212 acres.

The subsurface estate in these lands will be conveyed to Bristol Bay Native Corporation when the surface estate is conveyed to Alaska Peninsula Corporation, Successor in Interest to Kokhanok Native Corporation. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Hillary Woods,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–14402 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14878–A, F–14878–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Qemirtalek Coast Corporation. The lands are in the vicinity of Kongiganak, Alaska, and are located in:

Seward Meridian, Alaska

T. 1 N., R. 77 W.,
Secs. 30 and 31.

Containing approximately 1,193 acres.

T. 1 N., R. 78 W.,
Secs. 2 to 5, inclusive;
Secs. 7 to 18, inclusive;
Secs. 24, 25, and 36.

Containing approximately 11,283 acres.

T. 1 N., R. 79 W.,
Secs. 1 to 4, inclusive;
Secs. 7 to 18, inclusive.

Containing approximately 9,706 acres.

T. 1 S., R. 78 W.,
Secs. 5, 7, and 8;
Secs. 17, 27, and 34.

Containing approximately 3,498 acres.

T. 3 S., R. 80 W.,
Secs. 2 and 3;
Secs. 10 to 15, inclusive.

Containing approximately 4,341 acres.
Total aggregate of approximately 30,021 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Qemirtalek Coast Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–14401 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–14951–A, F–14951–A2; AK–965–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface estate of certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Tununrmiut Rinit Corporation. The lands are in the vicinity of Tununak, Alaska, and are located in:

U.S. Survey No. 13104, Alaska.

Containing 159.98 acres.

Seward Meridian, Alaska

T. 7 N., R. 80 W.,
Secs. 4 to 9, inclusive;
Secs. 16 to 21, inclusive;
Secs. 28 to 33, inclusive.

Containing approximately 9,154 acres.

T. 8 N., R. 80 W.,
Secs. 28 to 33, inclusive.

Containing approximately 3,520 acres.

T. 9 N., R. 80 W.,
Secs. 25, 27, and 28;
Secs. 32 to 36, inclusive.

Containing approximately 1,675 acres.

T. 7 N., R. 81 W.,
Secs. 1, 12, and 13;
Secs. 23 to 27, inclusive;
Secs. 33 to 36, inclusive.

Containing approximately 3,995 acres.

T. 8 N., R. 81 W.,
Secs. 1 to 6, inclusive;
Secs. 8 to 16, inclusive;
Secs. 22 to 27, inclusive;
Secs. 35 and 36.

Containing approximately 8,401 acres.

T. 9 N., R. 81 W.,
Secs. 25 to 30, inclusive;
Secs. 32 to 36, inclusive.

Containing approximately 3,407 acres.
Total aggregate of approximately 30,312 acres.

The subsurface estate in these lands will be conveyed to Calista Corporation when the surface estate is conveyed to Tununrmiut Rinit Corporation. Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30

days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Robert Childers,

Land Law Examiner, Land Transfer Adjudication II.

[FR Doc. E9–14400 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[F–19155–3; AK–964–1410–KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Doyon, Limited. The lands are in the vicinity of Stevens Village, Alaska, and are located in:

Fairbanks Meridian, Alaska

T. 13 N., R. 7 W.,
Secs. 1 to 12, inclusive.
Containing approximately 6,435 acres.

T. 12 N., R. 8 W.,
Secs. 3, 6, 7, and 10;
Secs. 19 and 20.
Containing approximately 3,676 acres.
Aggregating approximately 10,111 acres.

Notice of the decision will also be published four times in the Fairbanks Daily News-Miner.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Barbara Opp Waldal,

Land Law Examiner, Land Transfer Adjudication I.

[FR Doc. E9–14399 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–12209; AK–962–1410–HY–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the conveyance of surface estate only for certain lands pursuant to the Alaska Native Claims Settlement Act will be issued to The Aleut Corporation for 93.53 acres on Samalga Island, Alaska. Notice of the decision will also be published four times in the Anchorage Daily News.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov.* Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Dina L. Torres,

Land Transfer Resolution Specialist, Resolution Branch.

[FR Doc. E9–14398 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AA–12466, AA–70148, AA–70149, AA–70150, AA–74549, AA–84417; AK–964–1410-KC–P]

Alaska Native Claims Selection

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of decision approving lands for conveyance.

SUMMARY: As required by 43 CFR 2650.7(d), notice is hereby given that an appealable decision approving the surface and subsurface estates in certain lands for conveyance pursuant to the Alaska Native Claims Settlement Act will be issued to Calista Corporation. The lands are in the vicinity of Lime Village, Stony River, Sleetmute, Red Devil, Crooked Creek, Aniak, Chuathbaluk, Russian Mission, and Goodnews Bay, Alaska, and are located in:

Seward Meridian, Alaska

T. 17 N., R. 35 W.,
Secs. 16 to 19, inclusive;
Secs. 20 and 21;
Secs. 28 to 33, inclusive.
Containing 6,383.48 acres.

T. 13 N., R. 36 W.,
Sec. 2;
Secs. 3 to 10, inclusive;
Secs. 16 to 21, inclusive.
Containing approximately 5,898 acres.

T. 22 N., R. 38 W.,
Secs. 1, 2, and 3;
Secs. 9 to 12, inclusive;
Secs. 15, 23, 26, and 27.
Containing 6,659 acres.

T. 20 N., R. 41 W.,
Secs. 35 and 36.
Containing 1,138.90 acres.

T. 17 N., R. 44 W.,
Secs. 4, 9, and 16;
Secs. 17 and 18.
Containing 3,193.75 acres.

T. 17 N., R. 45 W.,
Secs. 13, 14, and 15.
Containing approximately 1,920 acres.

T. 19 N., R. 49 W.,
Secs. 1, 2, and 3;
Secs. 10 to 14, inclusive;
Secs. 24 to 28, inclusive;
Secs. 33 to 36, inclusive.
Containing 10,841.34 acres.

T. 20 N., R. 55 W.,
Secs. 15, 16, and 17;
Secs. 20, 21, and 22:
Secs. 27 to 32, inclusive.
Containing 7,612.04 acres.

T. 9 N., R. 59 W.,
Secs. 19 to 22, inclusive;
Secs. 27 to 34, inclusive.
Containing approximately 7,672 acres.

T. 13 N., R. 59 W.,
Secs. 3, 4, 9, and 10;
Secs. 15, 16, 21, and 22;
Secs. 27 and 28.
Containing approximately 5,580 acres.

T. 8 N., R. 60 W.,
Secs. 1 to 4, inclusive;
Secs. 9 to 12, inclusive.
Containing approximately 5,120 acres.

T. 23 N., R. 64 W.,
Secs. 13 to 17, inclusive;
Sec. 20;
Secs. 29 to 32, inclusive;
Sec. 35.
Containing 6,993.04 acres.

T. 21 N., R. 65 W.,
secs. 3, 4, and 5.
Containing 1,920 acres.

T. 22 N., R. 65 W.,
Secs. 27, 28, and 29;
Secs. 32, 33, and 34.
Containing 3,840 acres.

T. 23 N., R. 65 W.,
Secs. 25 and 26;
Secs. 34, 35, and 36.
Containing 3,200 acres.

T. 10 S., R. 74 W.,
Secs. 10, 11, and 12;
Secs. 14, 15, and 22.
Containing approximately 3,840 acres.
Aggregating approximately 81,811 acres.

Notice of the decision will also be published four times in the Tundra Drums.

DATES: The time limits for filing an appeal are:

1. Any party claiming a property interest which is adversely affected by the decision shall have until July 20, 2009 to file an appeal.

2. Parties receiving service of the decision by certified mail shall have 30 days from the date of receipt to file an appeal.

Parties who do not file an appeal in accordance with the requirements of 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

ADDRESSES: A copy of the decision may be obtained from: Bureau of Land Management, Alaska State Office, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7504.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management by phone at 907–271–5960, or by e-mail at *ak.blm.conveyance@ak.blm.gov*. Persons who use a telecommunication device (TTD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8330, 24 hours a day, seven days a week, to contact the Bureau of Land Management.

Charles Lovely,

Land Transfer Resolution Specialist, Branch of Adjudication II.

[FR Doc. E9–14396 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLUT–92000–09–L13200000–EL0000–24–1A00, UTU–85539]

Adequacy of the Environmental Assessment and Fair Market Value Public Meeting for the Dry Canyon Coal Tract, Carbon County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting and Call for Public Written Comment on the Proposed Sale, Adequacy of the Environmental Assessment, Fair Market Value determination and Maximum Economic Recovery consideration for Coal Lease Application UTU–85539. Note all comments must be submitted in written form to be considered.

SUMMARY: The Bureau of Land Management (BLM) will hold a public meeting on August 13, 2009, at 7 p.m. at the Bureau of Land Management, Price Field Office, 125 South 600 West, Price, Utah, for the proposed competitive sale of the Dry Canyon coal tract. BLM requests public written comment on the fair market value and environmental effects of mining of this tract. The lands included in the delineated Federal coal lease tract (''Dry Canyon'') are located in Carbon County, Utah approximately three miles northeast of Helper, Utah on both private and BLM surface with federally administered minerals and are described as follows:

T. 12 S., R.10 E., SLM, Carbon County, Utah
Sec. 25, N½;
Sec. 26, N½;
Sec. 27, N½;
Sec. 28, NE¼, E½NW¼, SW¼NW¼, S½;
Sec. 29, E½SE¼;
Sec. 33, all.

T. 13 S., R.10 E., SLM, Carbon County, Utah
Sec. 3, all;
Sec. 4, lots 1–4, S½N½, N½S½;
Sec. 8, lot 4;
Sec. 10, N½, W½SW¼;
Sec. 11, N½, SE¼.
Containing approximately 4,325.01 acres.

UtahAmerican Energy, Inc. submitted the application for the coal lease. The company plans to mine the coal as an extension from their existing Aberdeen Mine, if the lease is obtained. The Dry Canyon coal tract has three minable coal beds—the Aberdeen, the Kennilworth and the D seam bed. The minable portions of the coal beds in this area are around ten feet in thickness for the Aberdeen; around eight feet in thickness for the Kennilworth and around six feet in thickness for the D seam. The tract contains around 42.2 million tons of recoverable high-volatile A/B bituminous coal. The coal quality in the coal beds on an ''as received basis'' is as follows: (1) Aberdeen: 13,414 Btu/lb., 2.35 percent moisture, 5.57 percent ash, 41.86 percent volatile matter, 49.83 percent fixed carbon and 0.49 percent sulfur; (2) Kennilworth: 13,287 Btu/lb., 2.06 percent moisture, 6.91 percent ash, 42.88 percent volatile matter, 48.26 percent fixed carbon and 0.72 percent sulfur; (3) D: 12,470 Btu/lb., 6.00 percent moisture, 8.00 percent ash, 39.00 percent volatile matter, 47.00 percent fixed carbon and 0.50 percent sulfur. The public is invited to the meeting to make written comments on the environmental implications of leasing the proposed tract, and also to submit written comments on the Fair Market Value and the Maximum Economic Recovery of the tract.

SUPPLEMENTARY INFORMATION: In accordance with Federal coal management regulations 43 CFR 3422 and 3425, the public meeting is being held on the proposed sale to allow written comment on and discussion of the potential effects of mining and proposed lease. The meeting is being advertised in the Sun Advocate located in Price, Utah. 43 CFR 3422 states that, no less than 30 days prior to the publication of the notice of the sale, the Secretary shall solicit public comments on the Fair Market Value appraisal and the Maximum Economic Recovery and on factors that may affect these two determinations. Proprietary data marked as confidential may be submitted to the Bureau of Land Management in response to this solicitation of public comments. Data so marked shall be treated in accordance with the laws and

regulations governing confidentiality of such information. A copy of the comments submitted by the public on Fair Market Value and Maximum Economic Recovery, except those portions identified as proprietary by the author and meeting exemptions stated in the Freedom of Information Act, will be available for public inspection at the Bureau of Land Management, Utah State Office during regular business hours (8 a.m.–4 p.m.) Monday through Friday. Comments on the Fair Market Value and Maximum Economic Recovery should be sent to the Bureau of Land Management and should address, but not necessarily be limited to the following information:

1. The quality of the coal resource;
2. The mining methods or methods which would achieve maximum economic recovery of the coal, including specifications of seams to be mined and the most desirable timing and rate of production;
3. Whether this tract is likely to be mined as part of an existing mine and therefore should be evaluated on a realistic incremental basis, in relation to the existing mine to which it has the greatest value;
4. Whether the tract should be evaluated as part of a potential larger mining unit and revaluated as a portion of a new potential mine (i.e., a tract which does not in itself form a logical mining unit);
5. Restrictions to mining that may affect coal recovery;
6. The price that the mined coal would bring when sold;
7. Costs, including mining and reclamation, of producing the coal and the time of production;
8. The percentage rate at which anticipated income streams should be discounted, either with inflation or in the absence of inflation, in which case the anticipated rate of inflation should be given;
9. Depreciation, depletion, amortization and other tax accounting factors;
10. The value of any surface estate where held privately;
11. Documented information on the terms and conditions of recent and similar coal land transactions in the lease sale area;
12. Any comparable sales data of similar coal lands; and coal quantities and the Fair Market Value of the coal developed by BLM may or may not change as a result of comments received from the public and changes in market conditions between now and when final economic evaluations are completed.

DATES: The public meeting is being held on Thursday, August 13, 2009 at the Price Field Office, 125 South 600 West, Price, Utah, starting at 7 p.m.

FOR FURTHER INFORMATION CONTACT: Written comments on the Fair Market Value and Maximum Economic Recovery must be received by August 12, 2009 and should be addressed to Stan Perkes, 801–539–4036, Bureau of Land Management, Utah State Office, Division of Lands and Minerals, P.O. Box 45155, Salt Lake City, Utah 84145 or E-Mail to *Stan_Perkes@blm.gov.* Information on the Decision Notice/ Finding of No Significant Impact can be obtained by contacting Mr. Steve Rigby, 435–636–3604. Written comments concerning the environmental review of this action should be directed to the Price Field Office, 125 South 600 West, Price, Utah 84501.

Dated: June 12, 2009.

Selma Sierra,

State Director.

[FR Doc. E9–14409 Filed 6–18–09; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0140]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60–Day Notice of Information Collection Under Review: OJP Standard Assurances Form.

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 clearance in accordance with review procedures of the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the approval is valid for three years.

All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to should be directed to the Office of the General Counsel, Office of Justice Programs, U.S. Department of Justice, Attention: Kristopher Brambila, Attorney-Advisor, 810 7th St. NW., Washington, DC 20503. Comments will be accepted for 60 days until August 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

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:

(1) *Type of information collection:* Extension, without change of a currently approved collection.

(2) *The title of the form/collection:* OJP Standard Assurances.

(3) *Agency Form Number:* None. Component Sponsoring Collection: 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:* Applicants for grants funded by the Office of Justice Programs. *Other:* None. The purpose of the Standard Assurances form is to obtain the assurance/certification of each applicant for OJP funding that it will comply with the various cross-cutting regulatory and statutory requirements that apply to OJP grantees, and to set out in one easy-to-reference document those requirements that most frequently impact OJP grantees.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: Total of 8,250 respondents estimated, at 20 minutes each.

(6) An estimate of the total public burden (in hours) associated with the collection: The estimated total public burden associated with this information is 3,500.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building,

Suite 1600, 601 D Street NW., Washington, DC 20530.

Dated: June 15, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–14376 Filed 6–18–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0259]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Bureau of Justice Assistance Application Form: Public Safety Officer's Medal of Valor.

The Department of Justice (DOJ), Office of Justice Programs (OJP), 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. Comments are encouraged and will be accepted for ''sixty days'' until August 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Maria A. Berry at 202–353–8643, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street, 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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Bureau of Justice Assistance Application Form: Public Safety Officers Medal of Valor.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: *Form Number:* None.

(4) Affected public who will be asked or required to respond, as well as a brief Abstract: *Primary:* State, local and Tribal government agencies within the United States and its territories.

Abstract: The Bureau of Justice Assistance, a component of the Office of Justice Program, Department of Justice, administers the Public Safety Officer's Medal of Valor. One a year, the President of the United States of America may award, and present in the name of Congress, a Medal of Valor of appropriate design, with ribbons and appurtenances, to a public safety officer who is cited by the Attorney General, upon the recommendation of the Medal of Valor Review Board, for extraordinary valor above and beyond the call of duty. The Public Safety Officer Medal of Valor is the highest national award given to a public safety officer in recognition of their bravery and altruistic acts of valor to protect and save the lives of others. Nomination(s) for this award is voluntary.

Nominations are received through the Internet, or postal mail. The Medal of Valor program is governed by F1.R.802, the ''Public Safety Officer Medal of Valor Act of 2001.''

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that it will take the 182 applicants under the Medal of Valor approximately 25 minutes to complete the application form.

(6) An estimate of the total public burden (in hours) associated with the collection: The total estimated annual hour burden to complete the certification form is 75.83 hours.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 15, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, Department of Justice.

[FR Doc. E9–14378 Filed 6–18–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms and Explosives

[OMB Number 1140–0092]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Voluntary Magazine Questionnaire for Agencies/Entities Who Store Explosives.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Debra Satkowiak, Chief, Explosives Industry Programs Branch, 99 New York Avenue, NE., Washington, DC 20226.

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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Voluntary Magazine Questionnaire for Agencies/Entities Who Store Explosives.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Business or other for-profit. *Other:* None. The information from the questionnaires will be used to identify the number and locations of public explosives storage facilities including those facilities used by State and local law enforcement. The information will also help ATF account for all explosive materials during emergency situations, such as hurricanes, forest fires or other disasters.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 1,000 respondents will complete the questionnaire within approximately 30 minutes

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 500 total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 16, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–14457 Filed 6–18–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Bureau of Alcohol, Tobacco, Firearms, and Explosives

[OMB Number 1140–0084]

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review: Application and Permit for Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

The Department of Justice (DOJ), Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 18, 2009. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Kevin Boydston, Chief, Firearms and Explosives Imports Branch, 244 Needy Road, Martinsburg, WV 25401.

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:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Application and Permit For Temporary Importation of Firearms and Ammunition by Nonimmigrant Aliens.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* ATF F 6NIA (5330.3D), Bureau of Alcohol, Tobacco, Firearms and Explosives.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. *Other:* None. This information collection is needed to determine if the firearms or ammunition listed on the application qualify for importation and to certify that a nonimmigrant alien is in compliance with 18 U.S.C. 922(g)(5)(B). This application will also serve as the authorization for importation.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* It is estimated that 15,000 respondents will complete a 30 minute form.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 7,500 annual total burden hours associated with this collection.

If additional information is required contact: Lynn Bryant, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600, 601 D Street, NW., Washington, DC 20530.

Dated: June 16, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–14458 Filed 6–18–09; 8:45 am]

BILLING CODE 4410–FY–P

DEPARTMENT OF JUSTICE

Office of Justice Programs

[OMB Number 1121–0270]

Bureau of Justice Assistance; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day Notice of Information Collection Under Review—Extension of

currently approved collection. Bureau of Justice Assistance Application Form: *Southwest Border Prosecution Initiative.*

The Department of Justice (DOJ), Office of Justice Programs, Bureau of Justice Assistance, will be submitting the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. This proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for ''sixty days'' until August 18, 2009. If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact M. Pressley at 202–353–8643 or 1–866–859–2687, Bureau of Justice Assistance, Office of Justice Programs, U.S. Department of Justice, 810 7th Street, NW., Washington, DC 20531.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information 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 function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

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

(4) Minimize the burden of the collection of information on those who are to respond, including 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:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *The title of the form/collection:* Southwest Border Prosecution Initiative.

(3) The agency form number, if any, and the applicable component of the Department sponsoring the collection: Bureau of Justice Assistance, Office of Justice Programs, United States Department of Justice.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: United States Border State, Local, and Tribal governments

Other: None.

Abstract: The Southwest Border Prosecutor Initiative was enacted in FY 2002 to reimburse state, county, parish, or municipal governments for the costs associated with the prosecution of criminal cases declined by local U.S. Attorneys. Each year, hundreds of criminal cases resulting from Federal arrests are referred to local prosecutors to handle when the cases fall below certain monetary, quantity, or severity thresholds. This places additional burdens on local government resources that are already stretched by the demands of prosecuting violations of local and state laws. This program provides funds to eligible jurisdictions in the four southwest border states, using a uniform payment-per-case basis for qualifying federally initiated and declined-referred criminal cases that were disposed of after October 1, 2001. Up to 220 eligible jurisdictions may apply. This includes county governments and the four state governments in Arizona, California, New Mexico, and Texas.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply: It is estimated that no more than 220 respondents will apply. Each application takes approximately 60 minutes to complete and is submitted 4 times per year (quarterly).

(6) An estimate of the total public burden (in hours) associated with the collection: The total hour burden to complete the applications is 880 hours (880 applications (220 × 4 times a year) × 60 minutes = 52,800/60 minutes per hour = 880 burden hours).

If additional information is required, contact: Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, 601 D Street, NW., Suite 1600, Washington, DC 20530.

Dated: June 15, 2009.

Lynn Bryant,

Department Clearance Officer, PRA, United States Department of Justice.

[FR Doc. E9–14377 Filed 6–18–09; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for Housing Up to 2,500 Low Security, Adult Inmate Beds at Privately Owned Institution in Lake City, FL and/or Baldwin, MI

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 Code of Federal Regulations [CFR] Parts 1500–1508), the Federal Bureau of Prisons (BOP) intends to prepare a Draft Environmental Impact Statement (DEIS) and conduct Public Scoping Meetings for the proposed housing of inmates under Criminal Alien Requirement 9, at proposed facilities in Lake City, Florida and/or Baldwin, Michigan.

SUPPLEMENTARY INFORMATION: The mission of the United States Department of Justice, BOP, is to protect society by confining offenders in the controlled environments of prison and community-based facilities that are safe, humane, cost-efficient, and appropriately secure, and that provide work and other self-improvement opportunities to assist offenders in becoming law-abiding citizens. The BOP accomplishes its mission through the appropriate use of community correction, detention, and correctional facilities that are either: federally-owned and operated; federally-owned and non-federally operated; and non-federally owned and operated.

Proposed Action

The BOP is facing a period of unprecedented growth in its inmate population. Projections show the federal inmate population increasing from approximately 201,600 inmates at the end of fiscal year 2008 to 212,000 inmates by the end of fiscal year 2010. As such, the demand for bed space within the federal prison system continues to grow at a significant rate. To accommodate a portion of the growing inmate population, the BOP has determined that an additional federal, low-security facility is needed in its system. To meet this need, the BOP proposes to contract with a contractor owned and operated correctional facility

that can house up to 2,500 sentenced or un-sentenced criminal aliens.

Proposals received by the BOP from private contractors include a proposed expansion of an existing facility in Baldwin, Michigan and/or new construction at a site in Lake City, Florida. The BOP has preliminarily evaluated these sites and determined that the prospective sites appear to be of sufficient size to provide space for housing, programs, administrative services and other support facilities associated with the correctional facility. The DEIS to be prepared by the BOP will analyze the potential impacts of correctional facility construction/renovation and operation at these sites.

The Process

In the process of evaluating the sites, several aspects will receive detailed examination including, but not limited to: Topography, geology/soils, hydrology, biological resources, utility services, transportation services, cultural resources, land uses, socio-economics, hazardous materials, and air and noise quality, among others.

Alternatives

In developing the DEIS, the options of ''no action'' and ''alternative sites'' for the proposed facility will be fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined in the DEIS. A Public Scoping Meeting will be held at 6 p.m. June 30, 2009 at the Columbia County Public Library located at 308 NW Columbia Avenue, Lake City, Florida.

In addition, a Public Scoping meeting will be held at 6 p.m., July 7, 2009 at the Webber Township Hall located at 2286 West Springtime Street, Baldwin, Michigan. The meeting locations, dates, and times will be well publicized and have been arranged to allow for public involvement, as well as interested agencies and organizations to attend. The meetings are being held to allow interested persons to formally express their views on the scope and significant issues to be studied as part of the DEIS process. The meetings will provide for timely public comments and understanding of federal plans and programs with possible environmental consequences as required by the NEPA of 1969, as amended, and the National Historic Preservation Act of 1966, as amended.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment at a later date.

ADDRESSES: All are encouraged to provide comments on the proposed action and alternatives at any Public Scoping Meetings and anytime during the 30-day comment review period, which ends July 20, 2009. There are two ways in which comments may be submitted: (1) by attending one of the meetings or (2) by mail. All written comments on the DEIS should be submitted and postmarked no later than July 20, 2009.

Comments submitted by mail or questions concerning the proposed action and the DEIS may be directed to: Richard A. Cohn, Chief or Issac Gaston, Site Selection Specialist, Capacity Planning and Site Selection Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Tel: 202–514–6470/Fax: 202–616–6024/E-mail: *racohn@bop.gov.*

Dated: June 10, 2009.

Richard A. Cohn,

Chief, Capacity Planning and Site Selection Branch.

[FR Doc. E9–14179 Filed 6–18–09; 8:45 am]

BILLING CODE P

OFFICE OF THE DIRECTOR OF NATIONAL INTELLIGENCE

Office of the Chief Human Capital Officer; Information Collection; Ancestry and Ethnicity Data Elements; Correction

AGENCY: Office of the Director of National Intelligence.

ACTION: Notice; correction.

SUMMARY: The Office of the Director of National Intelligence published a document in the **Federal Register** of May 11, 2009, concerning request for comments by the general public and Federal Agencies on the standard data elements being reviewed under regular review procedures for use by the Intelligence Community. The document contained an incorrect mailing address.

FOR FURTHER INFORMATION CONTACT: Office of the Chief Human Capital Officer, 703–275–3365.

Correction

In the **Federal Register** of May 11, 2009, in FR Doc. E9–10475, on page 21834, in the **SUMMARY**, correct the last sentence to read:

These data elements can be viewed on the Web site *http://www.intelligence.gov.* Click on Careers, A Place For You, which will direct you to *http://www.intelligence.gov/3place.shtml.* Click on the Federal Register—Data Elements link.

In the **Federal Register** of May 11, 2009, in FR Doc. E9–10475, on page 21834, in the last paragraph, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

The Office of the Chief Human Capital Officer, ODNI, Washington, DC 20511, 703–275–3365. Please cite OMB Control No. 3440—NEW, Ancestry and Ethnicity Data Elements. The form can be downloaded from *http://www.intelligence.gov.* Click on Careers, A Place for You, which will direct you to *http://www.intelligence.gov/3place.shtml.* Click on the Federal Register—Data Elements link.

In the **Federal Register** of May 11, 2009, in FR Doc. E9–10475, on page 21835, in the last paragraph, correct the Obtaining Copies of Proposals caption to read:

Requesters may obtain a copy of the information collection documents from the Office of the Chief Human Capital Officer, ODNI, at Washington, DC 20511, or call 703–275–3365. Please cite Ancestry and Ethnicity Data Elements in all correspondence.

Dated: June 9, 2009.

Deatri L. Brewer,

DNI PRA Clearance Officer.

[FR Doc. E9–14443 Filed 6–18–09; 8:45 am]

BILLING CODE P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400; NRC–2009–0247]

Carolina Power & Light Company; Shearon Harris Nuclear Power Plant, Unit 1; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission, NRC) is considering issuance of an amendment to Renewed Facility Operating License No. NPF–63, issued to the Carolina Power & Light Company (the licensee), for operation of the Shearon Harris Nuclear Power Plant, Unit 1, located in Wake and Chatham Counties, North Carolina.

The proposed amendment would transition the current fire protection program to a risk-informed, performance-based program based on the National Fire Protection Association Standard 805 (NFPA–805), ''Performance-Based Standard for Fire Protection for Light Water Reactor

Generating Plants,'' 2001 Edition, in accordance with Title 10 of the Code of Federal Regulations (10 CFR), Section 50.48(c). NFPA–805 allows the use of performance-based methods, such as fire modeling, and risk-informed methods, such as Fire Probabilistic Risk Assessment, to demonstrate compliance with the nuclear safety performance criteria.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

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 Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 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/requestor in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following general requirements: (1) The name, address and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The petition must also identify the specific contentions which the petitioner/requestor seeks to have litigated at the proceeding.

Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner/requestor shall provide a brief explanation of the bases for the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petition must include sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the 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.

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC E-Filing rule, which the NRC promulgated on August 28, 2007 (72 FR 49139). The E-Filing process requires participants to submit and serve all adjudicatory documents over the Internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek a waiver in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor must contact the Office of the Secretary by e-mail at *hearing.docket@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 or the presiding officer of the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted, based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii).

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 submissions.

For further details with respect to this license amendment application, see the licensee's application for amendment dated May 29, 2008 (ADAMS Accession No. ML081560641), as supplemented by letter dated November 14, 2008 (ADAMS Accession No. ML083240593), which are available for public inspection at the Commission's PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the ADAMS Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, MD, this 11th day of June 2009.

For the Nuclear Regulatory Commission.

Marlayna Vaaler,

Project Manager, Plant Licensing Branch II–2, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–14420 Filed 6–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 55–62335–SP; ASLBP No. 09–891–01–SP–BD01]

David B. Kuhl, II; Establishment of Atomic Safety and Licensing Board

Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972 (37 FR 28,710), and the Commission's regulations, *see* 10 CFR 2.103(b), 2.309, 2.313(a), and 2.318, notice is hereby given that an Atomic Safety and Licensing Board (Board) is being established to preside over the following proceeding:

David B. Kuhl, II (Denial of Senior Reactor Operator License)

This proceeding concerns a request for hearing from David B. Kuhl, II, dated May 28, 2009. His request is in response to a denial letter from the Office of Nuclear Reactor Regulation (NRR) dated May 13, 2009 notifying him that, following an administrative review, NRR was in agreement with Region I's decision of February 20, 2009 not to issue him a Senior Reactor Operator License for the Beaver Valley Power Station.

The Board is comprised of the following administrative judges:

Paul S. Ryerson, Chair, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Alan S. Rosenthal, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Michael F. Kennedy, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

As provided in 10 CFR 2.302, all correspondence, documents, and other materials shall be filed in accordance with the NRC E-Filing rule, which the NRC promulgated in August 2007 (72 FR 49,139).

Issued at Rockville, Maryland, this 15th day of June 2009.

E. Roy Hawkens,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. E9–14435 Filed 6–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0588]

Final Regulatory Guide: Issuance, Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide (RG) 1.21, Revision 2.

FOR FURTHER INFORMATION CONTACT: Steven Garry, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: (301) 415–2766 or e-mail *Steven.Garry@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

RG 1.21, Rev. 2, ''Measuring, Evaluating, and Reporting Radioactive Material in Liquid and Gaseous

Effluents and Solid Waste,'' was issued with a temporary identification as Draft Regulatory Guide, DG–1186. This guide describes a method that the staff of the NRC considers acceptable for use in measuring, evaluating, and reporting plant-related radioactivity (excluding background radiation) in effluents and solid radioactive waste shipments. The regulatory guide also provides guidance on determining and reporting the public dose from nuclear power plant operations.

This guide incorporates the risk-informed principles of the Reactor Oversight Process. A risk-informed, performance-based approach to regulatory decision-making combines the ''risk-informed'' and ''performance-based'' elements discussed in the staff requirements memorandum on SECY–98–144, ''White Paper on Risk-Informed and Performance-Based Regulation,'' dated March 1, 1999.

II. Further Information

In November 2008, DG–1186 was issued for public comment. The public comment period closed on January 30, 2009. The staff's responses to the public comments received are located in the NRC's Agencywide Documents Access and Management System under Accession Number ML091170117. Electronic copies of RG 1.21, Rev. 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at 11555 Rockville Pike, Rockville, Maryland. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4205, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, MD, this 10th day of June 2009.

For the Nuclear Regulatory Commission.

R.A. Jervey,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–14422 Filed 6–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0096]

Notice of Issuance of Regulatory Guide

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Issuance and Availability of Regulatory Guide 4.1, Revision 2.

FOR FURTHER INFORMATION CONTACT: Steven Garry, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–2766 or e-mail *Steven.Garry@nrc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to an existing guide in the agency's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information such as methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific problems or postulated accidents, and data that the staff needs in its review of applications for permits and licenses.

Revision 2 of Regulatory Guide 4.1, ''Radiological Environmental Monitoring for Nuclear Power Plants,'' was issued with a temporary identification as Draft Regulatory Guide, DG–4013. This guide describes a method that the staff of the NRC considers acceptable for use in establishing and conducting an environmental monitoring program at nuclear power plants. The guide describes programs for preoperational and operational environmental monitoring.

II. Further Information

In November 2008, DG–4013 was published with a public comment period of 60 days from the issuance of the guide. The public comment period closed on January 30, 2009. The staff's responses to the comments received are located in the NRC's Agencywide Documents Access and Management System under accession number ML091310156. Electronic copies of Regulatory Guide 4.1, Revision 2 are available through the NRC's public Web site under ''Regulatory Guides'' at *http://www.nrc.gov/reading-rm/doc-collections/*.

In addition, regulatory guides are available for inspection at the NRC's Public Document Room (PDR) located at Room O–1F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852–2738. The PDR's mailing address is USNRC PDR, Washington, DC 20555–0001. The PDR can also be reached by telephone at (301) 415–4737 or (800) 397–4209, by fax at (301) 415–3548, and by e-mail to *pdr.resource@nrc.gov*.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

Dated at Rockville, MD, this 12th day of June 2009.

For the Nuclear Regulatory Commission.

Richard A. Jervey,

Acting Chief, Regulatory Guide Development Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. E9–14421 Filed 6–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–156; EA–09–141; NRC–2009–0245]

In the Matter of University of Wisconsin (University of Wisconsin Nuclear Reactor); Order Modifying Facility Operating License No. R–74

I

University of Wisconsin (the licensee) is the holder of Amended Facility Operating License No. R–74 (the license) originally issued on February 4, 1974, by the U.S. Atomic Energy Commission. The license authorizes operation of the University of Wisconsin Nuclear Reactor (the facility) at a power level up to 1,000 kilowatts thermal and in the pulse mode, with reactivity insertions not to exceed 1.4%Δk/k, and to receive, possess, and use special nuclear material associated with facility operation. The facility is a research reactor located on the campus of the University of Wisconsin, in the city of Madison, Dane County, Wisconsin. The mailing address is Nuclear Reactor Laboratory, University of Wisconsin—Madison, 1513 University Avenue, Room 1215 ME, Madison, WI 53706–1687.

II

Title 10 of the Code of Federal Regulations (10 CFR) Section 50.64, ''Limitations on the Use of Highly Enriched Uranium (HEU) in Domestic Nonpower Reactors,'' limits the use of high-enriched uranium (HEU) fuel in domestic non-power reactors (research and test reactors). The regulation, which became effective on March 27, 1986 (Volume 51 of the **Federal Register**,

page 6514 (51 FR 6514)), requires that, if Federal Government funding for conversion-related costs is available, each licensee of a non-power reactor authorized to use HEU fuel shall replace it with low-enriched uranium (LEU) fuel acceptable to the Commission unless the Commission has determined that the reactor has a unique purpose. The Commission's stated purpose for these requirements was to reduce, to the maximum extent possible, the use of HEU fuel in order to reduce the risk of theft and diversion of HEU fuel used in non-power reactors.

Paragraphs 50.64(b)(2)(i) and (ii) require that a licensee of a non-power reactor (1) not acquire more HEU fuel if LEU fuel that is acceptable to the Commission for that reactor is available when the licensee proposes to acquire HEU fuel, and (2) replace all HEU fuel in its possession with available LEU fuel acceptable to the Commission for that reactor in accordance with a schedule determined pursuant to 10 CFR 50.64(c)(2).

Paragraph 50.64(c)(2)(i) requires, among other things, that each licensee of a non-power reactor authorized to possess and to use HEU fuel develop, submit to the Director of the Office of Nuclear Reactor Regulation (the Director) by March 27, 1987, and at 12-month intervals thereafter, a written proposal for meeting the requirements of the rule. The licensee shall include in its proposal a certification that Federal Government funding for conversion is available through the U.S. Department of Energy or other appropriate Federal agency. The proposal should also provide a schedule for conversion, based upon the availability of replacement fuel acceptable to the Commission for that reactor and upon consideration of other factors such as the availability of shipping casks, implementation of arrangements for available financial support, and reactor usage.

Paragraph 50.64(c)(2)(iii) requires the licensee to include in the proposal, to the extent required to effect conversion, all necessary changes to the license, the facility, and licensee procedures. This paragraph also requires the licensee to submit supporting safety analyses in time to meet the conversion schedule.

Paragraph 50.64(c)(2)(iii) also requires the Director to review the licensee proposal, to confirm the status of Federal Government funding, and to determine a final schedule, if the licensee has submitted a schedule for conversion.

Section 50.64(c)(3) requires the Director to review the supporting safety analyses and to issue an appropriate enforcement order directing both the conversion and, to the extent consistent with the protection of public health and safety, any necessary changes to the license, the facility, and licensee procedures. In the **Federal Register** notice of the final rule (51 FR 6514), the Commission explained that in most, if not all cases, the enforcement order would be an order to modify the license under 10 CFR 2.204 (now 10 CFR 2.202).

Any person, other than the licensee, whose interest may be affected by this proceeding and who desires to participate as a party must file a written request for hearing or petition for leave to intervene meeting the requirements of 10 CFR 2.309, ''Hearing Requests, Petitions to Intervene, Requirements for Standing, and Contentions.''

III

The U.S. Nuclear Regulatory Commission (NRC) maintains the Agencywide Documents Access and Management System (ADAMS), which provides text and image files of the NRC's public documents. On August 25, 2008, the licensee submitted its conversion proposal (ADAMS Accession No. ML090760776), which was supplemented on April 10, 2009 (ADAMS Accession No. ML091470391), May 1, 2009 (ADAMS Accession No. ML091470390), and June 4, 2009 (ADAMS Accession No. ML091610704), including its proposed modifications and supporting safety analyses. HEU fuel elements are to be replaced with LEU fuel elements. The reactor core contains fuel elements of the TRIGA design, with the LEU fuel consisting of uranium-zirconium hydride with 30 weight percent uranium. These LEU fuel elements contain the uranium-235 isotope at an enrichment of less than 20 percent. The NRC staff reviewed the licensee's proposal and the requirements of 10 CFR 50.64 and have determined that public health and safety and common defense and security require the licensee to convert the facility from the use of HEU to LEU fuel in accordance with the attachments to this Order and the schedule included herein. The attachments to this Order specify the changes to the license conditions, technical specifications, and emergency plan that are needed to amend the facility license and contain an outline of a reactor startup report to be submitted to the NRC within 6 months following the return of the converted reactor to normal operation.

IV

Accordingly, pursuant to Sections 51, 53, 57, 101, 104, 161b, 161i, and 161o of the Atomic Energy Act of 1954, as amended, and to Commission regulations in 10 CFR 2.202 and 10 CFR 50.64, *it is hereby ordered that:*

Facility Operating License No. R–74 is modified by amending the license conditions, technical specifications, and emergency plan as stated in the attachments to this Order (*Attachment 1:* Modifications to Facility Operating License No. R–74; *Attachment 2:* Modifications to Emergency Plan; *Attachment 3:* Outline of Reactor Startup Report). License Condition 2.B, allowing possession of LEU fuel, becomes effective, provided there are no requests for a hearing, 20 days after the date of publication of this Order in the **Federal Register**. All other changes become effective, provided there are no requests for a hearing, on the later date of either (1) the day the licensee receives an adequate number and type of LEU fuel elements to operate the facility as specified in the licensee proposal dated August 25, 2008 (ADAMS Accession No. ML090760776), as supplemented on April 10, 2009 (ADAMS Accession No. ML091470391), May 1, 2009 (ADAMS Accession No. ML091470390), and June 4, 2009 (ADAMS Accession No. ML091610704), or (2) 20 days after the date of publication of this Order in the **Federal Register**.

V

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.

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 2007, 72 FR 49139 (Aug. 28, 2007). 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 an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least ten (10) days prior to the filing deadline, the petitioner/requestor should contact the

Office of the Secretary by e-mail at *HEARING.DOCKET@NRC.GOV,* or by calling (301) 415–1677, to request (1) a digital 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 using the agency's adjudicatory E-filing system may seek assistance through the ''Contact Us'' link located on the NRC Web site at *http://www.nrc.gov/site-help/e-submittals.html* or by calling the NRC electronic filing help desk, which is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays. The toll-free help line number is (866) 672–7640. A person filing electronically may also seek assistance by sending an e-mail to the NRC electronic filing help desk at *MSHD.Resource@nrc.gov.*

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville, Pike, Rockville, Maryland 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service.

Non-timely requests and/or petitions and contentions will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted and/or the contentions should be admitted based on a balancing of the factors specified in 10 CFR 2.309(c)(1)(i)–(viii). To be timely, filings must be submitted no later than 11:59 p.m. Eastern Time on the due date.

Documents submitted in adjudicatory proceedings will appear in NRC's electronic hearing docket which is available to the public at *http://ehd.nrc.gov/EHD_Proceeding/home.asp,* unless excluded pursuant to an order of the Commission, an Atomic Safety and Licensing Board, or a Presiding Officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, 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.

If a hearing is requested and the request is granted by the Commission, the NRC will issue an order designating the time and place of the hearing.

In the absence of any request for hearing, the provisions as specified in Section IV shall be final twenty (20) days after the date of publication of this Order in the **Federal Register**.

In accordance with 10 CFR 51.10(d), this Order is not subject to Section 102(2) of the National Environmental Policy Act, as amended. The NRC staff notes, however, that with respect to environmental impacts associated with the changes imposed by this Order as described in the safety evaluation, the changes would, if imposed by other than an order, meet the definition of a categorical exclusion in accordance with 10 CFR 51.22(c)(9). Thus, pursuant to either 10 CFR 51.10(d) or 51.22(c)(9), no environmental assessment or environmental impact statement is required.

Detailed guidance that the NRC uses to review applications from research reactor licensees appears in NUREG–1537, ''Guidelines for Preparing and Reviewing Applications for the Licensing of Non-Power Reactors,'' issued February 1996, which can be obtained from the Commission's Public Document Room (PDR). The public may also access NUREG–1537 through the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/reading-rm/adams.html* under ADAMS Accession Nos. ML0412430055 for Part 1 and ML042430048 for Part 2.

For further information see the application from the licensee dated August 25, 2008 (ADAMS Accession No. ML090760776), as supplemented on April 10, 2009 (ADAMS Accession No. ML091470391), May 1, 2009 (ADAMS Accession No. ML091470390), and June 4, 2009 (ADAMS Accession No. ML091610704), the NRC staff's request for additional information (ADAMS Accession No. ML090540005), and the cover letter to the licensee and the staff's safety evaluation dated June 11, 2009, (ADAMS Accession No. ML091390802). These documents are available for public inspection in the PDR, located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, MD. Publicly available records will be accessible electronically from the Public Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to

ADAMS or who have problems accessing the documents in ADAMS should contact the NRC PDR reference staff by telephone at (800) 397–4209 or (301) 415–4737 or by e-mail to *pdr@nrc.gov.*

Dated this 11th day of June 2009.

For the Nuclear Regulatory Commission.

James T. Wiggins,

Deputy Director, Office of Nuclear Reactor Regulation.

Attachment 1—Modifications to Facility Operating License No. R–74

A. License Conditions Revised by This Order

1. The license applies to the University of Wisconsin's nuclear reactor with the TRIGA nuclear core and control system (herein ''the reactor'') owned by the University of Wisconsin (herein ''the licensee''), and located on the University's campus in Madison, Wisconsin, and described in the licensee's application for license dated July 13, 1966, and amendments thereto including the amendment dated June 6, 1973, and supplements dated August 1, and August 21, 1973, (herein ''the application'').

2.B. Pursuant to the Act and 10 CFR Part 70, ''Domestic Licensing of Special Nuclear Material,''

(1) To receive, possess and use, in connection with operation of the facility, up to 15.0 kilograms of contained uranium-235 enriched to less than 20 percent in the form of TRIGA reactor fuel;

(2) To receive, possess and use, in connection with operation of the facility, up to 150 grams of contained uranium-235 of any enrichment in the form of neutron detectors;

(3) To receive, possess and use, in connection with operation of the facility, up to 16 grams of contained plutonium in the form of plutonium-beryllium neutron source;

(4) To receive, possess, use, but not separate, in connection with operation of the facility, such special nuclear material as may be produced by operation of the facility; and

(5) To possess, but not use, up to 18.0 kilograms of contained uranium-235 at equal to or greater than 20 percent enrichment in the form of TRIGA fuel until the existing inventory of this fuel is removed from the facility.

3.B. Technical Specifications

The Technical Specifications contained in Appendix A, as revised through Amendment No. 17, are hereby incorporated in the license. The licensee shall operate the facility in accordance with the Technical Specifications.

Attachment 2—Modifications to Emergency Plan

Replace the following pages of the University of Wisconsin Nuclear Reactor Emergency Plan (EP) with the enclosed pages.

Remove	Insert
EP Page 1	EP Page 1, Rev 6.
EP Page 5	EP Page 5, Rev 7.
EP Page 6	EP Page 6, Rev 6.
EP Page 7	EP Page 7, Rev 6.
EP Page 13	EP Page 13, Rev 7.
EP Page 14	EP Page 14, Rev 7.
EP Page 15	EP Page 15, Rev 7.

Attachment 3—Outline of Reactor Startup Report

Within six months following the return of the converted reactor to normal operation, submit the following information to the NRC. Information on the HEU core should be presented to the extent it exists.

1. Critical mass.

Measurement with HEU.

Measurement with LEU.

Comparisons with calculations for LEU and if available, HEU.

2. Excess (operational) reactivity.

Measurement with HEU.

Measurement with LEU.

Comparisons with calculations for LEU and if available, HEU.

3. Control rod calibrations.

Measurement of HEU and LEU rod worths and comparisons with calculations for LEU and if available, HEU.

4. Reactor power calibration.

Methods and measurements that ensure operation within the license limit and comparison between HEU and LEU nuclear instrumentation set points, detector positions and detector output.

5. Shutdown margin.

Measurement with HEU.

Measurement with LEU.

Comparisons with calculations for LEU and if available, HEU.

6. Thermal neutron flux distributions.

Measurements of the core and measured experimental facilities (to the extent available) with HEU and LEU and comparisons with calculations for LEU and if available, HEU.

7. Reactor physics measurements.

Results of determination of LEU effective delayed neutron fraction, temperature coefficient, and void coefficient to the extent that measurements are possible and comparison with calculations and available HEU core measurements.

8. Initial LEU core loading.

Measurements made during initial loading of the LEU fuel, presenting subcritical multiplication measurements, predictions of multiplication for next fuel additions, and prediction and verification of final criticality conditions.

9. Primary coolant measurements.

Results of any primary coolant water sample measurements for fission product activity taken during the first 30 days of LEU operation.

10. Results of any test pulses performed and comparison with calculations and available HEU core measurements.

11. Discussion of results.

Discussion of the comparison of the various results including an explanation of any significant differences that could affect normal operation and accident analyses.

[FR Doc. E9–14423 Filed 6–18–09; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2009–0246; Docket No. 50–382]

Entergy Operations Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations Inc. (Entergy, the licensee), to withdraw its September 17, 2008, application for proposed amendment to Facility Operating License (FOL) No. NPF–38 for the Waterford Steam Electric Station, Unit 3, located in St, Charles Parish, Louisiana.

The proposed amendment would have revised FOL to add a license condition on the extension of the reactor vessel inservice inspection (ISI) interval. This proposed license condition is the result of a condition in the NRC safety evaluation (SE), issued by letter dated May 8, 2008, on Westinghouse Owners Group (WOG), topical report WCAP–16168–NP, Revision 2, ''Risk-Informed Extension of the Reactor Vessel In-Service Inspection Interval.'' The Pressurized Water Reactor Owners Group, formerly known as WOG, issued WCAP–16168–NP–A (Approved), Revision 2, on June 13, 2008, incorporating the NRC SE dated May 8, 2008. The ISI interval extension part of a relief request is being separately evaluated by NRC and independent of this amendment request.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on November 4, 2008 (73 FR 65696). However, by letter dated June 3, 2009, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated September 17, 2008, and the licensee's letter dated June 3, 2009, which withdrew the application for license amendment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, Public File Area O1 F21, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet

at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, or 301–415–4737 or by e-mail to *pdr.resource@nrc.gov.*

Dated at Rockville, MD, this 12th day of June 2009.

For The Nuclear Regulatory Commission.

Nageswaran Kalyanam,

Project Manager, Plant Licensing Branch IV, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

[FR Doc. E9–14419 Filed 6–18–09; 8:45 am]

BILLING CODE 7590–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11750 and #11751]

West Virginia Disaster Number WV–00012

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1838–DR), dated 05/15/2009.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 05/03/2009 and continuing through 06/08/2009.

DATES: *Effective Date:* 06/08/2009.

Physical Loan Application Deadline Date: 07/14/2009.

EIDL Loan Application Deadline Date: 02/15/2010.

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 the State of West Virginia, dated 05/15/2009 is hereby amended to establish the incident period for this disaster as beginning 05/03/2009 and continuing through 06/08/2009.

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. E9–14364 Filed 6–18–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11776 and #11777]

Alaska Disaster #AK–00015

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a Notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA–1843–DR), dated 06/11/2009.

Incident: Flooding and Ice Jams.

Incident Period: 04/28/2009 and continuing.

EFFECTIVE DATE: 06/11/2009.

Physical Loan Application Deadline Date: 08/10/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 03/11/2010.

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: Notice is hereby given that as a result of the President's major disaster declaration on 06/11/2009, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Alaska Gateway REAA (03), Kuspuk REAA (29), Yukon Flats REAA (51), Yukon-Koyukuk REAA (52).

Contiguous Counties (Economic Injury Loans Only):

Alaska: Bering Strait REAA (07), Copper River Reaa (11), Delta/Greely (14), Denali Borough, Fairbanks North Star Borough, Iditarod Area REAA (21), Kashunamiut (Chevak) REAA (55), Lower Kuskokwim REAA (31), Lower Yukon REAA (32), North Slope Borough, Northwest Arctic Borough, Southwest Region REAA (45), Yupiit REAA (54).

The Interest Rates are:

For Physical Damage:

	Percent
Homeowners With Credit Available Elsewhere:	4.875
Homeowners Without Credit Available Elsewhere:	2.437
Businesses With Credit Available Elsewhere:	6.000
Other (Including Non-Profit Organizations) With Credit Available Elsewhere:	4.500
Businesses and Non-Profit Organizations Without Credit Available Elsewhere:	4.000
For Economic Injury:.	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere:	4.000

The number assigned to this disaster for physical damage is 117766 and for economic injury is 117770.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. E9–14365 Filed 6–18–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11750 and #11751]

West Virginia Disaster Number WV–00012

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 West Virginia (FEMA–1838–DR), dated 05/15/2009.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 05/03/2009 through 06/08/2009.

Effective Date: 06/12/2009.

Physical Loan Application Deadline Date: 07/14/2009.

EIDL Loan Application Deadline Date: 02/15/2010.

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 West Virginia, dated 05/15/2009 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Calhoun.

Contiguous Counties: (Economic Injury Loans Only):

West Virginia: Braxton, Clay, Gilmer, Ritchie, Roane, Wirt.

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. E9–14368 Filed 6–18–09; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #11752 and #11753]

West Virginia Disaster Number WV–00013

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 West Virginia (FEMA–1838–DR), dated 05/15/2009.

Incident: Severe Storms, Flooding, Mudslides, and Landslides.

Incident Period: 05/03/2009 through 06/08/2009.

Effective Date: 06/08/2009.

Physical Loan Application Deadline Date: 07/14/2009.

Economic Injury (EIDL) Loan Application Deadline Date: 02/15/2010.

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 West Virginia, dated 05/15/2009, is hereby amended to establish the incident period for this disaster as beginning 05/03/2009 and continuing through 06/08/2009.

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. E9–14370 Filed 6–18–09; 8:45 am]

BILLING CODE 8025–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [74 FR 28293, June 15, 2009]

STATUS: Closed Meeting.

PLACE: 100 F Street, NE., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Friday, June 19, 2009 at 11 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item has been added to the Friday, June 19, 2009 Closed Meeting agenda: Formal Order of Investigation.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b)(c)(3), (5), (7) and (10) and 17 CFR 200.402(a)(3), (5), (7) and (10) permit consideration of the scheduled matter at the Closed Meeting.

Commissioner Walter, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact the Office of the Secretary at (202) 551–5400.

Dated: June 16, 2009.

Elizabeth M. Murphy,

Secretary.

[FR Doc. E9–14538 Filed 6–17–09; 11:45 am]

BILLING CODE P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60101; File No. SR–NYSEArca–2009–49]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, by NYSE Arca, Inc. Implementing Schedule of Fees and Charges for Exchange Services

June 11, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 1, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On June 9, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (the ''Schedule''). While changes to the Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on June 1, 2009. The text of the proposed rule change is attached as Ex. 5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com*, at the Exchange'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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange corrected a typographical error that occurred on the cover sheet that accompanied the Exchange's submission on Form 19b–4. Specifically, the Exchange conformed its categorization of the statutory provision applicable to the proposed rule change (*i.e.*, Section 19(b)(3)(A) instead of Section 19(b)(2) of the Act) to make the cover sheet consistent with the text of the Form 19b–4.

on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to modify the list of strategies presently included in the Strategy Execution Fee Pilot Program (''Pilot Program''). NYSE Arca proposes to add ''Jelly Rolls'' as an eligible strategy execution for inclusion in Pilot Program.

A Jelly Roll is a long calendar call spread combined with the same short calendar put spread, or vice versa. This option strategy aims to profit from a time value spread through the purchase and sale of two call and two put options, each with different expiration dates. A Jelly Roll is created by entering into two separate positions simultaneously. One position involves buying a put and selling a call with the same strike price and expiration. The second position involves selling a put and buying a call, with the same strike price, but a different expiration from the first position. Below is an example of a Jelly Roll strategy execution.

XYZ Jun/Oct 25 Jelly Roll:

—Buy XYZ Jun 25 put and sell XYZ Jun 25 call
—Sell XYZ Oct 25 Put and buy XYZ Oct 25 call

Market BBO:

Jun 25 call .51 at .53
Jun 25 put .72 at .74
Oct 25 call 1.52 at 1.55
Oct 25 put 2.35 at 2.39

.74(long Jun put) + 1.52(long Oct call) − .51(short Jun call) − 2.35(short Oct put) = .60 credit received for the Jelly roll.

Because the referenced Jelly Rolls are commonly executed in large volumes with profit margins that are generally narrow, the Exchange proposes to cap the transaction fees associated with such executions at $750 per strategy execution that is executed on the same trading day in the same option class. In addition, Jelly Rolls will be included in the monthly cap of $25,000 per initiating firm for all strategy executions. NYSE Arca believes that by keeping fees low, the Exchange is able to attract liquidity by accommodating these transactions.

2. Statutory Basis

The Exchange believes that the proposal is consistent with Section 6(b) of the Act, in general, and Section 6(b)(4), in particular, in that it provides for the equitable allocation of dues, fees and other charges among its members and other market participants that use the trading facilities of NYSE Arca. Under this proposal, all similarly situated Exchange participants will be charged the same reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[5] of the Act and subparagraph (f)(2) of Rule 19b–4[6] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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–NYSEArca–2009–49 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–49. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2009–49 and should be submitted on or before July 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14351 Filed 6–18–09; 8:45 am]

BILLING CODE 8010–01–P

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(2).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60102; File No. SR–NYSEArca-2009–50]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change, as Modified by Amendment No. 1, by NYSE Arca, Inc. Implementing Schedule of Fees and Charges for Exchange Services by adding a Ratio Threshold Fee

June 11, 2009.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (the ''Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 1, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. On June 9, 2009, the Exchange filed Amendment No. 1 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Schedule of Fees and Charges for Exchange Services (''Schedule'') by adding a Ratio Threshold Fee. While changes to the Schedule pursuant to this proposal will be effective upon filing, the proposed fee will become operative on June 1, 2009. The text of the proposed rule change is attached as Ex.5 to the 19b–4 form. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange'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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes adding a Ratio Threshold Fee to its Fee Schedule. The proposed Ratio Threshold Fee will be charged to OTP Holders based on the number of orders entered compared to the number of executions received in a calendar month. The fee will be assessed as follows:

Monthly order to execution ratio	Monthly charge
Between 10,000 and 14,999 to 1	$5,000
Between 15,000 and 19,999 to 1	10,000
Between 20,000 and 24,999 to 1	20,000
25,000 to 1 and greater	35,000

This fee shall not apply to orders that improve the Exchange's prevailing best bid-offer (BBO) market at the time the orders are received.

OTP Holders with order to execution ratios of 10,000 to 1 or greater have the potential residual effect of exhausting system resources, bandwidth, and capacity. Such order to execution ratios may, in turn, create latency and impact other OTP Holders ability to receive timely executions. Recognizing that orders and executions often occur in large numbers, the purpose of this fee is to focus on activity that is truly disproportionate while fairly allocating costs among members. The proposed fee has multiple thresholds and is greater at higher order to execution ratios because the potential impact on exchange systems, bandwidth and capacity becomes greater with increased order to execution ratios.

The new Ratio Threshold Fee will become effective on June 1, 2009.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Securities Exchange Act of 1934 (the ''Act''),[5] in general, and Section 6(b)(4) of the Act,[6] 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. Under this proposal, all similarly situated members of NYSE Arca will be charged the same reasonable dues, fees and other charges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b–4[8] thereunder, because it establishes a due, fee, or other charge imposed by NYSE Arca.

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–NYSEArca-2009–50 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.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] In Amendment No. 1, the Exchange corrected a typographical error that occurred on the cover sheet that accompanied the Exchange's submission on Form 19b–4. Specifically, the Exchange conformed its categorization of the statutory provision applicable to the proposed rule change (*i.e.,* Section 19(b)(3)(A) instead of Section 19(b)(2) of the Act) to make the cover sheet consistent with the text of the Form 19b–4.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

All submissions should refer to File Number SR–NYSEArca-2009–50. 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 will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2009–50 and should be submitted on or before July 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14352 Filed 6–18–09; 8:45 am]

BILLING CODE 8010–01–P

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60103; File No. SR–Phlx–2009–47]

Self-Regulatory Organizations; NASDAQ OMX PHLX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Order Routing Fees

June 11, 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 June 5, 2009, NASDAQ OMX PHLX, Inc. (''Phlx'' 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 substantially prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt fees governing pricing for Phlx members using the Phlx XL II system,[3] for routing standardized equity and index options to away markets for execution.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.cchwallstreet.com/NASDAQOMXPHLX/Filings/*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt fees for executions of options orders entered into the Exchange's enhanced electronic trading platform for options, Phlx XL II but routed to away markets. The Exchange proposes a routing fee based upon the cost to the Exchange of executing such orders at those markets. In order to reflect the Exchange's cost of execution at away markets, the fees will be separated as applicable, depending on the away market's fee schedule, by type of option (penny pilot, equity/non-penny pilot, ETF or HLDS/non-penny pilot, and Index) and vary depending upon whether the order is being routed for a customer, a member firm, a market maker (which includes a specialist, a Registered Options Trader, a Streaming Quote Trader (''SQT''),[4] and a Remote Streaming Quote Trader (''RSQT'')),[5] or by a Floor Broker. Initially, the Phlx XL II system will only route customer orders.[6] The Table reflects that routing fees are currently not applicable to firms and market makers, since their order will not be routed by the Phlx XL II system. In the event that the Exchange determines to route firm and market maker orders, membership will be notified by an Options Trader Alert (''OTA'') of any applicable routing fees, and the Table will be updated to reflect such fees.

The Exchange proposes to pass through to Exchange members the actual transaction fees (including surcharges/license fees if applicable) assessed by away markets plus the clearing fees for the execution of orders routed from the Phlx XL II system. The Exchange has collected and organized in table format the fees to be assessed for routing to each destination exchange.[7]

The Exchange recently adopted Rule 1080(m)(iii)(A) to establish Nasdaq Options Services LLC (''NOS''), a member of the Exchange, as the Exchange's exclusive order router.[8] The sole use of NOS by the Phlx XL II system will be to route orders in options listed and open for trading on the Phlx XL II system to destination markets. A particular destination market would charge NOS their applicable transaction fees, which would then be passed through to Phlx, and ultimately to the initiating member under this proposal. Similarly, clearing fees charged to NOS by the Options Clearing Corporation

[3] For a complete description of Phlx XL II, *see* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32). The instant proposed fees will apply only to options entered into, and routed by, the Phlx XL II system.

[4] An SQT is an Exchange Registered Options Trader (''ROT'') who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such SQT is assigned. An SQT may only submit such quotations while such SQT is physically present on the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(A).

[5] An RSQT is an ROT that is a member or member organization with no physical trading floor presence who has received permission from the Exchange to generate and submit option quotations electronically through AUTOM in eligible options to which such RSQT has been assigned. An RSQT may only submit such quotations electronically from off the floor of the Exchange. *See* Exchange Rule 1014(b)(ii)(B).

[6] *See supra* note 3.

[7] *See* Exhibit 3 to the proposed rule change. *See also infra* note 9

[8] *See* Securities Exchange Act Release No. 59995 (May 28, 2009), 74 FR 26750 (June 3, 2009) (SR–Phlx–2009–32).

(''OCC'') would be passed through in this manner.

The fees listed in the NASDAQ OMX PHLX Table of Routing Fees (the ''Table'') will be updated as necessary to reflect changes in fees on destination exchanges. The Table generally should be accurate; however there may be instances in which a destination exchange submits a proposed rule change to amend its fee schedule on an immediately effective basis. In such a circumstance there may be a short time lag between such change to the destination market's fee schedule and a corresponding change to the Table. Accordingly, members should review the fees that were imposed on the destination market at the time an order was routed to ensure that they are aware of the actual fees that were passed through to them.

The Exchange believes that it is impractical to reflect and maintain in its fee schedule the table of fees assessed by each of the six competing away options markets. Because transaction and clearing costs are subject to frequent change on all of the options markets, the Exchange expects that maintaining an updated and accurate fee schedule would require it to file up to six changes or more each month in order to accurately reflect the changing fees for all six away markets.

Accordingly, under the current proposed rule change, the Exchange will assess pass-through transaction and clearing fees for executions on away markets but, rather than reflect the actual fees in its fee schedule, the Exchange will cross-reference a location on its primary Web site for members, *NasdaqTrader.com*, where it will maintain the Table, setting forth fees applicable to options executions at away markets.[9] The Exchange will maintain a current Table as well as an historical record of fees applicable on prior trading days in order to permit members to understand and evaluate their invoices from the Exchange.

The Exchange believes that these routing fees and the proposed approach to displaying them are competitive, fair and reasonable, and non-discriminatory in that they replicate the fees assessed by away markets executing orders routed from the Exchange. The Exchange believes that displaying its fees on a well-publicized and accessible web site and maintaining an historical record of fee changes will provide sufficient transparency for Exchange members that voluntarily choose to use the Phlx XL II system to route orders in standardized options.

The Exchange believes that these routing fees are inherently competitive, fair and reasonable, and non-discriminatory in that they replicate the fees assessed by away markets executing orders routed from the Phlx XL II system. As with all fees, the Exchange may adjust these routing fees in response to competitive conditions by filing a new proposed rule change.

This proposal is scheduled to become operative for option trades routed by the Phlx XL II system that settle on or after the initial date of deployment of the Phlx XL II system. The roll-out of the Phlx XL II system began on June 5, 2009. Members will be notified of the date of deployment and the commencement of the imposition of the proposed fees by way of an Options Trader Alert (''OTA'') posted on the Exchange's Web site.

2. Statutory Basis

The Exchange believes that its proposal to amend its schedule of fees is consistent with Section 6(b) of the Act[10] in general, and furthers the objectives of Section 6(b)(4) of the Act[11] in particular, in that it is an equitable allocation of reasonable fees and other charges among Exchange members. The Phlx is one of seven options markets in the national market system for standardized options. Joining Phlx and electing to trade options is entirely voluntary. Under these circumstances, Phlx's fees must be competitive and low in order for Phlx to attract order flow, execute orders, and grow as a market. The various exchanges have filed these fees with the Commission and it is reasonable for Phlx to pass those fees through to its members. As such, Phlx believes that its fees are fair and reasonable and consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act[12] and paragraph (f)(2) of Rule 19b–4[13] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File Number SR–Phlx–2009–47 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–Phlx–2009–47. 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

[9] The Commission notes that the following link to this table is included in the proposed rule text: *http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing.*

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(4).

[12] 15 U.S.C. 78s(b)(3)(A)(ii).

[13] 17 CFR 240.19b–4(f)(2).

between the hours of 10 a.m. and 3 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the self-regulatory organization. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–Phlx–2009–47 and should be submitted on or before July 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14353 Filed 6–18–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60099; File No. SR–NYSEArca–2009–51]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Amending Rule 7.36 Governing Order Ranking and Display

June 11, 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 June 4, 2009, NYSE Arca, Inc. (''NYSE Arca'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. NYSE Arca filed the proposed rule change as a ''non-controversial'' proposal pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend NYSE Arca Equities Rule 7.36 governing order ranking and display. A copy of this filing is available on the Exchange's Web site at *http://www.nyse.com,* at the Exchange'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, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this rule filing is to amend NYSE Arca Equities Rule 7.36 governing order ranking and display. The Exchange proposes to add language that allows a limit order that has been modified to retain priority if the modification to the order involves a decrease in the size of the order. In the event that the size of the order has been increased and/or the price has been changed, the order will be treated as a new order and will receive a new time priority. Currently, any modification to the size of an order, including a decrease in the size, is treated as a new order with a new time priority. Allowing Users[5] to decrease the size of an order and retain priority follows precedent established by other market centers and will not impact the Exchange's disseminated best priced bid-offer market. This change allows Users to more effectively account for portfolio position changes while retaining priority in the NYSE Arca book.[6]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)[7] of the Securities Exchange Act of 1934 (the ''Exchange Act''), in general, and furthers the objectives of Section 6(b)(5)[8] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposed rule change allows Users to decrement the size of an order while still retaining priority in the NYSE Arca Book.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6)(iii) thereunder.[12]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate

---

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] NYSE Arca Equities Rule 1.1(yy). The term ''User'' shall mean any ETP Holder or Sponsored Participant who is authorized to obtain access to the NYSE Arca Marketplace pursuant to Rule 7.29.

[6] NYSE Arca Equities rule 1.1(a). The term ''NYSE Arca Book'' shall refer to the NYSE Arca Marketplace's electronic file of orders, which contains all the User's orders in each of the Directed Order, Display Order, Working Order and Tracking Order Processes.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied the pre-filing requirement.

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–NYSEArca–2009–51 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2009–51. 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–NYSEArca–2009–51 and should be submitted on or before July 10, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[13]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14350 Filed 6–18–09; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–60113; File No. SR–FINRA–2007–009]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Approving Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Modernize and Simplify NASD Rule 2720

June 15, 2009.

I. Introduction

The Financial Industry Regulatory Authority, Inc. (''FINRA'') (f/k/a National Association of Securities Dealers, Inc. (''NASD'')) filed with the Securities and Exchange Commission (''Commission'' or ''SEC'') on September 6, 2007, and amended on May 1, 2009,[1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act'')[2] and Rule 19b–4 thereunder,[3] a proposal to modernize and simplify NASD Rule 2720 (Distributions of Securities of Members and Affiliates—Conflicts of Interest) (''Rule 2720'' or ''Rule''), which governs public offerings of securities in which a member with a conflict of interest participates, and make corresponding changes to FINRA Rule 5110 (Corporate Financing Rule) (''Rule 5110''). This proposal was published for comment in the **Federal Register** on May 13, 2009.[4] The Commission received no comments on the proposal. This order approves the proposed rule change, as modified by Amendment No. 1.

II. Description of the Proposed Rule Change

Rule 2720 governs public offerings of securities issued by participating members or their affiliates, public offerings in which a member or any of its associated persons or affiliates has a conflict of interest, and public offerings that result in a member becoming a public company. The Rule regulates the potential conflicts of interest that exist with respect to the pricing of such offerings and the conduct of due diligence when a member participates in such offerings.

In September 2006, FINRA published NASD *Notice to Members* 06–52 requesting comment on proposed amendments to Rule 2720 (the ''original proposal''). FINRA received two comment letters that generally supported the proposal and recognized the need to modernize the Rule.[5] However, in response to the comments received, FINRA staff made certain revisions to the original proposal in its September 6, 2007 filing with the Commission. In order to address Commission staff's comments, FINRA filed Amendment No. 1 to SR–FINRA–2007–009 on May 1, 2009.

The proposed rule change would replace the current Rule in its entirety with proposed Rule 2720 entitled ''Public Offerings of Securities With Conflicts of Interest.'' The proposal would, among other things: (1) Exempt from the filing and qualified independent underwriter (''QIU'') requirements public offerings of investment grade rated securities, public offerings of securities that have a bona fide public market, and public offerings in which the member primarily responsible for managing the offering does not have a conflict of interest and can meet the disciplinary history requirements for a QIU; (2) Amend the definition of ''conflict of interest'' to include public offerings in which at least five percent of the offering proceeds are directed to a participating member or its affiliates; (3) Modify the Rule's disclosure requirements to provide more prominent disclosure of conflicts of interest in the offering documents; and (4) Amend the Rule's provisions regarding the use of a QIU to eliminate the requirement that the QIU render a pricing opinion. In addition, the proposed rule change would amend the QIU qualification requirements to focus on the experience of the firm

---

[13] 17 CFR 200.30–3(a)(12).

[1] This Amendment No. 1 to SR–FINRA–2007–009 replaces and supersedes the original filing submitted on September 6, 2007, except with regard to Exhibit 2 (NASD *Notice to Members* 06–52 and comments received in response to NASD *Notice to Members* 06–52).

[2] 15 U.S.C. 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Exchange Act Release No. 59880 (May 7, 2009), 74 FR 22600 (May 13, 2009) (SR–FINRA–2007–009).

[5] Letter from the Securities Industry and Financial Markets Association, dated November 1, 2006 (the ''SIFMA Letter''); and Letter from the American Bar Association, dated December 4, 2006 (the ''ABA Letter'').

rather than its board of directors, prohibit a member from acting as a QIU if it would receive more than five percent of the proceeds of an offering, and lengthen from five to ten years the amount of time that a person involved in due diligence in a supervisory capacity must have a clean disciplinary history. These and the other proposed amendments are discussed in greater detail below.

A. Proposed Rule 2720(a)

Proposed Rule 2720(a) would provide that no member that has a conflict of interest may participate in a public offering unless the offering meets one of the exemptions set forth in paragraph (a)(1) or a QIU participates in the offering pursuant to paragraph (a)(2).

1. Offerings Exempt From the QIU and Filing Requirements Under Paragraph (a)(1)

FINRA proposed an exemption from the QIU and filing requirements for public offerings in which the member primarily responsible for managing the offering (*e.g.,* the book-running lead manager or lead placement agent) does not have a conflict of interest, is not an affiliate of a member that has a conflict of interest, and can meet the disciplinary history requirements for a QIU under proposed paragraph (f)(12)(E).[6] FINRA staff believed that a QIU should not be required for such offerings because the book-running lead manager or lead placement agent (or member acting in a similar capacity), which does not have conflict of interest, would be expected to perform the necessary due diligence that would otherwise be required of a QIU.[7]

In response to comments on the original proposal,[8] FINRA amended this provision to clarify that it would apply to public offerings in which there are joint books or that are best efforts offerings. However, where there are two or more co-lead managers or co-lead placement agents that have equal responsibilities with regard to due diligence, FINRA clarified that each would need to be free of conflicts of interest. FINRA believes that, due to the important role a book-runner or dealer-manager can be expected to play in the due diligence process in an offering, even if that responsibility is shared equally with other members, the Rule's QIU provisions would apply and the offering would have to be filed for review if *any* book-runner or dealer-manager has a conflict.

FINRA also proposed an exemption from the QIU and filing requirements for public offerings of securities that have a bona fide public market.[9] The current Rule exempts public offerings of securities for which there is a ''bona fide independent market'' from Rule 2720's QIU requirement, but not the filing requirement.[10] The proposed rule change would replace the term ''bona fide independent market'' with ''bona fide public market,'' which is defined in proposed Rule 2720(f)(3) in accordance with the numerical standards set forth in Regulation M.[11] Specifically, ''bona fide public market'' would be defined in the proposal as a market for a security issued by a company that has been reporting under the Exchange Act for at least 90 days, is current in its reporting requirements and whose securities are listed on a national securities exchange with an average daily trading volume of at least $1 million, provided that the issuer's common equity securities have a public float value of at least $150 million. One commenter expressed strong support for the proposed definition of ''bona fide public market.'' [12]

FINRA also proposed to exempt from the filing requirement (and retain the existing exemption from the QIU requirement) public offerings of investment grade rated securities and securities in the same series that have equal rights and obligations as investment grade rated securities.[13] In response to comments on the original proposal,[14] FINRA proposed to define ''investment grade rated'' in proposed Rule 2720(f)(8) to refer to securities that are rated by a nationally recognized statistical rating organization in one of its four highest generic rating categories. This definition is consistent with the definition proposed by FINRA in SR–NASD–2004–022 relating to the filing requirements and the regulation of public offerings of securities registered with the Commission and offered by members pursuant to Securities Act Rule 415 (the ''proposed shelf amendments'').[15]

These three types of public offerings described above and enumerated in paragraphs (a)(1)(A) through (a)(1)(C) of proposed Rule 2720 would not be subject to the QIU requirements of the proposed Rule and, by operation of proposed Rule 2720(d), they would not be subject to the filing requirements of Rule 5110 (formerly NASD Rule 2710).[16] They would be, however, subject to the other provisions of proposed Rule 2720, *e.g.,* the escrow and discretionary account requirements in paragraphs (b) and (c) respectively, if applicable. Additionally, these public offerings would be subject to certain disclosure requirements. Proposed Rule 2720(a)(1) would require prominent disclosure of the nature of the conflict of interest in the prospectus, offering circular, or similar document for the public offering.

In response to the original proposal, one commenter requested clarification regarding the ''prominent disclosure'' requirement in the proposed Rule.[17] Proposed Rule 2720(f)(10) provides a description of how a member could make ''prominent disclosure'' for purposes of paragraphs (a)(1) and (a)(2)(B) of the proposed Rule. Specifically, a member could make the notation ''(Conflicts of Interest)'' following the listing of the Plan of Distribution in the Table of Contents section required in Item 502 of Regulation S–K, and provide such disclosures in the Plan of Distribution section required in Item 508 and any Prospectus Summary section required in Item 503 of Regulation S–K. For offering documents not subject to Regulation S–K, ''prominent disclosure'' could be made by providing disclosure on the front page of the offering document that a conflict exists, with a cross-reference to the discussion within the offering document and in the summary of the offering document if one is included.

[6] *See* proposed Rule 2720(a)(1)(A).

[7] FINRA clarified their understanding that all syndicate members have due diligence responsibility, but the book-runner(s) in a firm commitment offering and the lead placement agent(s) in a best efforts offering typically hire outside counsel to help members meet their due diligence obligations.

[8] SIFMA Letter.

[9] *See* proposed Rule 2720(a)(1)(B).

[10] ''Bona fide independent market'' is defined in current Rule 2720(b)(3) as a market in a security that is listed on a national securities exchange or Nasdaq with a market price of $5 per share, aggregate trading volume of 500,000 shares over 90 days and a public float of 5 million shares.

[11] 17 CFR 242.100 to 105.

[12] ABA Letter.

[13] *See* proposed Rule 2720(a)(1)(C). Thus, proposed Rule 2720(a)(1)(C) would apply to public offerings of securities that have not received an individual rating, but are of the same class or series and are considered ''pari passu'' with other investment grade rated securities issued by the same company.

[14] ABA Letter.

[15] *See* Exchange Act Release No. 50749 (November 29, 2004), 69 FR 70735 (December 7, 2004) (notice of filing of SR–NASD–2004–022) and Amendment No. 5 (filed on August 31, 2007), available at *http://www.finra.org/Industry/Regulation/RuleFilings/2004/P036671.*

[16] On September 11, 2008, the Commission approved proposed rule change SR–FINRA–2008–039, in which FINRA proposed, among other things, to adopt NASD Rule 2710 as Rule 5110 in the Consolidated FINRA Rulebook. *See* Exchange Act Release No. 58514 (September 11, 2008), 73 FR 54190 (September 18, 2008). SR–FINRA–2008–039 was implemented on December 15, 2008. *See Regulatory Notice* 08–57 (October 2008).

[17] ABA Letter.

FINRA stated that these methods of disclosure would be considered a non-exclusive safe harbor for effecting ''prominent disclosure,'' and clarified it would consider alternative but equally prominent disclosures on a case-by-case basis.

2. Offerings in Which a QIU Must Participate Under Paragraph (a)(2)

If a member with a conflict of interest participates in a public offering that does not meet the conditions of proposed Rule 2720(a)(1), then proposed Rule 2720(a)(2)(A) would require that a QIU participate in the preparation of the registration statement and the prospectus, offering circular or similar document and exercise the usual standards of ''due diligence'' with respect thereto.[18]

Like proposed Rule 2720(a)(1), proposed Rule 2720(a)(2)(B) would require ''prominent disclosure'' (as defined in proposed Rule 2720(f)(10)) in the prospectus, offering circular, or similar document of the nature of the conflict of interest. In addition, proposed Rule 2720(a)(2)(B) would require disclosure of the name of the member acting as QIU and a brief statement regarding the role and responsibilities of the QIU. The disclosure requirements contained in current Rule 2720(d) require that, among other things, the offering documents expressly state that the member acting as QIU (if one is required for the offering) is assuming its responsibilities in pricing the offering and conducting due diligence. In response to commenters' concerns that such a statement potentially could give rise to liability on the part of the QIU,[19] FINRA proposed to replace this disclosure requirement with a more general statement about the role and responsibilities of a QIU.

FINRA clarified that a public offering in which a QIU participates pursuant to proposed paragraph (a)(2) would continue to be subject to the filing requirements of Rule 5110.[20] Additionally, as in the Rule currently, a public offering in which a QIU participates would be required to meet proposed Rule 2720's escrow and discretionary account requirements, if applicable.

Current Rule 2720 requires that a QIU provide an opinion that the price at which equity securities are offered to the public is no higher, or the yield for debt securities is no lower, than that recommended by the QIU. The proposed rule change would eliminate the requirement that a QIU provide a pricing opinion. FINRA staff stated that they were unaware of instances where QIUs have made recommendations that were inconsistent with pricing decisions by the book-running lead manager or lead placement agent. In addition, FINRA staff stated that they believe QIU pricing opinions in at-the-market offerings are of little to no value. Both commenters expressed strong support for eliminating the QIU pricing requirement.[21]

B. Escrow of Proceeds; Net Capital Computation

Proposed Rule 2720(b)(1) would require that all proceeds from a public offering by a member of its securities be placed in a duly established escrow account and not be released therefrom or used by the member in any manner until the member has complied with the net capital requirements set forth in paragraph (b)(2). This proposed provision mirrors current Rule 2720(e).[22]

The net capital requirements set forth in proposed Rule 2720(b)(2) mirror current Rule 2720(e)(2), except that FINRA is proposing to replace the reference to Exchange Act Rule 15c3–1(f) with a reference in proposed Rule 2720(b)(2) to the alternative standard for calculating net capital under Exchange Act Rule 15c3–1(a)(1)(ii).

In addition, proposed Rule 2720(b)(3) would require that any member offering its securities pursuant to the proposed Rule disclose in the registration statement, offering circular, or similar document a date by which the offering is reasonably expected to be completed and the terms upon which the proceeds will be released from the escrow account described in paragraph (b)(1). This provision mirrors current Rule 2720(d)(1).

C. Disclosure

Current Rule 2720(d)(1) requires disclosure in the registration statement or offering circular regarding the date the offering will be completed and the terms upon which proceeds will be released from the escrow account. Current Rule 2720(d)(2) requires disclosure: (1) That the offering is being made pursuant to Rule 2720; (2) Relating to the member's status in the offering; and (3) Relating to the QIU (if one is required).

The proposed rule change would delete current paragraph (d) of Rule 2720. As discussed above, the proposal would move the disclosure requirements in current paragraph (d)(1) to proposed paragraph (b)(3) and establish separate disclosure requirements for public offerings in which a QIU participates (proposed Rule 2720(a)(2)(B)) and public offerings in which a QIU does not participate (proposed Rule 2720(a)(1)).

D. Discretionary Accounts

Proposed Rule 2720(c) would prohibit, notwithstanding NASD Rule 2510 (Discretionary Accounts), members that have a conflict of interest from selling to a discretionary account any security with respect to which the conflict exists, unless the member has received specific written approval of the transaction from the account holder and retains documentation of the approval in its records. This provision differs from current Rule 2720(*l*), which also places limitations on sales to discretionary accounts, in that proposed Rule 2720(c) would only apply to the sale of securities by the member with the conflict of interest. Current Rule 2720(*l*) limits discretionary sales by all firms participating in the offering, even those that do not have a conflict of interest. One commenter expressed support for limiting this provision to the member that has a conflict.[23] FINRA has clarified that the ''specific written approval'' requirement in this provision could be satisfied by an e-mail from the customer.

E. Application of Rule 5110

As noted above, proposed Rule 2720(d) would provide that any public offering subject to the QIU requirements of paragraph (a)(2) would also be subject to Rule 5110, whether or not the offering would otherwise be exempted from Rule 5110's filing or other requirements. Rule 5110 generally requires members to file with FINRA public offerings for review of the proposed underwriting terms and arrangements. Rule 5110 contains certain exemptions from the filing requirements for, among others, public offerings of the securities of seasoned issuers and offerings of investment grade debt.[24] However, pursuant to

[18] The requisite qualifications of a QIU are set forth in the definition of ''qualified independent underwriter'' in proposed Rule 2720(f)(12), which is discussed in greater detail below.

[19] ABA Letter; SIFMA Letter.

[20] *See* proposed Rule 2720(d).

[21] ABA Letter; SIFMA Letter.

[22] Members are reminded that additional escrow account maintenance and payment requirements may be applicable under Exchange Act Rule 15c2–4.

[23] ABA Letter.

[24] The ''seasoned issuer'' filing exemption in Rule 5110(b)(7)(C) currently exempts offerings registered on Forms S–3 and F–3 by issuers that meet the standards for those Forms prior to October 21, 1992 (*i.e.*, a three-year reporting history and either $150 million float or $100 million float and annual

Continued

current Rule 2720(m), these exemptions are inapplicable to public offerings that fall within the scope of Rule 2720. Thus, for example, while a public offering of the securities of a seasoned issuer is normally exempt from filing under Rule 5110, if a member participating in the offering has a conflict of interest with the seasoned issuer, it must be filed and comply with Rule 5110. The proposed rule change would narrow this filing requirement to apply only to those public offerings that fall within the scope of proposed Rule 2720(a)(2).

In response to comments on the original proposal,[25] FINRA proposed to amend current Rule 5110(b)(7), which lists offerings that are exempt from the Rule 5110 filing requirements, to specify that documents and information related to the public offerings listed in Rule 5110(b)(7) are not required to be filed with FINRA for review, unless the public offering is subject to the QIU requirements of Rule 2720(a)(2). This would clarify that if a public offering listed in Rule 5110(b)(7) is subject to Rule 2720(a)(1), such offering would not be subject to the filing requirements of Rule 5110.

F. Requests for Exemption From Rule 2720

Proposed Rule 2720(e) would permit, pursuant to the Rule 9600 Series, FINRA in exceptional and unusual circumstances, taking into consideration all relevant factors, to exempt a member unconditionally or on specified terms from any or all of the provisions of the proposed Rule that it would deem appropriate. This provision mirrors existing Rule 2720(o).

G. Definition of ''Affiliate''

Proposed Rule 2720(f)(1) would define the term ''affiliate'' as an entity that controls, is controlled by or is under common control with a member. While current Rule 2720(b)(1) incorporates the ''control'' standard in the definition of affiliate, FINRA proposed instead to adopt a separate definition of ''control,'' which is discussed below.

In response to comments on the original proposal,[26] FINRA narrowed the proposed definition of ''affiliate'' to apply only where an entity controls, is controlled by or is under common control with *a member*. As originally proposed, the definition would have applied where an entity was under common control with *another entity* that controls, was controlled by or was under common control with a member.

H. Definition of ''Beneficial Ownership''

Proposed Rule 2720(f)(2) would define ''beneficial ownership'' as the right to the economic benefits of a security. This provision mirrors the definition contained in current Rule 2720(b)(2). In NASD *Notice to Members* 06–52, FINRA requested comment on whether Rule 2720 should incorporate the definition of ''beneficial ownership'' found in Exchange Act Rule 13d–3. That definition includes the right to dispose and vote the securities, which would apply to many investment funds. In response to comments suggesting that the definition should be confined to economic interests in which the member can profit directly,[27] FINRA is proposing to retain the current definition of ''beneficial ownership.''

I. Definition of ''Common Equity''

Proposed Rule 2720(f)(4) would define ''common equity'' as the total number of shares of common stock outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company. This definition mirrors current Rule 2720(b)(5).

J. Definition of ''Conflict of Interest''

Proposed Rule 2720(f)(5) would define ''conflict of interest'' to be the situation where, at the time of a member's participation in an entity's public offering, any of four conditions applies. The proposed Rule would operate much as it does currently. However, the proposed rule change would relocate many of the current Rule's substantive concepts to the definition of ''conflict of interest.''

First, pursuant to proposed Rule 2720(f)(5)(A), a conflict of interest would exist if the securities are to be issued by the member.

Second, pursuant to proposed Rule 2720(f)(5)(B), a conflict of interest would exist if the issuer controls, is controlled by, or is under common control with the member or the member's associated persons. ''Control'' is defined in proposed Rule 2720(f)(6) and is discussed below.

Third, pursuant to proposed Rule 2720(f)(5)(C), a conflict of interest would exist where at least five percent of the net offering proceeds, not including underwriting compensation, are intended to be either used to reduce or retire the balance of a loan or credit facility extended by the member, its affiliates, and its associated persons (in the aggregate) or otherwise directed to the member, its affiliates, and associated persons (in the aggregate). In response to comments on the original proposal,[28] FINRA amended the proposed definition to clarify that the proceeds are net of underwriting compensation.

Currently, Rule 5110(h) requires public offerings in which ten percent or more of the offering proceeds (not including the underwriting discount) will be paid to participating members to comply with Rule 2720's QIU requirements. Pursuant to this proposed rule change, FINRA proposed to delete Rule 5110(h) and move the proceeds requirement to Rule 2720 by defining ''conflict of interest'' to include a member's participation in a public offering where proceeds are directed to the member. Although the threshold for proceeds directed to a member would be lowered from ten percent to five percent, the new threshold would apply to *each* participating member individually (including the member's affiliates and its associated persons), not on an aggregate basis for all participating members, as is currently the case. Thus, for example, a conflict of interest would exist where a member received five percent of the proceeds, but not where two unaffiliated members each received three percent of the proceeds.

Fourth, pursuant to proposed Rule 2720(f)(5)(D), a conflict of interest would exist if, as a result of the public offering and any transactions contemplated at the time of the public offering, the member will be an affiliate of the issuer, the member will become publicly owned, or the issuer will become a member or form a broker-dealer subsidiary.

In response to comments on the original proposal,[29] FINRA clarified that for purposes of Rule 2720, ''participation in a public offering'' has the same meaning as in Rule 5110. Rule 5110(a)(5) provides that ''participation or participating in a public offering'' means:

> Participation in the preparation of the offering or other documents, participation in the distribution of the offering on an underwritten, non-underwritten, or any other basis, furnishing of customer and/or broker lists for solicitation, or participation in any advisory or consulting capacity to the issuer

trading volume of three million shares). The proposed shelf amendments (*see supra* note 14) would preserve the current filing requirements and amend the Rule to specifically describe the pre-October 21, 1992 standards.

[25] SIFMA Letter.

[26] ABA Letter.

[27] *Id.*

[28] SIFMA Letter.

[29] *Id.*

related to the offering, but not the preparation of an appraisal in a savings and loan conversion or a bank offering or the preparation of a fairness opinion pursuant to [Exchange Act] Rule 13e–3.[30]

K. Definition of ''Control''

As noted above, under the current Rule, the control standard is incorporated in the definition of ''affiliate.'' The proposal would create a separate definition of ''control,'' which would be defined as any of the following: (1) Beneficial ownership of ten percent or more of the outstanding common equity of an entity, including any right to receive such securities within 60 days of the member's participation in the public offering;[31] (2) The right to ten percent or more of the distributable profits or losses of an entity that is a partnership, including any right to receive an interest in such distributable profits or losses within 60 days of the member's participation in the public offering;[32] (3) Beneficial ownership of ten percent or more of the outstanding subordinated debt of an entity, including any right to receive such subordinated debt within 60 days of the member's participation in the public offering;[33] (4) Beneficial ownership of ten percent or more of the outstanding preferred equity of an entity, including any right to receive such preferred equity within 60 days of the member's participation in the public offering;[34] or (5) The power to direct or cause the direction of the management or policies of an entity.[35] FINRA believed it was important in subparagraph (i) to include entities other than corporations in order to expressly include conflicts that may arise in connection with the offerings of, for example, trusts.

FINRA had originally proposed that the definition of control would eliminate ownership of subordinated debt and preferred equity as a basis for a conflict of interest.[36] However, in response to comments from Commission staff, FINRA proposed to include beneficial ownership of ten percent or more of the outstanding common equity (which is defined expressly to include non-voting stock), subordinated debt or preferred equity in the proposed definition of control. Thus, for example, ''control'' could derive from the restrictive covenants typically found in debt indentures, preferred rights to dividends given to holders of non-voting common or preferred stock or special voting rights given to certain classes of (generally) non-voting stock. While FINRA specifically requested comment on whether such forms of ownership give rise to a conflict of interest and should be included in the proposed rule, no comments were received in regards to this filing.

The proposed definition of control would not only include shares beneficially owned by a participating member, but also the right to receive such securities within 60 days of the member's participation in the public offering. In its original filing of September 6, 2007, FINRA proposed that for purposes of this provision, 60 days would be from the effective date of the offering. However, in Amendment No. 1, FINRA revised the proposed rule text to provide that the relevant time frame is ''within 60 days of the member's participation in the public offering.''[37] This would ensure that the Rule properly applies to takedowns from an effective shelf registration. FINRA stated their belief that the determination of control should be when the member participates in an offering, not the date that a registration statement for the offering is declared effective.

Thus, under the proposed rule change, warrants or rights for voting securities that are exercisable within 60 days of the member's participation in the public offering would be included in the calculation of voting securities when determining whether control exists. In response to comments on the original proposal, FINRA clarified that in calculating the percentage beneficial ownership, it would be appropriate to include the potential ownership of shares in both the numerator and denominator.[38] FINRA did not believe, however, that this calculation should include securities that could be received by all investors. Rather, FINRA clarified that the calculation would be limited to warrants or rights that are exercisable within 60 days and received by the participating member only and would not include warrants or rights held by other investors.

L. Definition of ''Entity''

Currently, Rule 2720 does not contain a definition of ''entity.'' Pursuant to proposed Rule 2720(f)(7), an ''entity'' would be defined, for purposes of the definitions of affiliate, conflict of interest, and control under the Rule, as ''a company, corporation, partnership, trust, sole proprietorship, association or organized group of persons.''

The proposed definition would expressly exclude: (1) An investment company registered under the Investment Company Act of 1940 (''Investment Company Act'');[39] (2) A ''separate account'' as defined in Section 2(a)(37) of the Investment Company Act;[40] (3) A ''real estate investment trust'' as defined in Section 856 of the Internal Revenue Code;[41] and (4) A ''direct participation program'' as defined in NASD Rule 2810.[42] These exclusions are substantially similar to the exemptions from the ''conflict of interest'' provisions contained in current Rule 2720(b)(7)(D). In response to comments on the original proposal,[43] FINRA revised the proposed definition of ''conflict of interest'' to apply only to a public offering of an ''entity.''

M. Definition of ''Preferred Equity''

Proposed Rule 2720(f)(9) would define the term ''preferred equity'' as the aggregate capital invested by all persons in the preferred securities outstanding without regard to class, whether voting or non-voting, convertible or non-convertible, exchangeable or non-exchangeable, redeemable or non-redeemable, as reflected on the consolidated financial statements of the company. This definition mirrors current Rule 2720(b)(12).

N. Definition of ''Public Offering''

Proposed Rule 2720(f)(11) is substantively similar to the definition of ''public offering'' in current Rule 2720(b)(14) and would define the term as any primary or secondary offering of securities made pursuant to a registration statement or offering circular including exchange offers, rights offerings, offerings made pursuant

[30] Rule 5110(a)(5). Pursuant to the proposed shelf amendments (*see supra* note 15), this definition in former NASD Rule 2710 (which has since been moved to the Consolidated FINRA Rulebook as Rule 5110) would be amended to specify participation in the distribution of the offering on an ''underwritten, non-underwritten, principal, agency or any other basis'' and to include ''participation in a shelf takedown.''

[31] Proposed Rule 2720(f)(6)(A)(i). The term ''beneficial ownership'' is defined in proposed paragraph (f)(2).

[32] Proposed Rule 2720(f)(6)(A)(ii).

[33] Proposed Rule 2720(f)(6)(A)(iii).

[34] Proposed Rule 2720(f)(6)(A)(iv).

[35] Proposed Rule 2720(f)(6)(A)(v).

[36] *See* current Rule 2720(b)(7)(A) and (C).

[37] For purposes of Rule 2720, ''participation in a public offering'' has the same meaning as in Rule 5110(a)(5). *See supra* for further discussion of the definition of the term ''participation in a public offering.''

[38] *See* ABA Letter (requesting that FINRA clarify whether the amount of securities to be received by a member and any other person within 60 days of the offering will be included in the denominator in order to calculate the member's total ownership interest in the issuer's securities).

[39] Proposed Rule 2720(f)(7)(B)(i).

[40] Proposed Rule 2720(f)(7)(B)(ii).

[41] Proposed Rule 2720(f)(7)(B)(iii).

[42] Proposed Rule 2720(f)(7)(B)(iv).

[43] SIFMA Letter.

to a merger or acquisition and all other securities offerings of any kind whatsoever. The proposed definition excludes from its scope any offering made pursuant to an exemption from registration under Sections 4(1), 4(2) or 4(6) of the Securities Act of 1933 (''Securities Act''),[44] Securities Act Rule 504, if the securities are ''restricted securities'' under Securities Act Rule 144(a)(3), Securities Act Rule 505, or Securities Act Rule 506, and Securities Act Rule 144A or Regulation S. FINRA currently does not interpret an offering made pursuant to Regulation S to be within the scope of a ''public offering'' under this Rule and as such, proposed also to exclude these offerings from the definition. Additionally, in response to comments on the original proposal,[45] FINRA amended the proposed definition of ''public offering'' to expressly exclude exempted securities as defined in Section 3(a)(12) of the Exchange Act,[46] as in the current Rule.

One commenter suggested that the proposed rule should provide an express exclusion for offerings made pursuant to Securities Act Rule 144A.[47] FINRA agreed and added an express exclusion for offerings under Securities Act Rule 144A. FINRA also noted that it currently does not interpret an offering made pursuant to Securities Act Rule 144A to be within the scope of either Rule 5110 or Rule 2720.

O. Definition of ''Qualified Independent Underwriter''

Proposed Rule 2720(f)(12) defines the term ''qualified independent underwriter'' as a member that meets five specified conditions. Specifically, the member must first not have a conflict of interest and must not be an affiliate of any member that has a conflict of interest.[48] The Rule currently does not disqualify or prohibit a QIU from receiving proceeds from an offering. The proposed rule change would prohibit a QIU from receiving more than five percent of the offering proceeds because the receipt of such proceeds would disqualify a member from acting as a QIU because it would fall within the proposed definition of ''conflict of interest.''

The second condition for being considered a QIU in the proposed Rule is the member could not beneficially own, as of the date of the member's participation in the public offering, more than five percent of the class of securities that would give rise to a conflict of interest, including any right to receive any such securities exercisable within 60 days.[49] Current Rule 2720(b)(15)(E) prohibits a member from acting as a QIU if it is an affiliate of the issuer or if it beneficially owns at least five percent of the equity, subordinated debt or partnership interest of the issuer. The proposed rule change would maintain these prohibitions.

Third, the member would need to have agreed, in acting as a QIU, to undertake the legal responsibilities and liabilities of an underwriter under the Securities Act, specifically including those inherent in Section 11 thereof.[50] The proposed provision mirrors current Rule 2720(b)(15)(F).

Fourth, the member would need to have served as underwriter in at least three public offerings of a similar size and type during the three-year period immediately preceding the filing of the registration statement or the date of first sale in an offering for which there is no registration statement.[51] This requirement would be deemed satisfied if, during the past three years, the member, with respect to a proposed public offering of debt securities, has acted as sole underwriter or book-running lead or co-manager of at least three public offerings of debt securities each with gross proceeds of not less than 25% of the anticipated gross proceeds of the proposed offering. With respect to a proposed public offering of equity securities, this requirement would be deemed satisfied if, during the past three years, the member has acted as sole underwriter or book-running lead or co-manager of at least three public offerings of equity securities (or of securities convertible into equity securities), each with gross proceeds of not less than 50% of the anticipated gross proceeds of the proposed offering. While FINRA specifically requested comment on whether the 50% threshold should be lowered if an equity offering is particularly large (*e.g.*, over $1 billion), no comments were received in regards to the filing. The proposed requirements would be similar those set forth in current Rule 2720(b)(15)(C). The proposal would, however, shorten the relevant period from five to three years and would impose, as discussed above, the requirement that a QIU must have acted as a managing underwriter in at least three similar offerings during that time.

Additionally, Rule 2720(b)(15)(B) currently permits a member to serve as a QIU only if the member is a sole proprietorship and the sole proprietor has been actively engaged in the investment banking or securities business for the five-year period immediately preceding the filing of the registration statement, or is a corporation or partnership and a majority of its board of directors or general partners has been similarly engaged in the investment banking or securities business. The proposed rule change would eliminate the requirement regarding board or partner experience, since FINRA staff believed that the experience of the firm is more relevant.

The fifth and final condition for being considered a QIU in the proposed Rule would be that the member's associated persons in a supervisory capacity who are responsible for organizing, structuring, or performing due diligence with respect to corporate public offerings of securities could not have certain criminal or disciplinary histories.[52] These associated persons could not have been convicted within ten years prior to the filing of the registration statement or the preparation of an offering circular in an offering without a registration statement of a violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder, in connection with a registered or unregistered offering of securities. These associated persons also could not be subject to any order, judgment, or decree of any court of competent jurisdiction entered within ten years prior to the filing of the registration statement, or the preparation of an offering circular in an offering without a registration statement, permanently enjoining or restraining such person from engaging in or continuing any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or any rules or regulations promulgated thereunder in connection with a registered or unregistered offering of securities. Finally, these associated persons could not have been suspended or barred from association with any member by an order or decision of the Commission, any state, FINRA, or any other self-regulatory organization within ten years prior to the filing of the registration statement, or the preparation of an offering circular in an offering without a registration statement, for any conduct or practice in violation of the anti-fraud provisions of the federal or state securities laws, or

[44] 15 U.S.C. 77d(1), (2), and (6).

[45] ABA Letter.

[46] 15 U.S.C. 78c(a)(12).

[47] ABA Letter.

[48] Proposed Rule 2720(f)(12)(A).

[49] Proposed Rule 2720(f)(12)(B).

[50] Proposed Rule 2720(f)(12)(C).

[51] Proposed Rule 2720(f)(12)(D).

[52] *See* proposed Rule 2720(f)(12)(E).

any rules, or regulations promulgated thereunder, or the anti-fraud rules of any self-regulatory organization in connection with a registered or unregistered offering of securities. The Rule currently prohibits an associated person's involvement in the due diligence process in a supervisory capacity if that person has been subject to certain criminal and disciplinary actions pertaining to the offering of securities within five years prior to the filing of the registration statement. The proposed rule change, as described above, would lengthen this period from five to ten years.

P. Definition of ''Registration Statement''

Proposed Rule 2720(f)(13) would define the term ''registration statement'' as a registration statement as defined by Section 2(a)(8) of the Securities Act,[53] notification on Form 1A filed with the Commission pursuant to the provisions of Securities Act Rule 252, or any other document, by whatever name known, initiating a registration or similar process for an issue of securities which is required to be filed by the laws or regulations of any federal or state agency. This definition mirrors current Rule 2720(b)(16), except for technical changes to correct the references in the current Rule to Securities Act Section 2(8) and Securities Act Rule 255.

Q. Definition of ''Subordinated Debt''

Proposed Rule 2720(f)(14) would define ''subordinated debt'' to include debt of an issuer which is expressly subordinate in right of payment to (or with a claim on assets subordinate to) any existing or future debt of such issuer or all debt that is specified as subordinated at the time of issuance. Subordinated debt would not include short-term debt with maturity at issuance of less than one year and secured debt and bank debt not specified as subordinated debt at the time of issuance. This definition mirrors current Rule 2720(b)(18).

R. Deleted Definitions

Proposed Rule 2720 would not include definitions for some terms that appear in current Rule 2720. These would be the definitions for ''company,'' ''effective date,'' ''immediate family,'' ''parent,'' ''person,'' ''public director,'' and ''settlement.'' In response to comments on the original proposal,[54] FINRA proposed to adopt the current Rule 2720 definitions of ''company,'' ''effective date,'' ''immediate family,'' and ''person'' as new paragraphs (a)(11) through (14) of Rule 5110 because they are used in that rule. Proposed Rule 2720(f) provides that the definitions in Rule 5110 are incorporated by reference in Rule 2720.

S. Corporate Governance and Periodic Reporting

Rule 2720 currently includes certain provisions that do not apply to the public offering itself and instead require the issuer to adopt corporate governance policies relating to an audit committee, public directors, and to issue periodic reports to shareholders.[55] With the enactment of the Sarbanes-Oxley Act of 2002 and recent SEC rulemaking and interpretive actions, FINRA enunciated its belief that issuers' periodic reporting requirements under the Exchange Act have been enhanced and listing standard changes intended to improve corporate governance and enhance the role of audit committees have been adopted. Accordingly, FINRA decided that separate Rule 2720 requirements for corporate governance and periodic reporting would be unnecessary. One commenter expressed support for eliminating these provisions from Rule 2720.[56]

T. Intrastate Offerings

Rule 2720(j) currently requires any member offering its securities pursuant to the intrastate offering exemption under the Securities Act to include in the offering documents information required in a release that the Commission published in 1972. The proposed amendments would delete this requirement from Rule 2720. FINRA stated their belief that disclosure requirements for unregistered offerings should be addressed in a more comprehensive manner by the Commission, the states, or FINRA, and not imposed under the narrow scope of Rule 2720 or limited to intrastate offerings. One commenter suggested that FINRA should not adopt disclosure requirements for intrastate offerings because such offerings are subject to the disclosure requirements of the state where the securities are offered.[57]

U. Suitability

Rule 2720(k) currently requires that every member underwriting an issue of its own securities, or securities of an affiliate or company with which it has a conflict of interest, that recommends to a customer the purchase of a security of such issue must have reasonable grounds to believe that the recommendation is suitable for the customer. FINRA did not propose a similar provision in proposed Rule 2720 because NASD Rule 2310 already addresses a member's obligations relating to suitability.

III. Discussion and Findings

After careful review of the proposed rule change, the Commission finds that the proposed rule change is consistent with the requirements of the Act, and the rules and regulations thereunder that are applicable to a national securities association.[58] In particular, the Commission believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[59] which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The Commission believes that FINRA has substantially streamlined the Rule thus enhancing its members' ability to comply with the rule while maintaining investor protections. The Rule, as amended in the proposal, continues regulation that protects investors in offerings where the member has a conflict of interest.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[60] that the proposed rule change (File No. SR–FINRA–2007–009), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–14367 Filed 6–18–09; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

[Docket No. SSA–2009–0033]

Occupational Information Development Advisory Panel Meeting

AGENCY: Social Security Administration (SSA).

[53] 15 U.S.C. 77b(a)(8).

[54] ABA Letter.

[55] *See* current Rule 2720(f), (g), and (h).

[56] ABA Letter.

[57] *Id.*

[58] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[59] 15 U.S.C. 78o–3(b)(6).

[60] 15 U.S.C. 78s(b)(2).

[61] 17 CFR 200.30–3(a)(12).

ACTION: Notice of Upcoming Panel Teleconference Meeting.

DATES: July 14, 2009, 12 p.m.–2 p.m. (EDT).

Call-in number: 1–866–244–4637. *Pass code:* 1367800.

Leader/Host: Debra Tidwell-Peters.

SUPPLEMENTARY INFORMATION: Type of meeting: The teleconference meeting is open to the public. *Purpose:* This discretionary Panel, established under the Federal Advisory Committee Act of 1972, as amended, shall report to the Commissioner of Social Security. The Panel will provide independent advice and recommendations on plans and activities to replace the Dictionary of Occupational Titles used in the Social Security Administration's (SSA) disability determination process. The Panel will advise the Agency on creating an occupational information system tailored specifically for SSA's disability programs and adjudicative needs. Advice and recommendations will relate to SSA's disability programs in the following areas: Medical and vocational analysis of disability claims; occupational analysis, including definitions, ratings and capture of physical and mental/cognitive demands of work and other occupational information critical to SSA disability programs; data collection; use of occupational information in SSA's disability programs; and any other area(s) that would enable SSA to develop an occupational information system suited to its disability programs and improve the medical-vocational adjudication policies and processes.

Agenda: The agenda for the meeting will be posted on the Internet at *http://www.ssa.gov/oidap/meeting_information.htm* at least one week prior to the start date and can be received electronically by e-mail or by fax, upon request. Records are kept of all proceedings and will be available for public inspection by appointment at the Panel office.

Contact Information: Anyone requiring information regarding the Panel should contact the Panel staff by: Mail addressed to the Occupational Information Development Advisory Panel, Social Security Administration, 6401 Security Boulevard, Operations Building, 3–E–26, Baltimore, MD 21235, fax to (410) 597–0825, or e-mail to *OIDAP@ssa.gov*.

Debra Tidwell-Peters,

Designated Federal Officer.

[FR Doc. E9–14374 Filed 6–18–09; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 6677]

Culturally Significant Objects Imported for Exhibition Determinations: ''Joaquin Torres-Garcia: Constructing Abstraction With Wood''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the objects to be included in the exhibition ''Joaquin Torres-Garcia: Constructing Abstraction With Wood,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Menil Collection, Houston, TX, from on or about September 25, 2009, until on or about January 3, 2010; at the San Diego Museum of Art, San Diego, CA, from on or about February 21 until on or about May 30, 2010; and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8040). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 12, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–14490 Filed 6–18–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6678]

Culturally Significant Objects Imported for Exhibition Determinations: ''Vermeer's Masterpiece, The Milkmaid''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that the object to be included in the exhibition ''Vermeer's Masterpiece, The Milkmaid,'' imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owner or custodian. I also determine that the exhibition or display of the exhibit object at the Metropolitan Museum of Art, New York, NY, from on or about September 9, 2009, until on or about November 29, 2009, and at possible additional exhibitions or venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Carol B. Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/453–8048). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: June 12, 2009.

C. Miller Crouch,

Acting Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E9–14492 Filed 6–18–09; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 6601]

U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission; (Notice of Renewal)

The Department of State has renewed the Charter of the U.S. Advisory Panel to the U.S. Section of the North Pacific Anadromous Fish Commission (NPAFC)

for another two years, effective June 12, 2009.

The NPAFC was established by the Convention for the Conservation of Anadromous Stocks in the North Pacific Ocean, signed on February 12, 1992, by Canada, Japan, the Russian Federation, and the United States, and entered into force on February 16, 1993. The U.S. Advisory Panel will continue to work with the U.S. Section to promote the conservation of anadromous fish stocks, particularly salmon, throughout their migratory range in the North Pacific Ocean, as well as ecologically related species.

The U.S. Section of the Commission is composed of three Commissioners who are appointed by the President. Each Commissioner is appointed for a term not to exceed 4 years, but is eligible for reappointment. The Secretary of State, in consultation with the Secretary of Commerce, may designate alternate commissioners. The Advisory Panel to the U.S. Section is composed of 14 members, 11 of whom are appointed by the Secretary, in consultation with the Secretary of Commerce. Advisory Panel members serve for a term not to exceed 4 years, and may not serve more than two consecutive terms.

The Advisory Panel will continue to follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will continue to be open to the public unless a determination is made in accordance with Section 10 of the FACA, 5 U.S.C. Secs. 552b(c)(1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will continue to be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information on the renewal of the Advisory Panel, please contact John Field, Office of Marine Conservation in the Department of State, (202) 647–3263.

Dated: May 5, 2009.

David A. Balton,

Deputy Assistant Secretary for Oceans and Fisheries, Department of State.

[FR Doc. E9–14343 Filed 6–18–09; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Air Excursions, LLC for Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause (Order 2009–6–11), Docket DOT–OST–2008–0318.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Air Excursions, LLC, fit, willing, and able to engage in interstate scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than June 26, 2009.

ADDRESSES: Objections and answers to objections should be filed in Docket DOT–OST–2008–0318 and addressed to U.S. Department of Transportation, Docket Operations, (M–30, Room W12–140), 1200 New Jersey Avenue, SE., West Building Ground Floor, Washington, DC 20590, and should be served upon the parties listed in Attachment A to the Order to Show Cause.

FOR FURTHER INFORMATION CONTACT: Lauralyn J. Remo, Chief, Air Carrier Fitness Division (X–56, Room W86–307), U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Washington, DC 20590, (202) 366–9721.

Dated: June 12, 2009.

Christa Fornarotto,

Acting Assistant Secretary for Aviation and International Affairs.

[FR Doc. E9–14418 Filed 6–18–09; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), U.S. DOT.

ACTION: Notice of Limitation on Claims for Judicial Review of Actions by FHWA and other Federal agencies: Shasta-Trinity National Forest (Forest Service), and U.S. Bureau of Reclamation, Mid-Pacific Region (Bureau of Reclamation).

SUMMARY: This notice announces actions taken by the FHWA and other Federal agencies that are final within the meaning of 23 U.S.C. 139(*l*)(1). These actions relate to a proposed highway project, replacement of the Antlers Bridge (Bridge No. 06–0089) and realignment of a 0.42-mile segment of Interstate 5, in the County of Shasta, State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before December 16, 2009. If the Federal law that authorizes judicial review of a claim provides a time period of less than 180 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: Lanh Phan, Transportation Engineer, Federal Highway Administration, 650 Capitol Mall, Suite 4–100, Sacramento, CA 95814, weekdays between 7 a.m. and 4 p.m., telephone 916–498–5046, *lanh.phan@dot.gov*. For Forest Service: Stacy Smith, Shasta-Trinity National Forest, 204 West Alma, Mount Shasta, CA 96067, Telephone: (530) 926–9643, e-mail: *slsmith01@fs.fed.us*. For Bureau of Reclamation: Buford Holt, Bureau of Reclamation, Northern California Area Office, 16349 Shasta Dam Boulevard, Shasta Lake, CA 96019, Telephone: (530) 276–2047, e-mail: *bholt@mp.usbr.gov*. For California Department of Transportation: Edward Espinoza, Chief, Caltrans Environmental Planning Office, 1657 Riverside Drive, Redding, CA 96001, during normal office hours 7:30 a.m.–4:15 p.m. Monday–Friday, Telephone: (530) 225–3308, e-mail: *ejespino@dot.ca.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the FHWA and other Federal agencies have taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the following highway project in the State of California: Replacement of the Antlers Bridge (Bridge No. 06–0089) and realignment of a 0.42-mile segment of Interstate 5, in Shasta County, near the community of Lakehead. The existing steel truss bridge was constructed in 1941 and exhibits signs of structural fatigue. Additionally, the section of highway abutting the south end of the bridge includes a series of curves and has an accident rate higher than average for similar highways statewide. The proposed project entails construction of a new bridge on an alignment immediately east of the existing bridge. The existing bridge will be removed once the new bridge is operational. A 0.42-mile section of highway south of the bridge will be reconstructed to improve the alignment. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA) for the project, approved on September 29, 2006, in the FHWA Finding of No

Significant Impact (FONSI) issued on January 19, 2007, and in other documents in the FHWA project records. The EA, FONSI, and other project records are available by contacting Caltrans at the address provided above. The FHWA EA and FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist3/departments/envinternet/antler/antler.htm*. The Forest Service and Bureau of Reclamation decisions and permits are available by contacting the Forest Service and Bureau of Reclamation at the addresses provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. *General:* National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109].

2. *Air:* Clean Air Act, 42 U.S.C. 7401–7671(q).

3. *Wildlife:* Endangered Species Act [16 U.S.C. 1531–1544 and Section 1536], Marine Mammal Protection Act [16 U.S.C. 1361], Anadromous Fish Conservation Act [16 U.S.C. 757(a)–757(g)], Migratory Bird Treaty Act [16 U.S.C. 703–712], Magnuson-Stevens Fishery Conservation and Management Act of 1976, as amended [16 U.S.C. 1801 *et seq.*].

4. *Historic and Cultural Resources:* Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470(f) *et seq.*]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470(aa)–11]; Archeological and Historic Preservation Act [16 U.S.C. 469–469(c)]; Native American Grave Protection and Repatriation Act (NAGPRA) [25 U.S.C. 3001–3013].

5. *Social and Economic:* Civil Rights Act of 1964 [42 U.S.C. 2000(d)–2000(d)(1)]; American Indian Religious Freedom Act [42 U.S.C. 1996].

6. *Wetlands and Water Resources:* Clean Water Act, 33 U.S.C. 1251–1377 (Section 404, Section 401, Section 319); Emergency Wetlands Resources Act, 16 U.S.C. 3921, 3931; TEA–21 Wetlands Mitigation, 23 U.S.C. 103(b)(6)(m), 133(b)(11); Flood Disaster Protection Act, 42 U.S.C. 4001–4128; Rivers and Harbors Act of 1899, 33 U.S.C. 401–406.

7. *Hazardous Materials:* Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601–9675; Superfund Amendments and Reauthorization Act of 1986 (SARA); Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6901–6992(k).

8. *Executive Orders:* E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources; E.O. 13175 Consultation and Coordination with Indian Tribal Governments; E.O. 11514 Protection and Enhancement of Environmental Quality; E.O. 13112 Invasive Species.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1).

Issued on: June 15, 2009.

Cindy Vigue,

Director, State Programs, Federal Highway Administration, Sacramento, California.

[FR Doc. E9–14408 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; Renewal of American Pyrotechnics Association (APA) Exemption From the 14-Hour Rule During Independence Day Celebrations

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition.

SUMMARY: FMCSA previously announced its decision to renew the American Pyrotechnics Association (APA) exemption for 61 member motor carriers from FMCSA's regulation that drivers of commercial motor vehicles (CMVs) may not drive after the 14th hour after coming on duty. No comments were submitted to the public docket; consequently, the Agency confirms the renewal of the exemption.

DATES: This exemption is effective during the periods of June 28, 2009, through July 8, 2009, and June 28, 2010, through July 8, 2010, inclusive.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Yager, Chief, 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 renew an exemption from the hours of service (HOS) requirements in 49 CFR 395.3(a)(2) for up to two years 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'' (49 CFR 381.305(a)). APA, a trade association representing the domestic fireworks industry, applied for renewal of a limited exemption from the HOS rules on behalf of 61 of its member motor carriers, and approximately 3,000 of their CMV drivers for an eleven-day period surrounding Independence Day in 2009, and a similar period in 2010, as previously announced in the **Federal Register** (74 FR 24069, May 22, 2009). A copy of the application is included in the docket referenced at the beginning of this notice. The list of APA member companies covered by the exemption from 49 CFR 395.3(a)(2) is included as an Appendix to this notice.

The HOS rules prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty (49 CFR 395.3(a)(2)). During the periods June 28–July 8, 2009, and June 28–July 8, 2010, inclusive, the companies named in the Appendix and approximately 3,000 CMV drivers employed by them, will be exempt from section 395.3(a)(2) if they are operating in conjunction with the staging of fireworks shows celebrating Independence Day. These CMV drivers hold a commercial driver's license with hazardous materials endorsement. They also are trained pyrotechnicians. They transport fireworks and set up and stage fireworks shows.

Section 49 CFR 395.3(a)(2) prohibits a driver from driving after the 14th hour after coming on duty and does not permit off-duty periods to extend the 14-hour limit. This exemption permits CMV drivers engaged in these operations to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour duty period. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and remain subject to the 11-hour driving time limit, the 60- and 70-hour on-duty limits, and all other HOS rules.

APA sought renewal of this exemption because compliance by its members with the current 14-hour rule would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member companies, with regard to their Independence Day celebrations. APA

has consistently maintained that the operational demands of this unique industry minimize the risk of CMV crashes. It maintains that renewal of the exemption will not adversely affect the safety of the fireworks transportation provided by these motor carriers, and actually improve safety in the storage of hazardous materials.

The FMCSA decision to grant the request for renewal of the exemption from 49 CFR 395.3(a)(2) was based on the merits of the application for renewal of the exemption. The Agency continues to believe that these APA operations, conducted under the terms and conditions of this limited exemption, will achieve a level of safety that is equivalent to, or greater than, the level that would be absent such exemption. Unless these motor carriers and their drivers fail to meet the terms and conditions specified in the May 22, 2009, notice of approval of this exemption, the exemption will remain in effect during the periods of June 28, 2009, through July 8, 2009, and June 28, 2010, through July 8, 2010, inclusive.

Issued on: June 12, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

Appendix to Notice of Renewal of American Pyrotechnics Association (APA) Exemption from the 14-Hour HOS Rule During 2009 and 2010 Independence Day Celebrations

Motor carrier	Address	DOT #
Alonzo Fireworks Display, Inc.	12 County Rd 75, Mechanicsville, NY 12118	420639
American Promotional Events, Inc.—West/TNT Fireworks	555 North Gilbert Street, Fullerton, CA 92833	564520
American Promotional Events, Inc.—East Coast/TNT Fireworks	4511 Helton Drive, Florence, AL 35630	0121384
American Promotional Events—Northwest/TNT Fireworks	2120 Milwaukee Way, Tacoma, WA 98421	013086
Arrowhead Fireworks Co., Inc.	3625 Normanna Rd, Duluth, MN 55803	125673
Atlas Enterprises Inc.	6601 Nine Mile Azle Rd, Fort Worth, TX 76135	0116910
Atomic Fireworks	3660 W. Sunshine, Springfield, MO	130200
Atomic Fireworks	999 Sumter Highway, Bishopville, SC	446835
Atomic Fireworks	PO Box 190, South Pittsburg, TN	095166
B.J. Alan Company	555 Martin Luther King, Jr Blvd., Youngstown, OH 44502.	262140
Central States Fireworks, Inc.	18034 Kincaid Street, Athens, IL 62613	1022659
Colonial Fireworks Company	5225 Telegraph Road, Toledo, OH 43612	177274
Falcon Fireworks	3411 Courthouse Road, Guyton, GA 31312	1037954
Fireworks & Stage FX America	PO Box 488, Lakeside, CA 92040	908304
Fireworks by Grucci, Inc.	1 Grucci Lane, Brookhaven, NY 11719	324490
Fireworks Productions, Inc.	PO Box 294, Maryland Line, MD	464796
Garden State Fireworks, Inc.	383 Carlton Road, Millington, NJ 07946	435878
Galaxy Fireworks, inc.	204 E MLK Jr Blvd, Tampa, FL 33603	809731
Gateway Fireworks Displays	PO Box 39327, St Louis, MO 63139	1325301
Global Pyrotechnics Solutions, Inc.	10476 Sunset Drive, Dittmer, MO 63023	1183902
Hamburg Fireworks Display Inc.	4300 Logan Lancaster Rd, Lancaster, OH	395079
Ingram Enterprises dba Fireworks over America	6597 W Independence Drive, Springfield, MO 65802.	0268419
International Fireworks Mfg. Co.	242 Sycamore Road, Douglasville, PA 19518	385065
Island Fireworks Company	N735 825th St, Hager City, WI 54014	414583
J&M Displays, Inc.	18064 170th Ave, Yarmouth, IA 52660	377461
Jake's Fireworks/Fireworks Spectacular	2311 A West 4th St, Pittsburg, KS 66762	449599
July 4 Ever	382 Rock Cut Rd, Walden, NY 12586	803442
Kellner's Fireworks Inc.	478 Old Rte 8, Harrisville, PA	481553
Lantis Fireworks and Lasers	PO Box 491, Draper, UT 84202	195428
Lantis Fireworks Inc.	130 Sodrac Dr, N Sioux City, DK 57049	534052
Legion Fireworks Co., Inc.	10 Legion Lane, Wappingers Falls, NY 12590	554391
Lew's Fireworks, Inc.	45788 US Hwy 212, Watertown, SD 57201	333792
Mad Bomber/Planet Productions	PO Box 294, Kingsbury, IN 46345	777176
Melrose Display Company	7620 Little Mount Rd, Taylorsville, KY 40071	434586
Melrose North Pyrotechnics	9405 River Rd SE, Clear Lake, MN 55319	434586
Melrose Pyrotechnics, Inc.	PO Box 302, Kingsbury, IN 46345	434586
Melrose South Pyrotechnics	4652 Catawga River Rd, Catawga, SC 29704	545033
Montana Display Inc.	9480 Inspiration Drive, Missoula, MT 59808	1030231
Precocious Pyrotechnics, Inc.	4420–278th Ave NW, Belgrade, MN 56312	435931
Pyro Engineering Inc., dba/Bay Fireworks	110 Route 110, Suite 102, Huntington Station, NY 11746.	530262
Pyro Shows Inc.	701 W. Central Ave, LaFollette, TN 37766	456818
Pyro Spectaculars, Inc.	3196 N Locust Ave, Rialto, CA 92376	029329
Pyrotechnics by Presutti, Inc.	PO Box 42, St Clairsville, OH 43950	51974
Pyrotecnico	302 Wilson Rd., New Castle, PA 16105	526749
Pyrotecnico of Louisiana, LLC	60 West Ct, Mandeville, LA 70471	548303
RES Specialty Pyrotechnics	21595 286th St, Belle Plaine, MN 56011	523981
Rich Brothers Company	700 S Marion Rd, Sioux Falls, SD 57106	001356
Rozzi's Famous Fireworks, Inc.	11605 North Lebanon Rd, Loveland, OH 45140	0483686
Skyworks, Ltd.	13513 W. Carrier Rd., Carrier, OK 73727	1421047
Spielbauer Fireworks Co, Inc.	220 Roselawn Blvd, Green Bay, WI 54301	046479
Stonebraker-Rocky Mountain Fireworks Co.	5650 Lowell Blvd, Unit E, Denver, CO 80221	0029845
Thunder Fireworks	5207 187th St, E, Tacoma, WA 98446	463284
Vermont Fireworks Co., Inc./Northstar Fireworks Co., Inc.	2235 Vermont Route 14 South, East Montpelier, VT 05651.	310632
Wald & Co., Inc.	PO Box 319, Greenwood, MO 64034	087079

APPENDIX TO NOTICE OF RENEWAL OF AMERICAN PYROTECHNICS ASSOCIATION (APA) EXEMPTION FROM THE 14-HOUR HOS RULE DURING 2009 AND 2010 INDEPENDENCE DAY CELEBRATIONS—Continued

Motor carrier	Address	DOT #
Walt Disney Entertainment	5700 Maple Road, Lake Buena Vista, FL 32830	148477
Western Enterprises, Inc.	PO Box 160, Carrier, OK 73727	203517
Western Fireworks, Inc.	14592 Ottaway Rd. NE, Aurora, OR 97002	838585
Winco Fireworks Int. LLC	1992 NW Hwy 50, Lone Jack, MO	259688
Wolverine Fireworks Display, Inc.	205 W Seidlers, Kawkawlin, MI	376857
Young Explosives Corp.	PO Box 18653, Rochester, NY	450304
Zambelli Fireworks MFG, Co., Inc.	PO Box 1463, New Castle, PA 16103	033167

[FR Doc. E9–14464 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2007–28043]

Hours of Service (HOS) of Drivers; Granting of Exemption; American Pyrotechnics Association (APA)

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of final disposition; granting of application for exemption.

SUMMARY: FMCSA announces its decision to grant the American Pyrotechnics Association (APA) exemption for 14 member motor carriers from FMCSA's regulation that drivers of commercial motor vehicles (CMV) may not drive after the 14th hour after coming on duty.

DATES: This exemption is effective during the periods of June 28, 2009, through July 8, 2009, and June 28, 2010, through July 8, 2010, inclusive.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas L. Yager, Chief, 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 the hours of service (HOS) requirements in 49 CFR 395.3(a)(2) for up to two years 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'' (49 CFR 381.305(a)). APA, a trade association representing the domestic fireworks industry, applied for a limited exemption from the HOS rules on behalf of 14 of its member motor carriers for a eleven-day period surrounding Independence Day in 2009, and a similar period in 2010, as previously announced in the **Federal Register** (74 FR 24066, May 22, 2009). (On May 22, 2009, the Agency also renewed the identical exemption for 61 additional APA-member motor carriers (74 FR 24069)). A copy of this application for exemption is included in the docket referenced at the beginning of this notice, and a list of the 14 APA-member companies being exempted from 49 CFR 395.3(a)(2) is included as an Appendix to this notice.

The HOS rules prohibit a property-carrying CMV driver from driving after the 14th hour after coming on duty following 10 consecutive hours off duty (49 CFR 395.3(a)(2)). During the periods June 28—July 8, 2009, and June 28—July 8, 2010, inclusive, the companies named in the Appendix, and CMV drivers employed by them, will be exempt from section 395.3(a)(2) if they are operating in conjunction with the staging of fireworks shows celebrating Independence Day. These CMV drivers hold a commercial driver's license with hazardous materials endorsement. They are also trained pyrotechnicians. They transport fireworks, and set-up and stage fireworks shows.

The exemption permits CMV drivers engaged in these operations to exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour on-duty period. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and observe the 11-hour driving time limit, as well as the 60- and 70-hour on-duty limits.

APA sought this exemption because compliance by its members with the current 14-hour rule would impose a substantial economic hardship on numerous cities, towns and municipalities, as well as its member companies, with regard to their Independence Day celebrations. APA maintains that the operational demands of this unique industry minimize the risk of CMV crashes. It also maintains that renewal of the exemption will not adversely affect the safety of the fireworks transportation provided by these motor carriers, and actually improve safety in the storage of hazardous materials.

Public Comment

On May 22, 2009, FMCSA published a notice in the **Federal Register** (74 FR 24066) announcing APA's application for exemption for these 14 member motor carriers, and requesting public comment. The comment period closed on June 8, 2009. There were no comments filed in response to the May 22, 2009, notice.

FMCSA Decision

The FMCSA decision to grant the request for exemption from 49 CFR 395.3(a)(2) is based on the merits of the application for exemption. The Agency believes that these APA operations, conducted under the terms and conditions of this limited exemption, will achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent the exemption. The identical limited exemption has been in effect during Independence Day periods since 2005 for designated APA-member motor carriers conducting these operations. There have been no reported crashes or incidents involving these carriers while operating under the exemption. The drivers employed by the companies, firms, and entities listed in the appendix to this notice are granted relief from the requirements of 49 CFR 395.3(a)(2) under the following terms and conditions:

Terms of the Exemption

Period of the Exemption

The exemption from the requirements of 49 CFR 395.3(a)(2) [the ''14-hour rule''] is effective from June 28 (12:01 a.m.) through July 8, 2009 (11:59 p.m.) and from June 28 (12:01 a.m.) through July 8, 2010 (11:59 p.m.).

Extent of the Exemption

This exemption is restricted to drivers employed by the companies, firms and entities listed in the Appendix to this notice. The drivers are provided a

limited exemption from the requirements of 49 CFR 395.3(a)(2). This regulation prohibits a driver from driving after the 14th hour of coming on duty and does not permit off-duty periods to extend the 14-hour limit. Drivers covered by this exemption may exclude off-duty and sleeper-berth time of any length from the calculation of the 14-hour limit. These drivers must continue to obtain 10 consecutive hours off duty prior to the 14-hour period, and remain subject to the 11-hour driving time limit, the 60- and 70-hour on-duty limits, and all other requirements of 49 CFR part 395.

Preemption

During the period the exemption is in effect, no State shall enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person operating under the exemption (49 U.S.C. 31315(d)).

Notification to FMCSA

Under the exemption, each APA member company, firm and entity listed in the appendix to this notice must notify FMCSA within 5 business days of any accident (as defined in 49 CFR 390.5), involving any of the motor carrier's CMVs, operating under the terms of this exemption. The notification must include the following information:

a. Date of the accident,

b. City or town, and State, in which the accident occurred, or closest to the accident scene,

c. Driver's name and license number,

d. Vehicle number and State license number,

e. Number of individuals suffering physical injury,

f. Number of fatalities,

g. The police-reported cause of the accident,

h. Whether the driver was cited for violation of any traffic laws, or motor carrier safety regulations, and

i. The total driving time and total on-duty time period prior to the accident.

Termination

FMCSA does not believe the motor carriers and drivers covered by this exemption will experience any deterioration of their safety record. However, should this occur, FMCSA will take all steps necessary to protect the public interest, including revocation of the exemption. FMCSA will immediately revoke the exemption for failure to comply with its terms and conditions. Each motor carrier and each driver may be subject to periodic monitoring by FMCSA during the period of the exemption.

Issued on: June 12, 2009.

Larry W. Minor,

Associate Administrator for Policy and Program Development.

APPENDIX TO THE NOTICE OF APPLICATION OF AMERICAN PYROTECHNICS ASSOCIATION (APA) FOR A LIMITED HOS EXEMPTION FOR 14 MOTOR CARRIERS DURING THE 2009 AND 2010 INDEPENDENCE DAY CELEBRATIONS

	Motor carrier	Address		DOT #
1	Alpha-Lee Enterprises, Inc.	4111 FM 2351	Friendswood, TX 77546	1324580
2	American Fireworks Company	7041 Darrow Road	Hudson, OH 44236	103972
3	Atlas Pyrovision Productions, LLC	P.O. Box 498	Jaffrey, NH 03452	789777
4	Cartwright Fireworks, Inc.	1608 Keely Road	Franklin, PA 16323	882283
5	DDT, LLC—All American Transport, LLC.	4503 E. 460	Pryor, OK 74361	1606354
6	Entertainment Fireworks, Inc.	P.O. Box 7160	Olympia, WA 98507–7160	680942
7	Fireworks Productions of Arizona, Ltd..	17034 S 54th Street	Chandler, AZ 85226	948780
8	Fireworks West Internationale	3200 West 910 North	Logan, UT 84321	245423
9	Great Lakes Fireworks	24805 Marine	Eastpointe, MI 48021	1011216
10	Hollywood Pyrotechnics, Inc.	1567 Antler Point	Eagan, MN 55122	1061068
11	Johnny Rockets Fireworks Display Co..	4410 N. Hamilton	Chicago, IL 60625	1263181
12	Night Magic, Inc.	P.O. Box 294	Kingsbury, IN 46345	557323
13	Rainbow Fireworks, Inc.	76 Plum Ave.	Inman, KS 67546	1139643
14	Victory Fireworks Inc.	579 Vincent Lane	Ellsworth, WI 54011	539751

[FR Doc. E9–14465 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub-No. 5) (2009–3)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board, DOT.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the third quarter 2009 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The third quarter 2009 RCAF (Unadjusted) is 0.938. The third quarter 2009 RCAF (Adjusted) is 0.426. The third quarter 2009 RCAF–5 is 0.403.

DATES: *Effective Date:* July 1, 2009.

FOR FURTHER INFORMATION CONTACT: Pedro Ramirez, (202) 245–0333. [Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision, which is available on our Web site *http://www.stb.dot.gov.* Copies of the decision may be purchased by contacting the office of Public Assistance, Governmental Affairs, and Compliance at (202) 245–0235. Assistance for the hearing impaired is available through FIRS at 1–800–877–8339.

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: June 12, 2009.

By the Board, Acting Chairman Mulvey, and Vice Chairman Nottingham.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. E9–14303 Filed 6–18–09; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2000–7257; Notice No. 54]

Railroad Safety Advisory Committee (RSAC); Working Group Activity Update

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

ACTION: Announcement of Railroad Safety Advisory Committee (RSAC) Working Group Activities.

SUMMARY: The FRA is updating its announcement of RSAC's Working Group activities to reflect its current status.

FOR FURTHER INFORMATION CONTACT: Larry Woolverton, RSAC Coordinator, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6212; or Grady Cothen, Deputy Associate Administrator for Safety, FRA, 1200 New Jersey Avenue, SE., Mailstop 25, Washington, DC 20590, (202) 493–6302.

SUPPLEMENTARY INFORMATION: This notice serves to update FRA's last announcement of working group activities and status reports of March 17, 2009 (74 FR 11401). The 38th full RSAC Committee meeting was held April 2, 2009, and the 39th meeting is scheduled for June 25, 2009, at the Wardman Park Marriott Hotel, 2660 Woodley Road, NW., Washington, DC 20008.

Since its first meeting in April of 1996, the RSAC has accepted 31 tasks. The status for each of the open tasks (neither completed nor terminated) is provided below:

Open Tasks

Task 96–4—Tourist and Historic Railroads. Reviewing the appropriateness of the agency's current policy regarding the applicability of existing and proposed regulations to tourist, excursion, scenic, and historic railroads. This Task was accepted on April 2, 1996, and a Working Group was established. The Working Group monitored the steam locomotive regulation task. Planned future activities involve the review of other regulations for possible adaptation to the safety needs of tourist and historic railroads. *Contact:* Grady Cothen, (202) 493–6302.

Task 03–01—Passenger Safety. This task includes updating and enhancing the regulations pertaining to passenger safety, based on research and experience. This Task was accepted on May 20, 2003, and a Working Group was established. Prior to embarking on substantive discussions of a specific task, the Working Group set forth in writing a specific description of the task. The Working Group reports planned activities to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. At the first meeting, held September 9–10, 2003, a consolidated list of issues was completed. At the second meeting, held November 6–7, 2003, four task groups were established: Emergency Preparedness; Mechanical; Crashworthiness; and Track/Vehicle Interaction. The task forces met and reported on activities for Working Group consideration at the third meeting held May 11–12, 2004, and a fourth meeting was held October 26–27, 2004. The Working Group met on March 21–22, 2006, and again on September 12–13, 2006, at which time the group agreed to establish a task force on General Passenger Safety. The full Passenger Safety Working Group met on April 17–18, 2007, December 11–12, 2007, November 13, 2008, and June 8, 2009. *Contact:* Charles Bielitz, (202) 493–6314.

Emergency Preparedness Task Force: At the Working Group meeting of March 9–10, 2005, the Working Group received and approved the consensus report of the Emergency Preparedness Task Force related to emergency communication, emergency egress, and rescue access. These recommendations were presented to and approved by the full RSAC Committee on May 18, 2005. The Working Group met on September 7–8, 2005, and additional, supplementary recommendations were presented to and accepted by the full RSAC on October 11, 2005. The Notice of Proposed Rulemaking (NPRM) was published on August 24, 2006 (71 FR 50275), and was open for comment until October 23, 2006. The Working Group agreed upon recommendations for the final rule, including resolution of final comments received, during the April 17–18, 2007, meeting. The recommendations were presented to and approved by the full RSAC on June 26, 2007. The Passenger Train Emergency Systems final rule, focusing on emergency communication, emergency egress, and rescue access, was published on February 1, 2008 (73 FR 6370). The Task Force met on October 17–18, 2007, and reached consensus on draft rule text for a followup NPRM on Passenger Train Emergency Systems, focusing on low-location emergency exit path marking, emergency lighting, and emergency signage. The Task Force presented the draft rule text to the Passenger Safety Working Group on December 11–12, 2007, and the consensus draft rule text was presented to and approved by full RSAC vote during the February 20, 2008, meeting. At its most recent meeting, held May 13–14, 2008, the Task Force recommended clarifying the applicability of backup emergency communication system requirements in the February 1, 2008, final rule, and FRA announced its intention to exercise limited enforcement discretion for a new provision amending instruction requirements for emergency window exit removal. The Working Group ratified these recommendations on June 19, 2008. The Task Force met on March 31, 2009, to clarify issues related to the followup NPRM raised by members. The rule text was modified to better reflect the intent of the Task Force and the revised rule text was presented to and approved by the Passenger Safety Working Group on June 8, 2009. The Working Group proposed adding language to address an issue left open by the Task Force related to daily inspection of removable panels/windows in vestibule doors and is sending this back to the Task Force for review. The Working Group will finalize the open issue via mail ballot. No additional Task Force meetings are currently scheduled. *Contact:* Brenda Moscoso, (202) 493–6282.

Mechanical Task Force: (Completed.) Initial recommendations on mechanical issues (revisions to Title 49 Code of Federal Regulations (CFR) Part 238) were approved by the full Committee on January 26, 2005. At the Working Group meeting of September 7–8, 2005, the Task Force presented additional perfecting amendments and the full RSAC approved them on October 11, 2005. An NPRM was published in the **Federal Register** on December 8, 2005 (70 FR 73070). Public comments were due by February 17, 2006. The final rule was published in the **Federal Register** on October 19, 2006 (71 FR 61835), effective December 18, 2006.

Crashworthiness Task Force: Among its efforts, the Crashworthiness Task Force provided consensus recommendations on static end strength that were adopted by the Working Group on September 7–8, 2005. The full Committee accepted the recommendations on October 11, 2005. The Front-End Strength of Cab Cars and Multiple-Unit Locomotives NPRM was published in the **Federal Register** on August 1, 2007 (72 FR 42016), with comments due by October 1, 2007. A number of comments were entered into the docket, and a Crashworthiness Task Force meeting was held September 9, 2008, to resolve comments on the

NPRM. Based on the consensus language agreed to at the meeting, FRA has prepared the text of the final rule incorporating the resolutions made at the Task Force meeting and the final rule language was adopted at the Passenger Safety Working Group meeting held on November 13, 2008. The language was presented and approved at the December 10, 2008, full RSAC meeting and the rule will go forward with a target publication date of June 25, 2009. *Contact:* Gary Fairbanks, (202) 493–6322.

Vehicle/Track Interaction Task Force: The Task Force is developing proposed revisions to 49 CFR parts 213 and 238, principally regarding high-speed passenger service. The Task Force met on October 9–11, 2007, and again on November 19–20, 2007, in Washington, DC, and presented the final Task Force Report and final recommendations and proposed rule text for approval by the Passenger Safety Working Group at the December 11–12, 2007, meeting. The final report and the proposed rule text were approved by the Working Group and was presented to and approved by full RSAC vote during the February 20, 2008, meeting. The group last met on February 27–28, 2008, and FRA is currently crafting an NPRM with a target publication date of September 2009. The Task Force may be reconvened to review comments on the NPRM, but no further meetings are currently scheduled. *Contact:* John Mardente, (202) 493–1335.

General Passenger Safety Task Force: At the Working Group meeting on April 17–18, 2007, the Task Force presented a progress report to the Working Group. The Task Force met on July 18–19, 2007, and afterwards, it reported proposed reporting cause codes for injuries involving the platform gap, which were approved by the Working Group by mail ballot in September 2007. The full RSAC approved the recommendations for changes to 49 CFR part 225 accident/incident cause codes on October 25, 2007. The Task Force continues work on passenger train door securement, ''second train in station,'' trespasser incidents, and System Safety-based solutions by developing a regulatory approach to System Safety. The System Safety regulation will cover all passenger railroads, including high-speed rail, and it is expected that the System Safety regulation will satisfy the risk reduction-mandated requirements for passenger railroads in the Rail Safety Improvement Act of 2008 (RSIA) (Pub. L. 110–432).

The General Passenger Safety Task Force presented draft guidance material for management of the gap that was considered and approved by the Working Group during the December 11–12, 2007, meeting and was presented and approved by full RSAC vote during the February 20, 2008, meeting. The group met on April 23–24, 2008, December 3–4, 2008, and April 21–23, 2009, and continues to work on emergency preparedness, door securement, and System Safety issues. The door securement team will meet in July and August 2009 and the System Safety group will hold ''GoTo meetings'' by teleconference in July with the American Public Transportation Association and commuter railroads. The next full meeting of the General Passenger Safety Task Force is scheduled for October 2009. *Contact:* Dan Knote, (631) 567–1596.

Task 05–01—Review of Roadway Worker Protection Issues. This Task was accepted on January 26, 2005, to review 49 CFR Part 214, Subpart C, Roadway Worker Protection (RWP), and related sections of Subpart A. The RSAC agreed to recommend consideration of specific actions to advance the on-track safety of railroad employees and contractors engaged in maintenance-of-way activities throughout the general system of railroad transportation, including clarification of existing requirements. A Working Group was established and reported to the RSAC any specific actions identified as appropriate. The first meeting of the Working Group was held on April 12–14, 2005. The Working Group was able to come to consensus on 32 separate items. However, prior to the full RSAC vote in June 2007, which confirmed working group recommendations on 31 of those items, two parties raised technical concerns regarding the draft language concerning electronic display of track authorities. In addition, there were eight items discussed by the Working Group, which led to valuable insight but over which the Working Group was unable to come to consensus. FRA intends to address all the items discussed through two rulemakings: (1) A relatively compact rulemaking that will address adjacent track protection and (2) a longer, catchall rulemaking that will address all consensus items and be broad enough in scope to raise the nonconsensus items for further discussion and comment. The decision to issue a separate adjacent track rule was due to an increase in roadway worker fatalities that occurred on adjacent track. Consequently, a draft NPRM to address adjacent track protection was published in the **Federal Register** on July 17, 2008, but due to concern that parts of the NPRM failed to accurately capture the consensus recommendations of the RSAC, the NPRM was withdrawn by FRA on August 13, 2008. FRA will address discrepancies between the consensus language and the adjacent track protection NPRM to clarify the essential issues, and intends to publish a second NPRM by August 31, 2009. FRA is also working on the longer, catchall rulemaking and plans to publish an NPRM in late 2009. *Contact:* Christopher Schulte, (610) 521–8201.

Task 05–02—Reduce Human Factor-Caused Train Accident/Incidents. This Task was accepted on May 18, 2005, to reduce the number of human factor-caused train accidents/incidents and related employee injuries. The Railroad Operating Rules Working Group was formed and the Group extensively reviewed the issues presented. The final Working Group meeting devoted to developing a proposed rule was held February 8–9, 2006. The Working Group was not able to deliver a consensus regulatory proposal, but did recommend that it be used to review comments on FRA's NPRM, which was published in the **Federal Register** on October 12, 2006 (FR 71 60372), with public comments due by December 11, 2006. Two reviews were held, one on February 8–9, 2007, the other on April 4–5, 2007. Consensus was reached on four items and those items were presented and accepted by the full RSAC Committee at the June 26, 2007, meeting. A final rule was published in the **Federal Register** on February 13, 2008 (73 FR 8442), with an effective date of April 14, 2008. FRA received four petitions for reconsideration of that final rule. The final rule that responded to the petitions for consideration was published in the **Federal Register** on June 16, 2008, and concluded the rulemaking. Working group meetings were held September 27–28, 2007, January 17–18, 2008, May 21–22, 2008, and September 25–26, 2008. The Working Group has considered issues related to issuance of Emergency Order No. 26 (prohibition on use of certain electronic devices while on duty) and ''after arrival mandatory directives,'' among other issues. The working group continues to work on after arrival orders and at the September 25, 2008, meeting voted to create a Highway-Rail Grade Crossing Task Force to review highway-rail grade crossing accident reports regarding incidents of crossing warning systems providing ''short or no warning'' resulting from or contributed to ''by train operational issues'' with the intent to recommend new accident/incident reporting codes that would better explain such events, and which

may provide information for remedial action going forward. A follow-on task is to review and provide recommendations regarding supplementary reporting of train operations-related, no-warning, or short-warning incidents that are not technically warning system activation failures but which result in an accident/incident or a near miss. The Task Force has been formed and is scheduled to meet in the late 2009 timeframe. *Contact:* Douglas Taylor, (202) 493–6255.

Task 06–01—Locomotive Safety Standards. This task was accepted on February 22, 2006, to review 49 CFR Part 229, Railroad Locomotive Safety Standards, and revise as appropriate. A Working Group was established with the mandate to report any planned activity to the full Committee at each scheduled full RSAC meeting, to include milestones for completion of projects and to progress toward completion. The first Working Group meeting was held May 8–10, 2006. Working Group meetings were held on August 8–9, 2006, September 25–26, 2006, October 30–31, 2006, and the Working Group presented recommendations regarding revisions to requirements for locomotive sanders to the full RSAC on September 21, 2006. The NPRM regarding sanders was published in the **Federal Register** on March 6, 2007 (72 FR 9904). Comments received were discussed by the Working Group for clarification, and FRA published a Final Rule on October 19, 2007 (72 FR 59216). The Working Group is continuing the review of Part 229 with work in the areas of locomotive cab temperature standards, alerters, remote control locomotives, and critical locomotive electronics, with a view to proposing further revisions to update the Standards. The Working Group met on January 9–10, 2007, November 27–28, 2007, February 5–6, 2008, May 20–21, 2008, August 5–6, 2008, October 22–23, 2008, January 6–7, 2009, and April 15–16, 2009. The group has completed the review of Part 229 and was unable to reach consensus regarding locomotive cab temperature standards, locomotive alerters, and remote control locomotives. The group reached consensus regarding critical locomotive electronic standards, updated annual/biennial air brake standards, clarification of the ''air brakes operate-as-intended requirement, locomotive pilot clearance within hump classification yards, clarification of the high-voltage warning requirement, updated headlight lamp requirements, and language to allow locomotive records to be stored electronically. FRA will brief the full RSAC and proceed to an NPRM. There are no meetings planned for the immediate future but the group may be called back into service to address comments received on the NPRM. *Contact:* George Scerbo, (202) 493–6249.

Task 06–02—Track Safety Standards and Continuous Welded Rail (CWR). Section 9005 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (Pub. L. 109–59), the 2005 Surface Transportation Authorization Act, requires FRA to issue requirements for inspection of joint bars in CWR to detect cracks that could affect the integrity of the track structure (49 U.S.C. 20142(e)). FRA published an interim final rule (IFR) establishing new requirements for inspections on November 2, 2005 (70 FR 66288). On October 11, 2005, FRA offered the RSAC a task to review comments on this IFR, but the conditions could not be established under which the Committee could have undertaken this with a view toward consensus. Comments on the IFR were received through December 19, 2005. FRA reviewed the comments. On February 22, 2006, the RSAC accepted this task to review and revise the CWR related to provisions of the Track Safety Standards, with particular emphasis on reduction of derailments and consequent injuries and damage caused by defective conditions, including joint failures, in track using CWR. A Working Group was established. The first Working Group meeting was held April 3–4, 2006, at which time the Working Group reviewed comments on the IFR. The second Working Group meeting was held April 26–28, 2006. The Working Group also met May 24–25, 2006, and July 19–20, 2006. The Working Group reported consensus recommendations for the final rule that were accepted by the full RSAC Committee by mail ballot on August 11, 2006. The final rule was published in the **Federal Register** on October 11, 2006 (71 FR 59677). The Working Group continued review of 49 CFR Section 213.119, with a view to proposing further revisions to update the standards. The Working Group met January 30–31, 2007, April 10–11, 2007, June 27–28, 2007, August 15–16, 2007, October 23–24, 2007, and January, 8–9, 2008. The Working Group reported consensus recommendations for revisions to 49 CFR Section 213.119 regulations to the full RSAC Committee on February 20, 2008, and the Working Groups recommendations were accepted and incorporated into FRA's publication of an NPRM on December 1, 2008 (73 FR 73077). The NPRM proposes specific requirements for the qualification of persons designated to inspect CWR track, or supervise the installation, adjustment, or maintenance of CWR track. FRA is also proposing to clarify the procedures associated with the submission of CWR plans to FRA by track owners. FRA proposes that these plans focus on inspecting CWR for pull-apart prone conditions, and focus more specifically on CWR joint installation and maintenance procedures. FRA is preparing a final rule with a target publication date of July 2009. See Tasks 07–01 and 08–03, below. *Contact:* Ken Rusk, (202) 493–6236.

Task 06–0—Medical Standards for Safety-Critical Personnel. This task was accepted on September 21, 2006, to enhance the safety of persons in the railroad operating environment and the public by establishing standards and procedures for determining the medical fitness for duty of personnel engaged in safety-critical functions. The Medical Standards Working Group has met 10 times since December 2006; the last Working Group meeting was held April 22–23, 2008. A Medical Standards Physicians Task Force was established in May 2007 to provide medical support for this task and had met four times prior to the last Working Group meeting held April 22–23, 2008. It was noted by FRA during the April 2008 Working Group meeting that although general agreement about the general structure of the medical standards had been achieved by the Working Group, significant points of departure remained unresolved among Working Group members despite efforts to achieve consensus. FRA announced that the agency would take the Working Group's products through April 2008, including information provided by the Medical Standards Physicians Task Force, and endeavor to produce a draft medical standards document by June 30, 2009. The Physicians Task Force met June 22–23, 2008, and began the process of development of mandatory medical guidelines, which will be the specific medical criteria used by railroad Chief Medical Officers and railroad physicians to assess whether safety-critical employees, who have specific medical conditions and/or take certain categories of medications, are medically fit for duty. Since meeting on June 22–23, 2008, the Physicians Task Force has met on September 8–10, 2008, October 8, 2008, November 12–13, 2008, December 8–10, 2008, January 27–28, 2009, February 24–25, March 11–12, and March 31–April 1, 2009, to continue development of the mandatory

medical guidelines. The Physicians Task Force is developing medical criteria and protocols for safety critical positions for the Working Group and FRA is drafting the regulation text. The completed draft medical standards language and the accompanying Mandatory Medical Guidelines document will be presented to the Working Group, when complete. There are currently no Medical Standards Working Group meetings scheduled. *Contact:* Dr. Bernard Arseneau, (202) 493–6002.

Task 07–01—Track Safety Standards. This task was accepted on February 22, 2007, to consider specific improvements to the Track Safety Standards or other responsive actions, supplementing work already underway on CWR, specifically to review controls applied to reuse of rail in CWR ''plug rail''; review the issue of cracks emanating from bond wire attachments; consider improvements in the Track Safety Standards related to fastening of rail to concrete ties; and to ensure a common understanding within the regulated community concerning requirements for internal rail flaw inspections. The tasks were assigned to the Track Safety Standards Working Group. The Working Group will report any planned activity to the full Committee at each scheduled full RSAC meeting, including milestones for completion of projects and progress toward completion. The first Working Group meeting was held on June 27–28, 2007 and the group met again on August 15–16, 2007, and October 23–24, 2007. Two Task Forces were created under the Working Group: Concrete Ties and Rail Integrity Task Forces. The Concrete Ties Task Force met on November 26–27, 2007, February 13–14, 2008, April 16–17, 2008, July 9–10, 2008, and September 17–18, 2008. The Concrete Ties Task Force finalized consensus language regarding concrete crossties (49 CFR Part 213) and presented a recommendation to the Track Standards Working Group at the November 20, 2008, Working Group meeting. The language was approved by both the Working Group and the December 10, 2008, RSAC meeting and the Task Force was dissolved. FRA is preparing a NPRM with a target publication date of July 2009. *Contact:* Ken Rusk, (202) 493–6236.

Task 08–03—Track Safety Standards Rail Integrity. This Task was accepted on September 10, 2008, to consider specific improvements to the Track Safety Standards or other responsive actions designed to enhance rail integrity. The Rail Integrity Task Force was created in October 2007 under Task 07–01 and first met on November 28–29, 2007. The Task Force met on February 12–13, 2008, April 15–16, 2008, July 8–9, 2008, September 16–17, 2008, and February 3–4, 2009. Consensus has been achieved on bond wires and a common understanding on internal rail flaw inspections has been reached; however, more work remains before a recommendation for possible regulatory action is made. The next Rail Integrity Task Force meeting is scheduled for June 16–17, 2009. *Contact:* Ken Rusk, (202) 493–6236.

Task No. 08–04—Positive Train Control. This task was accepted on December 10, 2008, to provide advice regarding development of implementing regulations for Positive Train Control (PTC) systems and their deployment under the RSIA. The task included a requirement to convene an initial meeting not later than January 2009 and to report recommendations back to the RSAC no later than April 24, 2009. The PTC Working Group was created in December 2008 by working group member nominations from Committee member organizations under Task 08–04 and the kickoff meeting was held on January 26–27, 2009. The group met again on February 11–13, 2009, February 25–27, 2009, March 17–18, 2009, and March 31–April 1, 2009. On April 2, 2009, the RSAC approved the request by the Working Group for agreement to vote on the draft rule text recommendations from the working group by mail ballot. On May 11, 2009, by majority vote via mail ballot, the RSAC Committee accepted the recommendations of the PTC Working Group and will forward those recommendations to the Administrator, with the understanding that there are other issues for which FRA will be making proposals with respect to its resolution. The NPRM is currently in coordination with a target publication date of June 30, 2009. If time permits, the PTC Working Group will be reconvened to discuss any comments received on the NPRM. An additional Task Force was formed to assist FRA in developing a model template for a successful PTC Implementation Plan, which are to be submitted by April 16, 2010, under the mandates of the RSIA of 2008. FRA provided a draft template to the Task Force for comment on May 20, 2009, and received an alternative draft on June 10, 2009, for review and consideration along with a proposed model for risk-based implementation prioritization. *Contact:* Grady Cothen, (202) 493–6302.

Task No. 08–05—Railroad Bridge Safety Assurance. This Task was accepted on December 10, 2008, to develop a draft rule encompassing the requirements of Section 417 of the Rail Safety Improvement Act of 2008, Railroad Bridge Safety Assurance. This Section directs the Secretary of Transportation to promulgate regulations, not later than 12 months after the October 16, 2008, date of enactment, requiring owners of track carried on one or more railroad bridges to adopt a bridge safety management program to reduce the risk of human casualties, environmental damage, and disruption to the Nation's railroad transportation system that would result from a catastrophic bridge failure. The Railroad Bridge Working Group created under Task 08–01 was directed to reconvene and the kickoff meeting was held January 28–29, 2009. The Working Group also met on February 23–24, 2009, where they reached agreement on consensus language covering all but two issues that remain to be resolved pending comments on the NPRM. The working group presented the draft language to the full Committee at the April 2, 2009, meeting and the Committee approved the consensus recommendations by vote as the recommendations of the Committee to the FRA Administrator. The resulting NPRM is currently in coordination, with a target publication date of September 1, 2009. The Working Group may be reconvened to address comments received on the NPRM. *Contact:* Gordon Davids, (202) 230–6320.

Task No. 08–06—Hours of Service Recordkeeping and Reporting. This Task was accepted on December 10, 2008, to develop revised recordkeeping and reporting requirements for hours of service of railroad employees. The Hours of Service Working Group was formed in January 2009 by member nominations from Committee member organizations and the first meeting was held on January 22–23, 2009. The working group met again on February 4–6, 2009, February 18–20, 2009 and March 23–25, 2009. At the full RSAC meeting held on April 2, 2009, the working group reported that partial consensus was reached on the draft rule text and the Committee approved the consensus recommendations by vote as the recommendations of the Committee to the FRA Administrator and the final rule was published on May 27, 2009, with an effective date of July 16, 2009 (74 FR 25330). *Contact:* Mark McKeon, (202) 493–6350.

Task No. 08–07—Conductor Certification. This task was accepted on December 10, 2008, to develop regulations for certification of railroad conductors, as required by the RSIA, and to consider any appropriate related amendments to existing regulations and

report recommendations for proposed or IFR (as determined by FRA in consultation with the Office of the Secretary of Transportation and the Office of Management and Budget) by October 16, 2009. The group has been tasked to review safety data bearing on opportunities for reducing risk associated with the duties performed by freight and passenger conductors and to assist FRA in developing regulations responsive to the legislative mandate and to consider any revisions to 49 CFR part 240 appropriate to conform and update the certification programs for locomotive engineers and conductors. The Conductor Certification Working Group has been officially formed through the Committee member nomination process and the first meeting is scheduled for July 21–23, 2009, with follow-on meetings planned for August 25–27, 2009, and September 15–17, 2009. *Contact:* Mark McKeon, (202) 493–6350.

Task No. 09–01—Passenger Hours of Service. This Task was accepted on April 2, 2009, to provide advice regarding development of implementing regulations for the hours of service of operating employees of commuter and intercity passenger railroads under the RSIA. The group has been tasked to review available data concerning the effects of fatigue on the performance of subject employees and to consider the role of fatigue prevention in determining maximum hours of service. The group has also been tasked to consider the potential for alternative approaches to hour of service using available tools for evaluating the impact of various crew schedules, and determine the effect of alternative approaches on the availability of employees to support passenger service. The group is charged to report whether existing hours of service restrictions are effective in preventing fatigue among subject employees, whether an alternative approach to hours of service for the subject employees would enhance safety, and whether alternative restrictions on hours of service could be coupled with other fatigue countermeasures to promote the fitness of employees for safety-critical duties. The Passenger Hours of Service Working Group has been officially formed through the formal Committee member nomination process and the first meeting is scheduled for June 24, 2009. *Contact:* Grady Cothen, (202) 493–6302.

Completed Tasks

Task 96–1—(Completed.) Revising the Freight Power Brake Regulations.

Task 96–2—(Completed.) Reviewing and recommending revisions to the Track Safety Standards (49 CFR Part 213).

Task 96–3—(Completed.) Reviewing and recommending revisions to the Radio Standards and Procedures (49 CFR Part 220).

Task 96–5—(Completed.) Reviewing and recommending revisions to Steam Locomotive Inspection Standards (49 CFR Part 230).

Task 96–6—(Completed.) Reviewing and recommending revisions to miscellaneous aspects of the regulations addressing Locomotive Engineer Certification (49 CFR Part 240).

Task 96–7—(Completed.) Developing Roadway Maintenance Machines (On-Track Equipment) Safety Standards.

Task 96–8—(Completed.) This Planning Task evaluated the need for action responsive to recommendations contained in a report to Congress entitled, *Locomotive Crashworthiness & Working Conditions.*

Task 97–1—(Completed.) Developing crashworthiness specifications (49 CFR Part 229) to promote the integrity of the locomotive cab in accidents resulting from collisions.

Task 97–2—(Completed.) Evaluating the extent to which environmental, sanitary, and other working conditions in locomotive cabs affect the crew's health and the safe operation of locomotives, proposing standards where appropriate.

Task 97–3—(Completed.) Developing event recorder data survivability standards.

Task 97–4 and *Task 97–5*—(Completed.) Defining PTC functionalities, describing available technologies, evaluating costs and benefits of potential systems, and considering implementation opportunities and challenges, including demonstration and deployment.

Task 97–6—(Completed.) Revising various regulations to address the safety implications of processor-based signal and train control technologies, including communications-based operating systems.

Task 97–7—(Completed.) Determining damages qualifying an event as a reportable train accident.

Task 00–1—(Task withdrawn.) Determining the need to amend regulations protecting persons who work on, under, or between rolling equipment and persons applying, removing, or inspecting rear end marking devices (Blue Signal Protection).

Task 01–1—(Completed.) Developing conformity of FRA's regulations for accident/incident reporting (49 CFR Part 225) to revised regulations of the Occupational Safety and Health Administration, U.S. Department of Labor, and to make appropriate revisions to the *FRA Guide for Preparing Accident/Incident Reports.*

Task 08–01—(Completed.) *Report on the Nation's Railroad Bridges.* Report to the FRA Administrator on the current state of railroad bridge safety management, update the findings and conclusions of the 1993 Summary Report of the FRA Railroad Bridge Safety Survey, and include recommendations for further action.

Please refer to the notice published in the **Federal Register** on March 11, 1996 (61 FR 9740), for more information about the RSAC.

Issued in Washington, DC, on June 15, 2009.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. E9–14390 Filed 6–18–09; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Additional Designation of Entities and Individuals Pursuant to Executive Order 12978

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (''OFAC'') is publishing the names of 15 newly-designated entities and 9 newly-designated individuals whose property and interests in property are blocked pursuant to Executive Order 12978 of October 21, 1995, ''Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers.'' In addition, OFAC is publishing changes to the identifying information associated with one entity and nine individuals previously designated pursuant to Executive Order 12978.

DATES: The designation by the Director of OFAC of the 15 entities and 9 individuals identified in this notice pursuant to Executive Order 12978 is effective on June 12, 2009.

FOR FURTHER INFORMATION CONTACT: Assistant Director, Compliance Outreach & Implementation, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2490.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document and additional information concerning OFAC are

available from OFAC's Web site (*http://www.treas.gov/ofac*) or via facsimile through a 24-hour fax-on demand service, tel.: (202) 622–0077.

Background

On October 21, 1995, the President, invoking the authority, *inter alia,* of the International Emergency Economic Powers Act (50 U.S.C. 1701–1706), issued Executive Order 12978 (60 FR 54579, October 24, 1995) (the ''Order''). In the Order, the President declared a national emergency to deal with the threat posed by significant foreign narcotics traffickers centered in Colombia and the harm that they cause in the United States and abroad.

Section 1 of the Order blocks, with certain exceptions, all property and interests in property that are in the United States, or that hereafter come within the United States or that are or hereafter come within the possession or control of United States persons, of: (1) The persons listed in an Annex to the Order; (2) any foreign person determined by the Secretary of Treasury, in consultation with the Attorney General and the Secretary of State, to play a significant role in international narcotics trafficking centered in Colombia, or materially to assist in, or provide financial or technological support for or goods or services in support of, the narcotics trafficking activities of persons designated in or pursuant to the Order; and (3) persons determined by the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to be owned or controlled by, or to act for or on behalf of, persons designated pursuant to the Order.

On June 12, 2009, the Director of OFAC, in consultation with the Attorney General and the Secretary of State, as well as the Secretary of Homeland Security, designated 15 entities and 9 individuals whose property and interests in property are blocked pursuant to the Order.

The list of additional designees is as follows:

Entities:

1. CIMIENTOS LA TORRE S.A. DE C.V. (f.k.a. ACTIVOS PARA EL DESARROLLO ISLA BLANCA S.A. DE C.V.); Calle San Uriel 690, Interior 10, Piso 4, Colonia Chapalita, Guadalajara, Jalisco, Mexico; (ENTITY) [SDNT]

2. COMERCIALIZADORA DE CAPITALES LIMITADA, Carrera 48C No. 15 Sur–68, Medellin, Colombia; Carrera 43C No. 70–73, Piso 2, Medellin, Colombia; NIT #811032525–4 (Colombia); (ENTITY) [SDNT]

3. CORPORACION DE CONSULTORIA, ASESORIA, PRESTACION DE SERVICIOS Y DOTACION DE ELEMENTOS Y SUMINISTROS CIA. LIMITADA (f.k.a. CORPORACION DE CONSULTORIA ASESORIA Y DOTACION DE ELEMENTOS Y SUMINISTROS CIA. LIMITADA; a.k.a. CORDES CIA. LIMITADA); Calle 71C No. 4N–19, Cali, Colombia; NIT #830502730–4 (Colombia); (ENTITY) [SDNT]

4. CUMBRES SOLUCIONES INMOBILIARIAS S.A. DE C.V., Avenida Miguel Angel 18, Colonia Real Vallarta, Zapopan, Jalisco, Mexico; Calle del Menhir Sur 661–2, Colonia Altamira, Zapopan, Jalisco, Mexico; (ENTITY) [SDNT]

5. GRANOPRODUCTOS AGRICOLAS S.A. DE C.V., Zona Conurbada, Guadalajara, Jalisco, Mexico; (ENTITY) [SDNT]

6. GRUPO C.L.P. CONSTRUCTORA S.A. DE C.V., Calle San Uriel 690, Interior 10, Piso 4, Colonia Chapalita, Guadalajara, Jalisco, Mexico; (ENTITY) [SDNT]

7. GRUPO CONSTRUCTOR INMOBILIARIO PACAR S.A. DE C.V., Guadalajara, Jalisco, Mexico; (ENTITY) [SDNT]

8. HODWALKER Y LEAL Y CIA. S.C.A., Via 40 No. 67–20/42, Barranquilla, Colombia; NIT #900074434–5 (Colombia); (ENTITY) [SDNT]

9. KELVEDON LIMITED, 1446 West Bay Road, Georgetown, Grand Cayman, Cayman Islands; (ENTITY) [SDNT]

10. MIRASOL INTERNATIONAL LIMITED, Road Town, Tortola, Virgin Islands, British; (ENTITY) [SDNT]

11. MISION INMOBILIARIA LIMITADA, Calle 100 No. 60–04, Oficina 506, Bogota, Colombia; NIT #900146213–4 (Colombia); (ENTITY) [SDNT]

12. PARQUE ECOLOGICO RECREACIONAL DE LAS AGUAS DE GIRARDOT LIMITADA, Carrera 19 No. 28–200 Barrio Gaitan, Girardot, Colombia; NIT #900034947–0 (Colombia); (ENTITY) [SDNT]

13. SHARDAE VENTURES INC., Road Town, Tortola, Virgin Islands, British; Carrera 63 No. 17–07, Bogota, Colombia; (ENTITY) [SDNT]

14. TECNICAR DIAGNOSTICENTRO S.A. (f.k.a. TECNICAR DIAGNOSTICENTRO E.U.); Carrera 48 No. 25AA Sur–13 Barrio Las Vegas, Envigado, Colombia; NIT #811046795–7 (Colombia); (ENTITY) [SDNT]

15. YAMAHA MUNDIAL LIMITADA, Carrera 4 No. 5A–03, Santa Marta, Colombia; NIT #900016791–2 (Colombia); (ENTITY) [SDNT]

Individuals:

1. ACOSTA URUETA, Yaneth (a.k.a. ACOSTA URUETA, Janeth; a.k.a. ACOSTA URUETA, Yaneth del Socorro); c/o HODWALKER Y LEAL Y CIA. S.C.A., Barranquilla, Colombia; c/o MARTIN HODWALKER M. & CIA. S. EN C., Barranquilla, Colombia; DOB 10 Nov 1965; POB Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 57411214 (Colombia); (INDIVIDUAL) [SDNT]

2. ARAMBULA GARCIA, Luz del Rocio (a.k.a. ARAMBULA DE FLORES, Luz del Rocio); C. Las Palmas No. 2700 Int. 14, Colonia Atlas Colomos, Zapopan, Jalisco, Mexico; Avenida Hidalgo 1890, Colonia Ladron de Guevara, Guadalajara, Jalisco, Mexico; DOB 06 Jan 1949; Alt. DOB 05 Jan 1949; POB Jalisco, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. AAGL490106MJCRRZ00 (Mexico); C.U.R.P. AAGL490106HJCRRZ00 (Mexico); Passport 98140030684 (Mexico); R.F.C. AAGL–490105 (Mexico); R.F.C. AAGL–490105–9F9 (Mexico); (INDIVIDUAL) [SDNT]

3. BEDOYA VELEZ, Jose Roberto, c/o TECNICAR DIAGNOSTICENTRO S.A., Envigado, Colombia; Carrera 28 No. 16–85, Casa 12, Medellin, Antioquia, Colombia; DOB 10 Oct 1960; POB Medellin, Antioquia, Colombia; Citizen Colombia; Nationality Colombia; Passport AI406455 (Colombia); Cedula No. 15256905 (Colombia); (INDIVIDUAL) [SDNT]

4. CARDENAS REAL, Juan, c/o GRUPO C.L.P. CONSTRUCTORA S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o GRUPO CONSTRUCTOR INMOBILIARIO PACAR S.A. DE C.V., Guadalajara, Jalisco, Mexico; Calle Lopez Cotilla 2032, Piso 10, Colonia Americana, Guadalajara, Jalisco, Mexico; Avenida Nicolas Copernico, No. 3924, Fraccionamiento Arboledas, Sector Juarez, Guadalajara, Jalisco, Mexico; Clz. Revolucion 2259, Guadalajara, Jalisco, Mexico; DOB 20 Jan 1944; POB Guadalajara, Jalisco, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. CARJ440120HJCRLN08 (Mexico); C.U.R.P. CARJ440120MJCRLN08 (Mexico); (INDIVIDUAL) [SDNT]

5. ESPITIA PINILLA, Ricardo, Bogota, Colombia; DOB 26 Apr 1962; POB Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 19483017 (Colombia); Passport AI264250 (Colombia); (INDIVIDUAL) [SDNT]

6. FLORES SALINAS, Mario Antonio, C. Las Palmas No. 2700 Int. 14, Colonia Atlas Colomos, Zapopan, Jalisco, Mexico; Paseo Lomas del Bosque No. 2700 Int. 14, Colonia Lomas del Bosque,

Guadalajara, Jalisco, Mexico; Avenida Hidalgo 1890, Colonia Ladron de Guevara, Guadalajara, Jalisco, Mexico; Tarascos No. 3469–114, Fraccionamiento Monraz, Guadalajara, Jalisco, Mexico; DOB 16 Mar 1937; Alt. DOB 16 Mar 1940; Alt. DOB 06 Mar 1940; POB Zacatecas, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. FOSM370316HZSLLR06 (Mexico); Passport 98140065448 (Mexico); R.F.C. FOSM–370316–K24 (Mexico); R.F.C. FOSM–400316–K27 (Mexico); R.F.C. FOSM–370316–K12 (Mexico); R.F.C. FOSM–400316 (Mexico); (INDIVIDUAL) [SDNT]

7. GONZALEZ BETANCOURTH, Luz Adriana, c/o CORDES CIA. LIMITADA, Cali, Colombia; Armenia, Quindio, Colombia; DOB July 29, 1975; POB Sevilla, Valle del Cauca, Colombia; Citizen Colombia; Nationality Colombia; Cedula No. 29831840 (Colombia); (INDIVIDUAL) [SDNT]

8. LARES RANGEL, Jose Luis, c/o GRUPO C.L.P. CONSTRUCTORA S.A. DE C.V., Guadalajara, Jalisco, Mexico; Calle Lopez Cotilla 2032, Piso 10, Colonia Americana, Guadalajara, Jalisco, Mexico; Ignacio Ramos Praslow 640, Guadalajara, Jalisco, Mexico; DOB 18 Apr 1942; POB Ciudad Guzman, Jalisco, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LARL420418HJCRNS01 (Mexico); (INDIVIDUAL) [SDNT]

9. LOPEZ RODRIGUEZ, Jorge Octavio, c/o CIMIENTOS LA TORRE S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o CUMBRES SOLUCIONES INMOBILIARIAS S.A. DE C.V., Zapopan, Jalisco, Mexico; Calle Aurora y Andres, Benito Juarez, Quintana Roo, Mexico; Calle Boyero No. 3500, Torre 4, Dpto. 2, Fraccionamiento La Calma, Zapopan, Jalisco, Mexico; DOB 01 Apr 1976; Alt. DOB 01 Jan 1976; POB Guadalajara, Jalisco, Mexico; Citizen Mexico; Nationality Mexico; C.U.R.P. LORJ760401HJCPDR08 (Mexico); Passport 98140145654 (Mexico); Passport 01140405557 (Mexico); (INDIVIDUAL) [SDNT]

In addition, OFAC has made changes to the identifying information associated with the following one entity and nine individuals previously designated pursuant to the Order:

1. GALLEGO VALENCIA, John Jairo (a.k.a. ''DON JOTA''; a.k.a. ''FREDERICO''), c/o LAVADERO EL CASTILLO, Medellin, Colombia; DOB 30 Jul 1950; POB Medellin, Colombia; Cedula No. 70126377 (Colombia); Passport AC312064 (Colombia) (INDIVIDUAL) [SDNT]

2. GONZALEZ BETANCUR, Angel Horacio, c/o FISHING ENTERPRISE HOLDING INC., Panama City, Panama; c/o AQUAMARINA ISLAND INTERNATIONAL CORPORATION, Panama City, Panama; DOB 3 Feb 1966; POB Colombia; Cedula No. 6465085 (Colombia) (INDIVIDUAL) [SDNT]

3. HERNANDEZ ORTEGA, Cesar Alejandro, c/o LIZZY MUNDO INTERIOR, Guadalajara, Mexico; DOB 28 Oct 1975; POB Guadalajara, Jalisco, Mexico; C.U.R.P. HEOC751028HJCRRS09 (Mexico); Passport 140022479 (Mexico) (INDIVIDUAL) [SDNT]

4. HODWALKER MARTINEZ, Martin David (a.k.a. ''TILO''), c/o VERANILLO DIVE CENTER LTDA., Barranquilla, Colombia; c/o MARTIN HODWALKER M. Y CIA. S. EN C., Barranquilla, Colombia; c/o YAMAHA VERANILLO DISTRIBUIDORES, Barranquilla, Colombia; c/o DESARROLLO GEMMA CORPORATION, Panama City, Panama; DOB 26 Dec 1968; POB Colombia; Cedula No. 8534760 (Colombia); Passport AF465508 Colombia (INDIVIDUAL) [SDNT]

5. LEAL LOPEZ, Janey Farides, c/o MARTIN HODWALKER M. Y CIA. S. EN C., Barranquilla, Colombia; c/o VERANILLO DIVE CENTER LTDA., Barranquilla, Colombia; DOB 6 Nov 1972; POB Colombia; Cedula No. 32779104 (Colombia); Passport AF665724 (Colombia) (INDIVIDUAL) [SDNT]

6. MARTIN HODWALKER M. & CIA. S. EN C., Via 40 No. 67–42, Barranquilla, Colombia; NIT #802007314–9 (Colombia) (ENTITY) [SDNT]

7. MOR SAAB, Jaime Dib (a.k.a. MOR, Jaime Div; a.k.a. ''JAIME MOORE''), c/o DURATEX S.A., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES S.A., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; c/o PROMOCIONES E INVERSIONES LAS PALMAS S.A., Bogota, Colombia; c/o ACUICOLA SANTA CATALINA S.A., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; c/o KARIAN LTDA., Bogota, Colombia; c/o GAVIRIA MOR Y CIA. LTDA., Girardot, Colombia; c/o CONSTRUCTORA IRAKA S.A., Bogota, Colombia; c/o CONSTRUCTORA AMERICA S.A., Bogota, Colombia; c/o COMERCIALIZADORA MOR GAVIRIA S.A., Quito, Ecuador; c/o COMERCIALIZADORA MORDUR S.A., Quito, Ecuador; c/o INTERNACIONAL DE PROYECTOS INMOBILIARIOS IPI S.A., Quito, Ecuador; DOB 29 Apr 1955; POB Girardot, Cundinamarca, Colombia; Cedula No. 19222380 (Colombia); SSN 591–98–9689 (United States) (INDIVIDUAL) [SDNT]

8. OLIVEROS GUZMAN, Henry, c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; c/o HOTEL LA CASCADA S.A., Girardot, Colombia; POB Colombia; Cedula No. 79484051 (Colombia) (INDIVIDUAL) [SDNT]

9. PABON ALVARADO, Gustavo Alberto, c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES S.A., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES INMOBILIARIA LTDA., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; c/o ACUICOLA SANTA CATALINA S.A., Bogota, Colombia; c/o HOTEL LA CASCADA S.A., Girardot, Colombia; c/o FLORIDA SOCCER CLUB S.A., Medellin, Colombia; Avenida 13 No. 100–12 Ofc. 302, Bogota, Colombia; DOB 6 May 1955; POB Bogota, Colombia; Cedula No. 79146243 (Colombia) (INDIVIDUAL) [SDNT]

10. PACHECO MEJIA, Luis, c/o FLORIDA SOCCER CLUB S.A., Medellin, Colombia; Calle Paseo de Los Virreyes No. 4022, Colonia San Wenceslao, Zapopan, Jalisco, Mexico; DOB 18 Jun 1951; POB Guadalajara, Jalisco, Mexico; Passport 03140120376 (Mexico); RFC PAML–510618–ED7 (Mexico) (INDIVIDUAL) [SDNT]

The listings now appear as the following:

1. GALLEGO VALENCIA, John Jairo (a.k.a. ''Frederico''; a.k.a. ''DON JOTA''); c/o LAVADERO EL CASTILLO, Medellin, Colombia; c/o COMERCIALIZADORA DE CAPITALES LIMITADA, Medellin, Colombia; c/o TECNICAR DIAGNOSTICENTRO S.A., Envigado, Colombia; DOB 30 Jul 1950; POB Medellin, Colombia; Passport AC312064 (Colombia); Cedula No. 70126377 (Colombia); (INDIVIDUAL) [SDNT]

2. GONZALEZ BETANCUR, Angel Horacio, c/o FISHING ENTERPRISE HOLDING INC., Panama City, Panama; c/o AQUAMARINA ISLAND INTERNATIONAL CORPORATION, Panama City, Panama; c/o CORDES CIA. LIMITADA, Cali, Colombia; DOB 3 Feb 1966; POB Colombia; Cedula No. 6465085 (Colombia); (INDIVIDUAL) [SDNT]

3. HERNANDEZ ORTEGA, Cesar Alejandro, c/o LIZZY MUNDO INTERIOR, Guadalajara, Mexico; c/o CUMBRES SOLUCIONES INMOBILIARIAS S.A. DE C.V., Zapopan, Jalisco, Mexico; DOB 28 Oct 1975; POB Guadalajara, Jalisco, Mexico; Passport 140022479 (Mexico); C.U.R.P. HEOC751028HJCRRS09 (Mexico); (INDIVIDUAL) [SDNT]

4. HODWALKER MARTINEZ, Martin David (a.k.a. ''Tilo''); c/o VERANILLO DIVE CENTER LTDA., Barranquilla, Colombia; c/o MARTIN HODWALKER M. Y CIA. S. EN C., Barranquilla, Colombia; c/o YAMAHA VERANILLO DISTRIBUIDORES, Barranquilla, Colombia; c/o DESARROLLO GEMMA CORPORATION, Panama City, Panama; c/o HODWALKER Y LEAL Y CIA. S.C.A., Barranquilla, Colombia; c/o YAMAHA MUNDIAL LIMITADA, Santa Marta, Colombia; DOB 26 Dec 1968; POB Colombia; Passport AF465508 Colombia; Cedula No. 8534760 (Colombia); (INDIVIDUAL) [SDNT]

5. LEAL LOPEZ, Janey Farides, c/o MARTIN HODWALKER M. Y CIA. S. EN C., Barranquilla, Colombia; c/o VERANILLO DIVE CENTER LTDA., Barranquilla, Colombia; c/o HODWALKER Y LEAL Y CIA. S.C.A., Barranquilla, Colombia; DOB 6 Nov 1972; POB Colombia; Passport AF665724 (Colombia); Cedula No. 32779104 (Colombia); (INDIVIDUAL) [SDNT]

6. MARTIN HODWALKER M. & CIA. S. EN C. (f.k.a. VERANILLO Y CIA. S. EN C.; n.k.a. VERANILLO S.A.); Via 40 No. 67–20/42, Barranquilla, Colombia; NIT #802007314–9 (Colombia); (ENTITY) [SDNT]

7. MOR SAAB, Jaime Dib (a.k.a. MOR, Jaime Div; a.k.a. ''Jaime Moore''); c/o DURATEX S.A., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o MOR GAVIRIA Y CIA. S.C.S., Bogota, Colombia; c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES S.A., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; c/o PROMOCIONES E INVERSIONES LAS PALMAS S.A., Bogota, Colombia; c/o ACUICOLA SANTA CATALINA S.A., Bogota, Colombia; c/o SUPER BOYS GAMES LTDA., Bogota, Colombia; c/o KARIAN LTDA., Bogota, Colombia; c/o GAVIRIA MOR Y CIA. LTDA., Girardot, Colombia; c/o CONSTRUCTORA IRAKA S.A., Bogota, Colombia; c/o CONSTRUCTORA AMERICA S.A., Bogota, Colombia; c/o COMERCIALIZADORA MOR GAVIRIA S.A., Quito, Ecuador; c/o COMERCIALIZADORA MORDUR S.A., Quito, Ecuador; c/o INTERNACIONAL DE PROYECTOS INMOBILIARIOS IPI S.A., Quito, Ecuador; c/o MIRASOL INTERNATIONAL LIMITED, Road Town, Tortola, Virgin Islands, British; c/o SHARDAE VENTURES INC., Road Town, Tortola, Virgin Islands, British; c/o KELVEDON LIMITED, Georgetown, Grand Cayman, Cayman Islands; c/o PARQUE ECOLOGICO RECREACIONAL DE LAS AGUAS DE GIRARDOT LIMITADA, Girardot, Colombia; DOB 29 Apr 1955; POB Girardot, Cundinamarca, Colombia; SSN 591–98–9689 (United States); Cedula No. 19222380 (Colombia); (INDIVIDUAL) [SDNT]

8. OLIVEROS GUZMAN, Henry, c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o MAYOR COMERCIALIZADORA LTDA., Bogota, Colombia; c/o MOR ALFOMBRAS ALFOFIQUE S.A., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; c/o HOTEL LA CASCADA S.A., Girardot, Colombia; c/o PARQUE ECOLOGICO RECREACIONAL DE LAS AGUAS DE GIRARDOT LIMITADA, Girardot, Colombia; POB Colombia; Cedula No. 79484051 (Colombia); (INDIVIDUAL) [SDNT]

9. PABON ALVARADO, Gustavo Alberto, c/o INVERSIONES MPS S.A., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES S.A., Bogota, Colombia; c/o PROYECTOS Y SOLUCIONES INMOBILIARIA LTDA., Bogota, Colombia; c/o GERENCIA DE PROYECTOS Y SOLUCIONES LTDA., Bogota, Colombia; c/o ACUICOLA SANTA CATALINA S.A., Bogota, Colombia; c/o HOTEL LA CASCADA S.A., Girardot, Colombia; c/o FLORIDA SOCCER CLUB S.A., Medellin, Colombia; c/o MISION INMOBILIARIA LIMITADA, Bogota, Colombia; Avenida 13 No. 100–12 Ofc. 302, Bogota, Colombia; DOB 6 May 1955; POB Bogota, Colombia; Cedula No. 79146243 (Colombia); (INDIVIDUAL) [SDNT]

10. PACHECO MEJIA, Luis, c/o FLORIDA SOCCER CLUB S.A., Medellin, Colombia; c/o GRANOPRODUCTOS AGRICOLAS S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o GRUPO C.L.P. CONSTRUCTORA S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o GRUPO CONSTRUCTOR INMOBILIARIO PACAR S.A. DE C.V., Guadalajara, Jalisco, Mexico; c/o CIMIENTOS LA TORRE S.A. DE C.V., Guadalajara, Jalisco, Mexico; Calle Paseo de Los Virreyes No. 4022, Colonia San Wenceslao, Zapopan, Jalisco, Mexico; DOB 18 Jun 1951; POB Guadalajara, Jalisco, Mexico; RFC PAML–510618–ED7 (Mexico); Passport 03140120376 (Mexico); (INDIVIDUAL) [SDNT]

Dated: June 12, 2009.

J. Robert McBrien,

Acting Director, Office of Foreign Assets Control.

[FR Doc. E9–14383 Filed 6–18–09; 8:45 am]

BILLING CODE 4811–45–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; System of Records

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Amendment of System of Records ''Compensation, Pension, Education, and Rehabilitation Records—VA (58VA21/22/28)''.

SUMMARY: As required by the Privacy Act of 1974, 5 U.S.C. 552a(e)(4), notice is hereby given that the Department of Veterans Affairs (VA) proposes to modify, alter, amend, rename and republish in its entirety the existing system of records ''Compensation, Pension, Education, and Rehabilitation Records—VA (58VA21/22/28)''.

DATES: The amended and altered system, which incorporates the comments received following the publication on April 1, 2009, shall become effective June 29, 2009.

FOR FURTHER INFORMATION CONTACT: Michael F. Palmer, Program Analyst, Office of Business Process Integration (20C), Veterans Benefits Administration (VBA), Department of Veterans Affairs, 810 Vermont Ave., NW., Washington, DC 20420, (336) 714–5939.

SUPPLEMENTARY INFORMATION: As required by the Privacy Act of 1974, as amended, 5 U.S.C. 552a(e)(4), this document sets forth the amendment of the proposed alteration of a system of records maintained by VBA, in response to comments received following publication in the **Federal Register** at 74 FR 14865 on April 1, 2009. VBA is altering the proposed republication of the system of records to include changes made in response to the six comments received.

Comment 1: The commenter expresses a concern over language in the system that states, ''This system of records does not directly address health or memorial benefits administered respectively by the Veterans Health Administration or the National Cemetery Administration, the other two of the three Administrations within VA.'' Commenter indicated that, ''VBA does administer claims for health related problems and the words 'health,

dental, medical, disability' or compilations thereof, are referenced approximately 22 times throughout this document.''

Response: VBA does not administer health benefits. VBA administers compensation benefits based on service connection for injuries or medical conditions incurred or aggravated during military service. The Veterans Health Administration administers health care benefits. The sentence to which the commenter registers objections has no operational impact, and merely distinguishes the proposed system of records from other systems of records administered by the other two administrations within the Department.

Comment 2: The commenter expresses concern over the disposition of the Official Military Personnel File (OMPF), which is the official property of the Department of Defense (DoD) that VBA occasionally incorporates into its claims folders in order to administer statutory benefits.

Response: We have revised the notice to reflect that at the death of the veteran, all documents in VBA's possession that are the official property of the DoD shall be retained permanently. At the death of the veteran, DoD-owned documents shall be transferred to the National Archives and Records Administration (NARA) and maintained in accordance with NARA regulations.

Comment 3: The commenter expresses concern that in the section ''Categories of Records in the System'', the notice shows that the system contains documents that were generated by DoD. The commenter recommends that VA adhere to disposition schedules approved by the National Archives and Records Administration (NARA).

Response: See our response to comment 2 above.

Comment 4: The commenter expresses concern regarding Routine Use Number 58, which states, ''Disclosure may be made to the National Archives and Records Administration and General Services Administration in records management inspections and such other activities conducted under Authority of Title 44 U.S.C''. The commenter states that GSA and NARA were separated in 1985, and therefore the reference to GSA should be removed.

Response: The reference to GSA shall be removed; otherwise, the routine use is acceptable, as it specifically limits the activities of NARA to that which is authorized under Title 44.

Comment 5: The notice states that VBA holds claims folders until the death of the veteran, after which they are sent to the Federal Records Center (FRC) and held for 75 years, and then destroyed. The commenter indicates that the claims folders occasionally contain records from the OMPF and the service treatment records (STRs). There is no NARA disposition schedule for STRs, and the OMPF records are considered permanent.

Response: See response to comment 2.

Comment 6: Commenter requests to know the disposition of DoD-owned documents if the claims folder is destroyed after being electronically imaged and stored in Virtual VA.

Response: We have revised the notice to reflect that after all DoD-owned paper documents have been electronically imaged, those DoD-owned paper documents will either be stored at the VA Records Management Center (RMC), or sent to NARA to be maintained in accordance with NARA regulations.

This Notice meets the requirements to notify the public that VA is amending the proposed changes to the republished system of records following the initial publication at 74 FR 14865 on April 1, 2009, as detailed above. With this notification, this system of records is effective June 29, 2009.

Approved: June 10, 2009.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

58VA21/22/28

SYSTEM NAME:

Compensation, Pension, Education, and Vocational Rehabilitation and Employment Records—VA.

SYSTEM LOCATION:

Records are maintained at the Department of Veterans Affairs (VA) regional offices, VA centers, the VA Records Management Center, St. Louis, Missouri, the Data Processing Center at Hines, Illinois, the Corporate Franchise Data Center in Austin, Texas, and the Information Technology Center at Philadelphia, PA. Active records are generally maintained by the regional offices having jurisdiction over the domicile of the claimant. Active educational assistance records are generally maintained at the regional processing office having jurisdiction over the educational institution, training establishment, or other entity where the claimant pursues or intends to pursue training. Address locations of VA facilities are listed in the VA Appendix I and are also listed at *http://www2.va.gov/directory/guide/home.asp?isFlash=1.* The automated individual employee productivity records are temporarily maintained at the VA data processing facility serving the office in which the employee is located. The paper record is maintained at the VA regional office having jurisdiction over the employee who processed the claim. Records provided to the Department of Housing and Urban Development (HUD) for inclusion on its Credit Alert Interactive Voice Response System (CAIVRS) are located at a data processing center under contract to HUD at Lanham, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The following categories of individuals will be covered by this system.

1. Veterans who have applied for compensation for service-connected disability under 38 U.S.C. chapter 11.
2. Veterans who have applied for nonservice-connected disability under 38 U.S.C. chapter 15.
3. Veterans entitled to burial benefits under 38 U.S.C. chapter 23.
4. Surviving spouses and children who have claimed pensions based on nonservice-connected death of a veteran under 38 U.S.C. chapter 15.
5. Surviving spouses and children who have claimed death compensation based on service-connected death of a veteran under 38 U.S.C. chapter 11.
6. Surviving spouses and children who have claimed dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. chapter 13.
7. Parents who have applied for death compensation based on service-connected death of a veteran under 38 U.S.C. chapter 11.
8. Parents who have applied for dependency and indemnity compensation for service-connected death of a veteran under 38 U.S.C. chapter 13.
9. Individuals who applied for educational assistance benefits administered by VA under title 38 U.S.C.
10. Individuals who applied for educational assistance benefits maintained by the Department of Defense under 10 U.S.C. that are administered by VA.
11. Veterans who apply for training and employers who apply for approval of their programs under the provisions of the Emergency Veterans' Job Training Act of 1983, Public Law 98–77.
12. Any VA employee who generates or finalizes adjudicative actions using the Benefits Delivery Network (BDN) or the Veterans Service Network (VETSNET) computer processing systems.
13. Veterans who apply for training and employers who apply for approval of their programs under the provisions

of the Service Members Occupational Conversion and Training Act of 1992, Public Law 102–484.

14. Representatives of individuals covered by the system.

CATEGORIES OF RECORDS IN THE SYSTEM:

The record, or information contained in the record, may include identifying information (e.g., name, address, social security number); military service and active duty separation information (e.g., name, service number, date of birth, rank, sex, total amount of active service, branch of service, character of service, pay grade, assigned separation reason, service period, whether veteran was discharged with a disability, reenlisted, received a Purple Heart or other military decoration); payment information (e.g., veteran payee name, address, dollar amount of readjustment service pay, amount of disability or pension payments, number of nonpay days, any amount of indebtedness (accounts receivable) arising from title 38 U.S.C. benefits and which are owed to the VA); medical information (e.g., medical and dental treatment in the Armed Forces including type of service-connected disability, medical facilities, or medical or dental treatment by VA health care personnel or received from private hospitals and health care personnel relating to a claim for VA disability benefits or medical or dental treatment); personal information (e.g., marital status, name and address of dependents, occupation, amount of education of a veteran or a dependent, dependent's relationship to veteran); education benefit information (e.g., information arising from utilization of training benefits such as a veteran trainee's induction, reentrance or dismissal from a program or progress and attendance in an education or training program); applications for compensation, pension, education and vocational rehabilitation benefits and training which may contain identifying information, military service and active duty separation information, payment information, medical and dental information, personal and education benefit information relating to a veteran or beneficiary's incarceration in a penal institution (e.g., name of incarcerated veteran or beneficiary, claims folder number, name and address of penal institution, date of commitment, type of offense, scheduled release date, veteran's date of birth, beneficiary relationship to veteran and whether veteran or beneficiary is in a work release or half-way house program, on parole or has been released from incarceration).

The VA employee's BDN or VETSNET identification numbers, the number and kind of actions generated and/or finalized by each such employee, the compilation of cases returned for each employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 10 United States Code (U.S.C.) chapters 106a, 510, 1606 and 1607 and Title 38, U.S.C., section 501(a) and Chapters 11, 13, 15, 18, 23, 30, 31, 32, 33, 34, 35, 36, 39, 51, 53, and 55.

PURPOSE(S):

VA gathers or creates these records in order to enable it to administer statutory benefits programs to veterans, service members, reservists, and their spouses, surviving spouses, and dependents, who file claims for a wide variety of Federal veteran's benefits administered by VA. See the statutory provisions cited in ''Authority for maintenance of the system''.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. The record of an individual who is covered by this system or records may be disclosed to a Member of Congress, or staff person acting for the member when, the member or staff person requests the record on behalf of and at the written request of that individual.

2. Any information in this system may be disclosed to a Federal agency, upon its official request, to the extent that it is relevant and necessary to that agency's decision regarding: the hiring, retention or transfer of an employee; the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit given by that agency. However, in accordance with an agreement with the U.S. Postal Service, disclosures to the U.S. Postal Service for decisions concerning the employment of veterans will only be made with the veteran's prior written consent.

3. Any information in this system may be disclosed to a State or local agency, upon official request, to the extent that it is relevant and necessary to that agency's decision on: The hiring, retention or transfer of an employee, the issuance of a security clearance, the letting of a contract, or the issuance or continuance of a license, grant or other benefit by that agency including eligibility for unemployment compensation; provided, that if the information pertains to a veteran, the name and address of the veteran will not be disclosed unless the name and address is provided first by the requesting State or local agency.

4. VA may disclose on its own initiative any information in this system, except the names and home addresses of individuals, that are relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal, State, local, tribal, or foreign agency charged with the responsibility of investigating or prosecuting such violation, or charged with enforcing or implementing the statute, rule, regulation or order.

5. VA may disclose on its own initiative the names and addresses of individuals, that are relevant to a suspected violation or reasonably imminent violation of law, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, to a Federal agency charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, regulation, rule or order.

6. The name and address of an individual, which is relevant to a suspected violation or reasonably imminent violation of law concerning public health or safety, whether civil, criminal or regulatory in nature and whether arising by general or program statute or by regulation, rule or order issued pursuant thereto, may be disclosed to any foreign, State or local governmental agency or instrumentality charged under applicable law with the protection of the public health or safety if a qualified representative of such organization, agency or instrumentality has made a written request that such name and address be provided for a purpose authorized by law.

7. The name, address, entitlement code (e.g., compensation or pension), period(s) of service, sex, and date(s) of discharge may be disclosed to any nonprofit organization if the release is directly connected with the conduct of programs and the utilization of benefits under title 38 U.S.C. Disclosures may be in the form of a computerized list.

8. Any information in this system, except for the name and address of an individual, may be disclosed to a Federal agency in order for VA to obtain information relevant to the issuance of a benefit under title 38 U.S.C. The name and address of an individual may be disclosed to a Federal agency under this routine use if they are required by the Federal agency to respond to the VA inquiry.)

9. Any information in this system may be disclosed in connection with any proceeding for the collection of an

amount owed to the United States by virtue of a person's participation in any benefit program administered by the Department of Veterans Affairs when in the judgment of the Secretary, or official generally delegated such authority under standard agency delegation of authority rules (38 CFR 2.6), such disclosure is deemed necessary and proper, in accordance with 38 U.S.C. 5701(b)(6).

10. The name and address of an individual, and other information as is reasonably necessary to identify such individual, may be disclosed to a consumer reporting agency for the purpose of locating the individual, or obtaining a consumer report to determine the ability of the individual to repay an indebtedness to the United States arising by virtue of the individual's participation in a benefits program administered by the VA, provided that the requirements of 38 U.S.C. 5701(g)(2) have been met.

11. The name and address of an individual, and other information as is reasonably necessary to identify such individual, including personal information obtained from other Federal agencies through computer matching programs, and any information concerning the individual's indebtedness to the United States by virtue of the person's participation in a benefits program administered by VA, may be disclosed to a consumer reporting agency for purposes of assisting in the collection of such indebtedness, provided that the provisions of 38 U.S.C. 5701(g)(4) have been met.

12. Any information in this system, including available identifying information regarding the debtor, such as name of debtor, last known address of debtor, VA insurance number, VA loan number, VA claim number, place of birth, date of birth of debtor, name and address of debtor's employer or firm and dates of employment may be disclosed, under this routine use, except to consumer reporting agencies, to a third party in order to obtain current name, address, locator, and credit report in connection with any proceeding for the collection of an amount owed to the United States by virtue of a person's participation in any VA benefit program when in the judgment of the Secretary such disclosure is deemed necessary and proper. This purpose is consistent with the Federal Claims Collection Act of 1966 (Pub. L. 89–508, 31 U.S.C. 951–953 and 4 CFR parts 101–105 and 38 U.S.C. 5701(b)(6)).

13. Any information in this system, including the nature and amount of a financial obligation, may be disclosed to a debtor's employing agency or commanding officer so that the debtor-employee may be counseled by his or her Federal employer or commanding officer and to assist in the collection of unpaid financial obligations owed VA.

14. Payment information may be disclosed to the Department of the Treasury, in accordance with its official request, to permit delivery of benefit payments to veterans or other beneficiaries.

15. Medical information may be disclosed in response to a request from the superintendent of a State hospital for psychotic patients, a commissioner or head of a State department of mental hygiene, or a head of a State, county or city health department or any fee basis physician or sharing institution in direct connection with authorized treatment for a veteran, provided the name of the individual to whom the record pertains is given and the information will be treated as confidential, as is customary in civilian professional medical practice.

16. The name, address, VA file number, effective date of compensation or pension, current and historical benefit pay amounts for compensation or pension, service information, date of birth, competency payment status, incarceration status, and social security number of veterans and their surviving spouses may be disclosed to the following agencies upon their official request: Department of Defense; Defense Manpower Data Center; Marine Corps; Department of Homeland Security; Coast Guard; Public Health Service (PHS); National Oceanic and Atmospheric Administration (NOAA) and Commissioned Officer Corps in order for these departments and agencies and VA to reconcile the amount and/or waiver of service, department and retired pay. These records may also be disclosed as a part of an ongoing computer-matching program to accomplish these purposes. This purpose is consistent with 10 U.S.C. 12316, 38 U.S.C. 5304 and 38 U.S.C. 5701.

17. The amount of pension, compensation, dependency and indemnity compensation, educational assistance allowance, retirement pay and subsistence allowance of any individual identified to VA may be disclosed to any person who applies for such information.

18. Identifying, personal, payment and medical information may be disclosed to a Federal, State, or local government agency at the request of a veteran in order to assist the veteran and ensure that all of the title 38 U.S.C. or other benefits to which the veteran is entitled are received. This information may also be disclosed upon the request from a Federal agency, or to a State or local agency, provided the name and address of the veteran is given beforehand by the requesting agency, in order to assist the veteran in obtaining a non-title 38 U.S.C. benefit to which the veteran is entitled. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

19. Any information in this system, which directly affects payment or potential payment of benefits to contesting claimants, including parties claiming an apportioned share of benefits, may be coequally disclosed to each affected claimant upon request from that claimant in conjunction with the claim for benefits sought or received.

20. Any information in this system, such as identifying information, nature of a claim, amount of benefit payments, percentage of disability, income and medical expense information maintained by VA which is used to determine the amount payable to recipients of VA income-dependent benefits and personal information, may be disclosed to the Social Security Administration, upon its official request, in order for that agency to determine eligibility regarding amounts of social security benefits, or to verify other information with respect thereto. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

21. VA may disclose an individual's identifying information to an educational institution, training establishment, or other entity which administers programs approved for VA educational assistance in order to assist the individual in completing claims forms, to obtain information necessary to adjudicate the individual's claim, or to monitor the progress of the individual who is pursuing or intends to pursue training at the request of the appropriate institution, training establishment, or other entity administrating approved VA educational programs or at the request of the veteran.

22. Medical data (excluding the name and address of a veteran unless the name and address are furnished by the requestor) may be disclosed to epidemiological and other research facilities approved by the Under Secretary for Health to obtain data from those facilities necessary to assist in medical studies on veterans for the Department of Veterans Affairs or for any research purposes determined to be necessary and proper by the Under Secretary for Health.

23. The name(s) and address(es) of a veteran may be disclosed to another Federal agency or to a contractor of that agency, at the written request of the head of that agency or designee of the head of that agency for the purpose of conducting government research necessary to accomplish a statutory purpose of that agency.

24. Any information in this system relevant to a veteran's claim such as the name, address, the basis and nature of a claim, amount of benefit payment information, medical information and military service and active duty separation information may be disclosed at the request of the veteran to accredited service organizations, VA-approved claims agents and attorneys acting under a declaration of representation so that these individuals can aid veterans in the preparation, presentation and prosecution of claims under the laws administered by VA.

25. Identifying and payment information may be disclosed, upon the request of a Federal agency, to a State or local government agency, to determine a beneficiary's eligibility under programs provided for under Federal legislation and for which the requesting Federal agency has responsibility. These records may also be disclosed as a part of an ongoing computer-matching program to accomplish these purposes. This purpose is consistent with 38 U.S.C. 5701.

26. Any information in this system such as the amount of benefit or disability payments and medical information may be disclosed in the course of presenting evidence to a court, magistrate, or administrative authority, in matters of guardianship, inquests, and commitments, to private attorneys representing veterans rated incompetent in conjunction with issuance of Certificates of Incompetency, and to probation and parole officers in connection with court-required duties.

27. Any information in this system including medical information, the basis and nature of claim, the amount of benefits and personal information may be disclosed to a VA Federal fiduciary or a guardian ad litem in relation to his or her representation of a veteran only to the extent necessary to fulfill the duties of the VA Federal fiduciary or the guardian ad litem.

28. Any relevant information (including changes in disability ratings) may be disclosed to the Department of Justice and United States Attorneys in the defense or prosecution of litigation involving the United States, and to Federal agencies upon their request in connection with review of administrative tort claims and potential tort claims filed under the Federal Tort Claims Act, 28 U.S.C. 2672, the Military Claims Act, 10 U.S.C. 2733, and other similar claims statutes.

29. Any information in this system including the name, social security number, date of birth, delimiting date and remaining entitlement of VA educational benefits, may be disclosed to the Department of Education (ED) upon its official request, or contractor thereof, for specific use by the ED to validate information regarding entitlement to VA benefits which is submitted by applicants who request educational assistance grants from the ED. The ED or contractor thereof will not use such information for any other purpose. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

30. VA may, at the request of the individual, disclose identifying information of an individual who is pursuing or intends to pursue training at an educational institution, training establishment, or other entity which administers programs approved for VA educational assistance in order for the VA to obtain sufficient information necessary to pay that individual or the educational or training establishment the correct monetary amounts in an expeditious manner. However, information will not be provided under this routine use to an educational institution, training establishment, or other entity when the request is clearly an attempt by that establishment to seek assistance in collection attempts against the individual.

31. Identifying information and information regarding the induction, reentrance and dismissal of a disabled veteran from a vocational rehabilitation program may be disclosed at the request of the veteran to a VA-approved vocational rehabilitation training establishment to ensure that the trainee receives the maximum benefit from training.

32. Identifying information and information regarding the extent and nature of a veteran's disabilities with respect to any limitations to be imposed on the veteran's vocational programs may be disclosed at the request of the veteran to a VA-approved vocational rehabilitation-training establishment to ensure that the trainee receives the maximum benefit from training.

33. Information regarding the type and amount of training/education received, and the name and address of a veteran, may be disclosed at the request of a veteran to local and State agencies and to prospective employers in order to assist the veteran in obtaining employment or further training.

34. The name, claims folder number and any other information relating to a veteran's or beneficiary's incarceration in a penal institution and information regarding a dependent's right to a special apportionment of the incarcerated individual's VA benefit payment may be disclosed to those dependents who may be eligible for entitlement to such apportionment in accordance with 38 U.S.C. 5313, 5307.

35. The name, claims folder number and any other information relating to an individual who may be incarcerated in a penal institution may, pursuant to an arrangement, be disclosed to penal institutions or to correctional authorities in order to verify information concerning the individual's incarceration status. The disclosure of this information is necessary to determine that individual's continuing eligibility as authorized under 38 U.S.C. 5313, 5307. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

36. Identifying information, except for the name and address of a veteran, may be disclosed to a State agency for the purpose of conducting a computer match to determine if income and employment data are being properly reported to VA and to detect the unwarranted payment of benefits under title 38 U.S.C.

37. Identifying, disability, and award (type, amount and reasons for award) information may be released to the DOL (Department of Labor) in order for the DOL to conduct a computer matching program against the 'Office of Workers' Compensation Programs Federal Employees Compensation File, DOL/ESA–13, published in 46 FR 12357 on February 13, 1981. This match will permit the DOL to verify a person's eligibility for DOL payments as well as to detect situations where recipients may be erroneously receiving concurrent multiple payments from the DOL and VA, to identify areas where legislative and regulatory amendments directed toward preventing overpayments are needed, and to collect debts owed to the United States Government. This matching program is performed pursuant to the DOL Inspector General's authority under Pub. L. 95–452, section 4(a) to detect and prevent fraud and abuse. This disclosure is consistent with 38 U.S.C. 5701(b)(3).

38. The beneficiary's name, address, social security number and the amount (excluding interest) of any indebtedness

waived under 38 U.S.C. 5302, or compromised under 4 CFR part 103 may be disclosed to the Treasury Department, Internal Revenue Service, as a report of income under 26 U.S.C. 61(a)(12).

39. Identifying information, including social security number, except for the name and address, may be disclosed to a Federal, State, County or Municipal agency for the purpose of conducting computer matches to obtain information to validate the entitlement of an individual, who is receiving or has received veterans' benefits under Title 10 or Title 38, United States Code. The name and address of individuals may also be disclosed to a Federal agency under this routine use if required by the Federal agency in order to provide information.

40. Identifying information, including the initials and abbreviated surname, the social security number, the date of birth and coding indicating the category of the individual's records, the degree of disability, the benefit program under which benefits are being paid and the computed amount of VA benefits for a calendar year may be released to the Department of the Treasury, Internal Revenue Service (IRS) in order for IRS to conduct a computer matching program against the Internal Revenue Service's Forms 1040, Schedule R, Credit for the Elderly and the Permanently and Totally Disabled. This match will permit IRS to determine the eligibility for and the proper amount of Elderly and Disabled Credits claimed on IRS Form 1040, Schedule R. This matching program is performed pursuant to the provisions of Internal Revenue Code Section 7602. This disclosure is consistent with 38 U.S.C. 5701(b)(3).

41. Identifying information, such as name, social security number, VA claim number, date and place of birth, etc., in this system may be disclosed to an employer or school having information relevant to a claim in order to obtain information from the employer or school to the extent necessary to determine that eligibility for VA compensation or pension benefits continues to exist or to verify that there has been an overpayment of VA compensation or pension benefits. Any information in this system also may be disclosed to any of the above-entitled individuals or entities as part of ongoing computer matching programs to accomplish these purposes.

42. The name of a veteran, or other beneficiary, other information as is reasonably necessary to identify such individual, and any other information concerning the individual's indebtedness by virtue of a person's participation in a benefits program administered by VA, may be disclosed to the Treasury Department, Internal Revenue Service, for the collection of Title 38, U.S.C. benefit overpayments, overdue indebtedness, and/or costs of services provided to an individual not entitled to such services, by the withholding of all or a portion of the person's Federal income tax refund.

43. Veterans' addresses which are contained in this system of records may be disclosed to the Defense Manpower Data Center, upon its official request, for military recruiting command needs, Department of Defense civilian personnel offices' mobilization studies and mobilization information, debt collection, and Individual Ready Reserve (IRR) Units' locator services.

44. The name, address, VA file number, date of birth, date of death, social security number, and service information may be disclosed to the Defense Manpower Data Center. The Department of Defense will use this information to identify retired veterans and dependent members of their families who have entitlement to Department of Defense benefits but who are not identified in the Defense Enrollment Eligibility Reporting System (DEERS) program and to assist in determining eligibility for Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) benefits. This purpose is consistent with 38 U.S.C. 5701. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

45. The name, address, VA file number, social security number, sex of veteran, date(s) of birth of the veteran and dependents, current benefit pay amounts for compensation or pension, pay status, check amount, aid and attendance status, veteran and spouse annual income amounts and type and combined degree of disability will be disclosed to the Department of Health and Human Services. The Social Security Administration will use the data in the administration of the Supplemental Security Income (SSI) payment system as prescribed by Pub. L. 92–603. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes. This purpose is consistent with 38 U.S.C. 5701.

46. The names and current addresses of VA beneficiaries who are identified by finance centers of individual uniformed services of the Department of Defense and the Department of Homeland Security (Coast Guard) as responsible for the payment of Survivor Benefit Plan (SBP) premium payments to be released from this system of records to them upon their official written request for such information for their use in attempting to recover amounts owed for SBP premium payments.

47. This routine use authorizes VA to compile lists of the social security numbers and loan account numbers of all persons with VA-guaranteed and portfolio loans in default, or VA loans on which there has been a foreclosure and the Department paid a claim and provide these records to the Department of Housing and Urban Development for inclusion in its Credit Alert Interactive Voice Response System (CAIVRS). Information included in this system may be disclosed to all participating agencies and lenders who participate in the agencies' programs to enable them to verify information provided by new loan applicants and evaluate the creditworthiness of applicants. These records may also be disclosed as part of an ongoing computer-matching program to accomplish these purposes.

48. Identifying information including social security number, abbreviated surname, first and middle initial, date of birth, sex and claim number, and excluding the full name and address, may be disclosed to the Social Security Administration for the purpose of conducting a computer match to obtain information to validate the social security number maintained in VA records.

49. Any information contained in the files of veterans whose claims were referred to VA Central Office for an advisory opinion concerning their claims that their disabilities were incurred secondary to occupational radiation exposure may be disclosed to the Department of the Navy. The information to be furnished to the Navy would include the medical opinions, dose estimates, advisory opinions, and rating decisions including veterans' names, addresses, VA claim numbers, social security numbers and medical information. The requested information may be disclosed to the Department of the Navy upon receipt of its official written request for such information for its use in the review and assessment of its occupational radiation exposure controls and training.

50. A veteran's claims folder number and folder location may be disclosed to a court of proper jurisdiction that has issued a garnishment order for that veteran under 42 U.S.C. 659 through 660.

51. An individual's identifying and payment information may be disclosed

to the educational institution, training establishment, or other entity the individual attends (or attended) if that individual received educational assistance from VA based on training at that educational institution, training establishment, or entity. VA will disclose this information to assist the educational institution, training establishment, or other entity in verifying the individual's receipt of VA educational assistance and to assist the individual in applying for additional financial aid (e.g. student loans).

52. The name and address of a prospective, present, or former accredited representative, claims agent or attorney and any information concerning such individual which is relevant to a refusal to grant access privileges to automated veterans' claims records, or a potential or past suspension or termination of such access privileges may be disclosed to the entity employing the individual to represent veterans on claims for veterans benefits.

53. The name and address of a former accredited representative, claim agent or attorney, and any information concerning such individual, except a veteran's name and home address, which is relevant to a revocation of such access privileges may be disclosed to an appropriate governmental licensing organization where VA determines that the individual's conduct that resulted in revocation merits reporting.

54. A record from this system (other than the address of the beneficiary) may be disclosed to a former representative of a beneficiary to the extent necessary to develop and adjudicate a claim for payment of attorney fees to such representative from past-due benefits under 38 U.S.C 5904(d) and Public Law 109–461 or to review a fee agreement between such representative and the beneficiary for reasonableness under 38 U.S.C. 5904(c)(2) and Public Law 109–461.

55. Disclosure of tax returns and return information received from the Internal Revenue Service (IRS) may be made only as provided by 26 U.S.C. 6103 (an IRS confidentiality statute) also covering any IRS tax return information provided as part of an ongoing computer matching program.

56. Where VA determines that there is good cause to question the legality or ethical propriety of the conduct of a person or organization representing a person in a matter before VA, a record from this system may be disclosed, on VA's initiative, to any or all of the following: (1) Applicable civil or criminal law enforcement authorities and (2) a person or entity responsible for the licensing, supervision, or professional discipline of the person or organization acting as a representative. Name and home addresses of veterans and their dependents will be released on VA's initiative under this routine use only to Federal entities.

57. The name and address of a VA beneficiary, and other information as is reasonably necessary to identify such a beneficiary, who has been adjudicated as incompetent under 38 CFR 3.353, may be provided to the Attorney General of the United States or his/her designee, for use by the Department of Justice in the National Instant Criminal Background Check System (NICS) mandated by the Brady Handgun Violence Prevention Act, Public Law 103–159.

58. Disclosure may be made to the National Archives and Records Administration in record management inspections and such other activities conducted under Authority of Title 44 U.S.C.

59. VA may disclose information from this system of records to the Department of Justice (DoJ), either on VA's initiative or in response to DoJ's request for the information, after either VA or DoJ determines that such information is relevant to DoJ's representation of the United States or any of its components in legal proceedings before a court or adjudicative body, provided that, in each case, the agency also determines prior to disclosure that release of the records to the DoJ is a use of the information contained in the records that is compatible with the purpose for which VA collected the records. VA, on its on initiative, may disclose records in this system of records in legal proceedings before a court or administrative body after determining that the disclosure of records to the court or administrative body is a use of the information contained in the records that is compatible with the purpose for which VA collected the records.

60. Disclosure of relevant information may be made to individuals, organizations, public or private agencies, or other entities with whom VA has a contract or agreement or where there is a subcontract to perform such services as VA may deem practicable for the purposes of laws administered by VA, in order for the contractor or subcontractor to perform the services of the contract or agreement.

61. Disclosure to other Federal agencies may be made to assist such agencies in preventing and detecting possible fraud, waste, overpayment, or abuse by individuals in their operations and programs as well as identifying areas where legislative and regulatory amendments directed toward preventing overpayments. These records may also be disclosed as part of an ongoing computer-matching program to accomplish this purpose.

62. VA may on its own initiative, disclose any information or records to appropriate agencies, entities, and persons when (1) VA suspects or has confirmed that the integrity or confidentiality of information in the system of records has been compromised; (2) VA has determined that as a result of the suspected or confirmed compromise, there is a risk of embarrassment or harm to the reputations of the record subjects, harm to the economic or property interests, identity theft or fraud, or harm to the programs (whether maintained by VA or another agency or entity) that rely upon the potentially compromised information; and (3) the disclosure is to agencies, entities, or persons whom VA determines are reasonably necessary to assist or carry out the VA's efforts to respond to the suspected or confirmed compromise and prevent, minimize, or remedy such harm. This routine use permits disclosures by VA to respond to a suspected or confirmed data breach, including the conduct of any risk analysis or provision of credit protection services as provided in 38 U.S.C. 5724, as the terms are defined in 38 U.S.C. 5727.

63. VA may disclose information to other Federal Agencies including, but not limited to, identifying information, payment information, and vocational objectives about a veteran or service member who is receiving or has received benefits under the Vocational Rehabilitation program to be used in data analysis and development of performance measures.

64. Any information contained in this system may be disclosed by VA, as deemed necessary, to DoD for use for determinations required by DoD. VA will routinely use the information to conduct medical evaluations needed to produce VA disability ratings and to promulgate subsequent claims for benefits under Title 38 U.S.C.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The Benefits Delivery Network (BDN), Virtual VA, Corporate WINRS, and Veterans' Service Network (VETSNET) are data telecommunication terminal systems. Records (or information contained in records) are maintained on paper documents in claims folders (C-folders), vocational rehabilitation folders, electronic folders (e.g., Virtual

VA and TIMS Files), and on automated storage media (e.g., microfilm, microfiche, magnetic tape and disks). Such information may be accessed through BDN, Virtual VA, Corporate WINRS, and VETSNET terminals. BDN, Virtual VA, Corporate WINRS, and VETSNET terminal locations include VA Central Office, regional offices, VA health care facilities, Veterans Integrated Service Network (VISN) offices, Department of Defense Finance and Accounting Service Centers and the U.S. Coast Guard Pay and Personnel Center. Remote on-line access is also made available to authorized remote sites, representatives of claimants and to attorneys of record for claimants. A VA claimant must execute a prior written consent or a power of attorney authorizing access to his or her claims records before VA will allow the representative or attorney to have access to the claimant's automated claims records. Access by representatives and attorneys of record is to be used solely for the purpose of assisting an individual claimant whose records are accessed in a claim for benefits administered by VA. Information relating to receivable accounts owed to VA, designated the Centralized Accounts Receivable System (CARS), is maintained on magnetic tape, microfiche and microfilm. CARS is accessed through a data telecommunications terminal system at St. Paul, Minnesota.

RETRIEVABILITY:

File folders, whether paper or electronic, are indexed by name of the individual and VA file number. Automated records are indexed by name, VA file number, payee name and type of benefit. Automated Records of employee productivity cannot be accessed. At the conclusion of a monthly reporting period, the generated listing is indexed by employee BDN identification number. Records in CAIVRS may only be retrieved by social security number.

SAFEGUARDS:

1. Physical Security:

(a) Access to working spaces and claims folder file storage areas in VA regional offices and centers is restricted to VA employees on a need-to-know basis. Generally, file areas are locked after normal duty hours and the offices and centers are protected from outside access by the Federal Protective Service or other security personnel. Employee claims folder records and claims folder records of public figures are stored in separate locked files. Strict control measures are enforced to ensure that access to and disclosure from these claims folder records are limited to a need-to-know basis.

(b) Access to BDN, Virtual VA, Corporate WINRS, and VETSNET data telecommunication networks are by authorization controlled by the site security officer who is responsible for authorizing access to the BDN, Virtual VA and VETSNET by a claimant's representative or attorney approved for access in accordance with VA regulations. The site security officer is responsible for ensuring that the hardware, software and security practices of a representative or attorney satisfy VA security requirements before granting access. The security requirements applicable to the access of automated claims folders by VA employees also apply to the access of automated claims folders by claimants' representatives or attorneys. The security officer is assigned responsibility for privacy-security measures, especially for review of violation logs, information logs and control of password distribution, including password distribution for claimants' representatives.

(c) Access to data processing centers is generally restricted to center employees, custodial personnel, Federal Protective Service and other security personnel. Access to computer rooms is restricted to authorized operational personnel through electronic locking devices. All other persons provided access to computer rooms are escorted.

(d) Employee production records are identified by the confidential BDN and VETSNET employee identification number, and are protected by management/supervisory personnel from unauthorized disclosure in the same manner as other confidential records maintained by supervisors.

2. BDN, Virtual VA and VETSNET System Security:

(a) Usage of the BDN, Virtual VA, Corporate WINRS and VETSNET systems is protected by the usage of ''login'' identification passwords and authorized function passwords. The passwords are changed periodically. These same protections apply to remote access users.

(b) At the data processing centers, identification of magnetic tapes and disks containing data is rigidly enforced using labeling techniques. Automated storage media, which are not in use, are stored in tape libraries, which are secured in locked rooms. Access to programs is controlled at three levels: Programming, auditing and operations. Access to the data processing centers where HUD maintains CAIVRS is generally restricted to center employees and authorized subcontractors. Access to computer rooms is restricted to center employees and authorized operational personnel through electronic locking devices. All other persons granted access to computer rooms are escorted. Files in CAIVRS use social security numbers as identifiers. Access to information files is restricted to authorized employees of participating agencies and authorized employees of lenders who participate in the agencies' programs. Access is controlled by agency distribution of passwords. Information in the system may be accessed by use of a touch-tone telephone by authorized agency and lender employees on a ''need-to-know'' basis.

RETENTION AND DISPOSAL:

Compensation, pension, and vocational rehabilitation claims folders are retained at the servicing regional office until they are inactive for three years, after which they are transferred to the Records Management Center (RMC) for the life of the veteran. Official legal documents (e.g., birth certificates, marriage licenses) are returned to the claimant after copies are made for the claimant's file. At the death of the veteran, these records are sent to the Federal Records Center (FRC), and maintained by the National Archives and Records Administration (NARA) in accordance with NARA policy. Some claims folders are electronically imaged; in which case, the electronic folder is maintained in the same manner as the claims folder. Once a file is electronically imaged and accepted by VBA, its paper contents (with the exception of documents that are the official property of the Department of Defense, and official legal documents), are destroyed in accordance with Records Control Schedule VB–1 Part 1 Section XIII, as authorized by NARA. Documents that are the property of the Department of Defense are either stored at the RMC, or transferred to NARA and maintained in accordance with NARA policy.

Vocational Rehabilitation counseling records are maintained until the exhaustion of a veteran's maximum entitlement or upon the exceeding of a veteran's delimiting date of eligibility (generally, ten or twelve years from discharge or release from active duty), whichever occurs first, and then destroyed. Automated storage media containing temporary working information are retained until a claim is decided, and then destroyed. All other automated storage media are retained and disposed of in accordance with

disposition authorization approved by NARA.

Education electronic folders are retained at the servicing Regional Processing Office. Education folders may be destroyed in accordance with the times set forth in the Veterans Benefits Administration Records Management, Records Control Schedule VB–1, Part 1, Section VII, as authorized by NARA.

Employee productivity records are maintained for two years after which they are destroyed by shredding or burning. File information for CAIVRS is provided to HUD by VA on magnetic tape. After information from the tapes has been read into the computer the tapes are returned to VA for updating. HUD does not keep separate copies of the tapes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Compensation and Pension Service (21), 810 Vermont Avenue, NW., VA Central Office, Washington, DC 20420.

Director, Education Service (22), 810 Vermont Avenue, NW., VA Central Office, Washington, DC 20420.

Director, Vocational Rehabilitation and Employment Service (28), 810 Vermont Avenue, NW., VA Central Office, Washington, DC 20420.

NOTIFICATION PROCEDURE:

An individual who wishes to determine whether a record is being maintained in this system under his or her name or other personal identifier, or who wants to determine the contents of such record, should submit a written request or apply in person to the nearest VA regional office or center. Address locations are listed in VA Appendix 1 at the end of this document. VA employees wishing to inquire whether the system of records contains employee productivity information about themselves should contact their supervisor at the regional office or center of employment.

RECORD ACCESS PROCEDURES:

Individuals seeking information regarding access to and contesting of VA records may write, call or visit the nearest VA regional office. Address locations are listed in VA Appendix 1.

CONTESTING RECORD PROCEDURES:

(See Record access procedures above.)

RECORD SOURCE CATEGORIES:

Veterans, service members, reservists, spouses, surviving spouses, dependents and other beneficiaries of the veteran, accredited service organizations, VA-supervised fiduciaries (i.e., VA Federal fiduciaries, court-appointed fiduciaries), military service departments, VA medical facilities and physicians, private medical facilities and physicians, education and rehabilitation training establishments, State and local agencies, other Federal agencies, State, local, and county courts and clerks, Federal, State, and local penal institutions and correctional facilities, other third parties and other VA records.

VA Appendix 1

VA Facilities

Patients should call the telephone numbers listed to obtain clinic hours of operation and services.

For more information or to search for a facility near you by zip code, visit *http://www1.va.gov/directory/guide/home.asp?isFlash=1.*

Please send address and telephone number corrections to: Department of Veterans Affairs, Federal Benefits for Veterans and Dependents (80D), 810 Vermont Ave., NW., Washington, DC 20420.

ALABAMA

VA Medical Centers

Birmingham 35233 (700 S. 19th St., 205–933–8101 or 800–872–0328).
Montgomery 36109–3798 (215 Perry Hill Rd., 334–272–4670 or 800–214–8387).
Tuscaloosa 35404 (3701 Loop Rd., East, 205–554–2000 or 888–269–3045).
Tuskegee 36083–5001 (2400 Hospital Rd., 334–727–0550 or 800–214–8387).

Clinics

Bessemer 32055 (975 9th Ave., SW–Suite 400 at UAB West Medical Center West Bessemer, 205–428–3495).
Dothan 36301 (2020 Alexander Dr., 334–673–4166).
Dothan Mental Health Center 36301 (3753 Ross Clark Cir Ste 4, 334–678–1903).
Gadsden 35906 (206 Rescia Ave., 256–413–7154).
Huntsville 35801 (301 Governor's Dr., 256–535–3100).
Jasper 35501 (3400 Highway 78 East—Suite #215, 205–221–7384).
Madison 35758 (8075 Madison Blvd., Suite 101, 256–772–6220).
Mobile 36604 (1504 Springhill Ave., 251–219–3900).
Oxford 36203 (96 Ali Way Creekside South, 256–832–4141).
Sheffield 35660 (Florence Shoals Area Clinic: 422 DD Cox Blvd., 256–381–9055).

Regional Office

Montgomery 36109 (345 Perry Hill Rd., statewide 1–800–827–1000).

Vet Centers

Birmingham 35233 (1500 5th Ave. S., 205–731–0550).
Mobile 36606 (2577 Government Blvd., 251–478–5906).

National Cemeteries

Birmingham-Montevallo 35115 (731 Middle St., 205–665–9039).
Fort Mitchell 36856 (553 Hwy. 165, Fort Mitchell, 334–855–2184).
Mobile 36604 (1202 Virginia St., 850–453–4846).

ALASKA

VA Medical Center

Anchorage 99508–2989 (2925 DeBarr Rd., 888–353–7574/907–257–4700).

Clinics

Fort Wainwright 99703 (Bldg 4076, Neeley Rd., Room 1J–101, Mailing Address: P.O. Box 74570, Fairbanks, AK 99707, 907–361–6370).
Kenai 99669 (11312 Kenai Spur Highway, #39, 907–283–2231).

Regional Office

Anchorage 99508–2989 (2925 De Barr Rd., statewide 1–800–827–1000).

Benefits Office

Juneau 99802 (P.O. Box 20069, 907–586–7472).

Vet Centers

Anchorage 99508 (4201 Tudor Centre Dr., Suite 115, 907–563–6966).
Fairbanks 99701 (540 4th Ave., Suite 100, 907–456–4238).
Kenai 99669 (Red Diamond Ctr., Bldg. F, #4, 43335 Kalifornsky Beach Rd., 907–260–7640).
Wasilla 99654 (851 E. West Point Dr., Suite 111, 907–376–4318).

National Cemeteries

Fort Richardson 99505–5498 (Building 997, Davis Hwy., 907–384–7075).
Sitka 99835 (803 Sawmill Creek Rd., 907–384–7075).

AMERICAN SAMOA

Clinic

Pago Pago 96799 (Fiatele Teo Army Reserve Bldg, Mailing Address: PO Box 1005, Pago Pago, AS 96799, 684–699–3730).

Benefits Office

Pago Pago 96799 (PO Box 1005, 684–633–5073).

ARIZONA

VA Medical Centers

Prescott 86313 (500 N. Hwy 89, 928–445–4860 or 800–949–1005).
Tucson 85723 (3601 South 6th Avenue, 520–792–1450 or 800–470–8262).
Phoenix 85012 (650 E. Indian School Rd., 602–277–5551 or 800–554–7174).

Clinics

Anthem 85086 (Anthem Medical Plaza, 3618 W. Anthem Way, Building D, #120, 623–551–6092).
Bellemont 86015–6196 (P.O. Box 16196, Camp Navajo Army Depot, 928–226–1056).
Buckeye 85326 (306 E. Monroe, 623–386–4814).
Casa Grande 85222 (900 E. Florence Blvd, Suites H & I, 520–629–4900).
Cottonwood 86326 (203 Candy Lane Building 5B, 928–649–1523 or 1532).
Globe 85501 (5860 S. Hospital Dr., Suite 11, 928–425–0027).

Green Valley 85614 (380 W. Hermosa Drive #140, 520–629–4900 or 800–470–8262).
Kingman 86401 (1726 Beverly Ave., 928–692–0080 or 928–445–4860x6830).
Lake Havasu City 86403 (2035 Mesquite, Suite E, 928–680–0090).
Mesa 85212–6033 (6950 E. Williams Field Road, Bldg. 23, 602–222–6568/3315).
Payson 85541 (1106 N. Beeline Highway, 928–472–3148).
Safford 85546 (711 South 14th Ave., 520–629–4900).
Show Low 85901 (2450 Show Low Lake Rd, Suite 1, 928–532–1069).
Sierra Vista 85635 (101 Coronado Dr., Suite A, 520–792–1450).
Sun City 85351 (10147 Grand Ave., Suite C1, 602–222–2630) Tuscon 85741 (2945 W. Ina Rd., 520–629–4900).
Yuma 85365 (2555 E. Gila Ridge Rd., 520–629–4900).

Regional Office

Phoenix 85012 (3333 N. Central Ave., statewide 1–800–827–1000).

Vet Centers

Phoenix 85012 (77 E. Weldon Ave., Suite 100, 602–640–2981).
Phoenix-East Valley 85202 (1303 S. Longmore, Suite 5, Mesa, 480–610–6727).
Prescott 86303 (161 S. Granite St., Suite B, 928–778–3469).
Tucson 85719 (3055 N. 1st Ave., 520–882–0333).

National Cemeteries

Nat. Mem. Cem. of AZ 85024 (23029 N. Cave Creek Rd., Phoenix, 480–513–3600).
Prescott 86301 (500 Hwy. 89 N., 480–513–3600).

ARKANSAS

VA Medical Centers

Fayetteville 72703 (1100 N. College Ave., 479–443–4301 or 800–691–8387).
Little Rock 72205–5484 (4300 West 7th St., 501–257–1000).
North Little Rock 72114–1706 (2200 Fort Roots Dr., 501–257–1000).

Clinics

El Dorado 71730 (460 W Oak St, 870–862–2489).
Ft Smith 72917 (1500 Dodson Ave., Sparks Med., 479–709–6850 or 1–877–604–0798).
Harrison 72601 (707 N Main St., 870–741–3592).
Hot Springs 71913 (1661 Airport Rd, Suite E, 501–881–4112).
Jonesboro 72401 (223 E Jackson, 870–972–0063).
Mena 71953 (1706 Hwy. 71 N, 479–394–4800).
Mountain Home 72653 (#10 Medical Plaza, 870–424–4109).
Paragould 72450 (1101 Morgan St., 870–236–9756).
Pine Bluff 71603 (4010 Old Warren Road, 870–541–9300).
Texarkana 71854 (910 Realtor Ave., 870–216–2242).

Regional Office

North Little Rock 72114 (2200 Fort Roots Dr., Bldg. 65, statewide 1–800–827–1000).

Vet Center

North Little Rock 72114 (201 W. Broadway, Suite A, 501–324–6395).

National Cemeteries

Fayetteville 72701 (700 Government Ave., 479–444–5051).
Fort Smith 72901 (522 Garland Ave., 479–783–5345).
Little Rock 72206 (2523 Confederate Blvd., 501–324–6401).

CALIFORNIA

VA Medical Centers

Fresno 93703 (2615 E. Clinton Ave., 559–225–6100 or 888–826–2838).
Livermore 94550 (4951 Arroyo Rd., 925–373–4700).
Loma Linda 92357 (11201 Benton St., 909–825–7084 or 800–741–8387).
Long Beach 90822 (5901 E. 7th St., 562–826–8000 or 888–769–8387).
Los Angeles 90073 (11301 Wilshire Blvd., 310–478–3711 or 800–952–4852).
Sacramento 95655 (10535 Hospital Way, Mather, 800–382–8387 or 916–366–5366).
Menlo Park 94025 (795 Willow Rd., 650–416–9997).
Palo Alto 94304–1290 (3801 Miranda Avenue, 650–493–5000 or 800–455–0057).
San Diego 92161 (3350 La Jolla Village Drive, 858–552–8585 or 800–331–8387).
San Francisco 94121–1598 (4150 Clement Street, 415–221–4810 or 800–733–0502).

Clinics

Anaheim 92801 (Professional Center, 3rd Floor, #303, 1801 W. Romneya Dr., 714–780–5400).
Atwater 95301–5140 (3605 Hospital Road, Suite D, 209–381–0105).
Auburn 95603 (11985 Heritage Oaks Place, 530–889–0872 or 888–227–5404).
Bakersfield 93301 (1801 Westwind Dr., 661–632–1800).
Brawley 92227 (Imperial Valley, 528 G St., 760–344–9085).
Capitola 95010–3906 (1350 N. 41st St., Suite 102, 831–464–5519).
Chico 95926 (280 Cohasset Rd., 800–382–8387 or 530–879–5000).
Chula Vista 91910 (South Bay, 835 3rd Ave., 619–409–1600).
City of Commerce 90040 (East Los Angeles, 5426 E. Olympic Blvd., 323–725–7557).
Corona 92879 (800 Magnolia Ave., #101, 951–817–8820).
Escondido 92025 (815 E. Pennsylvania Ave., 760–466–7020).
Eureka 95501 (714 F St., 707–442–5335).
Fairfield 94535 (103 Bodin Cir, Travis Air Force Base, 800–382–8387 or 707–437–1800).
French Camp 95231 (Stockton Clinic, 7777 South Freedom Dr., 209–946–3400).
Gardena 90247 (1251 Redondo Beach Blvd, 3rd Floor, 310–851–4705).
Lancaster 93536 (Antelope Valley, 547 West Lancaster Blvd., 661–729–8655 or 800–515–0031).
Long Beach 90806 (Villages at Cabrillo: 2001 River Ave, Bldg 28, 562–388–8000).
Los Angeles 90012 (351 East Temple St., 213–253–2677).
Los Angeles 90073 (West LA Ambulatory Care, 11301 Wilshire Blvd., 310–268–3526).
Lynwood 90262 (3737 Martin Luther King Blvd. Suite 515, 310–537–6825).
Martinez 94553 (Clinic and Center for Rehabilitation & Extended Care, 150 Muir Rd., 800–382–8387 or 925–372–2000).
Modesto 95350 (1524 McHenry Ave., 209–557–6200).
Monterey 93955 (3401 Engineer Lane, Seaside, 831–883–3800).
North Hills 91343: (Sepulveda Clinic and Nursing Home, 16111 Plummer St., 818–891–7711 or 800–516–4567).
Oakland 94626 (Mental Health Clinic: 2505 West 14th St., Oakland Army Base, 800–382–8387 or 510–587–3400).
Oakland 94612 (2221 Martin Luther King Jr. Way, 800–382–8387 or 510–267–7800).
Oxnard 93030 (250 W. Citrus Grove Ave., Ste 150, 805–983–6384).
Palm Desert 92211 (41–865 Boardwalk, Suite 103, 760–341–5570).
Redding 96002 (351 Hartnell Ave., 800–382–8387 or 530–226–7555).
Sacramento 95655 (Mental Health Clinic at Mather, 10633 Grissom Rd., 800–382–8387 or 916–366–5420).
Sacramento 95652 (McClellan Dental Clinic, 5401 Arnold Ave., 800–382–8387 or 916–561–7800).
Sacramento 95652 (McClellan Outpatient Clinic, 5342 Dudley Blvd., 800–382–8387 or 916–561–7400).
San Bruno 9406 (1001 Sneath Lane, Suite 300, Third Floor, 650–615–6000).
San Diego 92108 (Mission Valley, 8810 Rio San Diego Dr., 619–400–5000).
San Francisco 94107 (Downtown Clinic, 401 3rd St., 415–551–7300).
San Gabriel 91776 (Pasadera, 420 W. Las Tunas Drive, 626–289–5973).
San Jose 95119 (80 Great Oaks Boulevard, 408–363–3011).
San Luis Obispo 93401 (Pacific Med. Plaza, 1288 Morro St., Ste.200, 805–543–1233).
Santa Ana 92704 (Bristol Medical, 2740 S. Bristol St., 1st Floor, #101, 714–825–3500).
Santa Barbara 93110 (4440 Calle Real, 805–683–1491).
Santa Fe Springs 90670 (10210 Orr & Day Rd., 562–864–5565).
Santa Maria 93454 (1550 East Main St., 805–354–6000).
Santa Rosa 95404 (3315 Chanate Rd., 707–570–3855 or 570–3800) Seaside 93955 (Monterey Clinic, 3401 Engineering Lane, 831–883–3800).
Sonora 95370 (19747 Greenley Rd., 209–588–2600).
Stockton 95231 (500 West Hospital Rd., 209–946–3400).
Sun City 92586 (28125 Bradley Road, Suite 130, 951–672–1931).
Tulare 93274 (VA South Valley Clinic, 1050 N. Cherry St., 559–684–8703).
Ukiah 95482 (630 Kings Court 707–468–7700).
Upland 91786 (1238 E. Arrow Highway, No. 100, 909–946–5348).
Vallejo 94592 (Mare Island Clinic, 201 Walnut Ave., 800–382–8387 or 707–562–8200).
Victorville 92392 (12138 Industrial Boulevard, Suite 120, 760–951–2599).

Vista 92083 (1840 West Drive, 760–643–2000).

Regional Offices

Los Angeles 90024 (Fed. Bldg., 11000 Wilshire Blvd., serving counties of Inyo, Kern, Los Angeles, San Bernardino, San Luis Obispo, Santa Barbara and Ventura, statewide 1–800–827–1000).
Oakland 94612 (1301 Clay St., Rm. 1300 North, serving all CA counties not served by the Los Angeles, San Diego, or Reno VA Regional Offices, 1–800–827–1000).
San Diego 92108 (8810 Rio San Diego Dr., serving Imperial, Orange, Riverside and San Diego, statewide 1–800–827–1000). The counties of Alpine, Lassen, Modoc, and Mono are served by the Reno, NV, Regional Office.

Benefits Office

Sacramento 95827 (10365 Old Placerville Rd., 916–364–6500).

Vet Centers

Anaheim 92805 (859 S. Harbor Blvd., 714–776–0161).
Chico 95926 (280 Cohasset Rd., Suite 100, 530–899–8549).
Concord 94520 (1899 Clayton Rd., Suite 140, 925–680–4526).
Corona 92879 (800 Magnolia Ave., 110, 951–734–0525).
East Los Angeles 90022 (5400 E. Olympic Blvd., 140, 323–728–9966).
Eureka 95501 (2830 G St., Suite A, 707–444–8271).
Fresno 93726 (3636 N. 1st St., Suite 112, 559–487–5660).
Gardena 90247 (1045 W. Redondo Beach Blvd., 150, Gardena, 310–767–1221).
West Los Angeles 90230 (5730 Uplander Way, Suite 100, Culver City, 310–641–0326).
Modesto 95351 (1219 N. Carpenter Rd., #11 & 12, 209–527–1359 or 209–527–5961).
Oakland 94612 (1504 Franklin St., 200, 510–763–3904).
Redwood City 94062 (2946 Broadway St., 650–299–0672).
Rohnert Park 94928 (6225 State Farm Dr., Suite 101, 707–586–3295).
Sacramento 95825 (1111 Howe Ave., Suite 390, 916–566–7430).
San Bernardino 92408 (155 West Hospitality Lane, Suite 140, 909–890–0797).
San Diego 92103 (2900 6th Ave., 619–294–2040).
San Francisco 94102 (505 Polk St., 415–441–5051).
San Jose 95112 (278 N. 2nd St., 408–993–0729).
San Marcos 92069 (1 Civic Center Dr., Suite 140, 760–744–6914).
Santa Cruz 95010 (1350 41st Ave., Suite 102, 831–464–4575).
Sepulveda 91343 (9737 Haskell Ave., 818–892–9227).
Ventura 93001 (790 E. Santa Clara, Suite 100, 805–585–1860).

National Cemeteries

Fort Rosecrans 92106 (P.O. Box 6237, Point Loma, San Diego, 619–553–2084).
Golden Gate 94066 (1300 Sneath Ln., San Bruno, 650–589–7737).
Los Angeles 90049 (950 South Sepulveda Blvd., 310–268–4675).
Riverside 92518 (22495 Van Buren Blvd., 951–653–8417).
Sacramento Valley VA 95620 (5810 Midway Rd., Dixon, 707–693–2460).
San Francisco 94129 (1 Lincoln Blvd., Presidio of San Francisco, 650–589–7737).
San Joaquin Valley 95322 (32053 West McCabe Rd., Santa Nella, 209–854–1040).

COLORADO

Medical Centers

Denver 80220 (1055 Clermont Street, 303–399–8020 or toll free 888–336–8262).
Grand Junction 81501 (2121 North Avenue, 970–242–0731 or toll free 866–206–6415).

Health Administration Center

Denver 80209 (3773 Cherry Creek North Dr., 303–331–7500).

Clinics

Alamosa 81101 (San Luis Valley Clinic/Sierra Blanca Med. Ctr. 622 Del Sol Drive, 719–587–6800 or toll free 1–866–659–0930).
Aurora 80045 (13001 East 17th Place, Bld. 500, 2nd Floor, West Wing, 303–724–0190).
Burlington 80807 (1177 Rose Avenue, 719–346–5239).
Colorado Springs 80905 (25 North Spruce St., 719–327–5660 or 800–278–3883).
Craig 81625 (551 Tucker Street, 970–824–9721 or 970–242–0731).
Durango 81301 (400 S. Camino Del Rio, 970–247–2214).
Ft. Collins 80524 (1100 Poudre River Drive, 970–224–1550).
Greeley 80631 (2020 16th St., 970–313–0027).
La Junta 81050 (1100 Carson Ave., Suite 104, 719–383–5195).
Lakewood 80225 (155 Van Gordon St., Suite 395, 303–914–2680).
Lamar 81052 (High Plains Community Health Center 201 Kendall Dr., 719–336–5972).
Montrose 81401 (4 Hillcrest Plaza Way, 970–249–7791 or 970–242–0731).
Pueblo 81008 (4112 Outlook Boulevard, 719–553–1000 or 800–369–6748).

Regional Office

Denver 80225 (Mailing Address PO Box 25126. Physical Address 155 Van Gordon St., Lakewood, 80228, statewide 1–800–827–1000).

Vet Centers

Boulder 80302 (2336 Canyon Blvd., Suite 103, 303–440–7306).
Colorado Springs 80903 (416 E. Colorado Ave., 719–471–9992).
Denver 80230 (7465 E. First Ave., Ste. B, 303–326–0645).
Grand Junction 81505 (2472 F. Rd. Unit 16, 970–245–4156).

National Cemeteries

Fort Logan 80236 (4400 W. Kenyon Ave., Denver, 303–761–0117).
Fort Lyon 81504 (15700 County Road HH, Las Animas, 303–761–0117).

CONNECTICUT

VA Medical Centers

Newington 06111 (555 Willard Ave., 860–666–6951).
West Haven 06516 (950 Campbell Avenue, 203–932–5711).

Clinics

Danbury 06810 (7 Germantown Rd., Suite 2B, 203–798–8422).
New London 06320 (Shaw's Cove Four, 860–437–3611).
Stamford 06905 (1275 Summer St, Suite 102, 203–325–0649).
Waterbury 06706 (95 Scovill St., 203–465–5292).
Windham 06226 (Windham Hospital, 96 Mansfield St., 860–450–7583).
Winsted 06908 (Winsted Health Center, 115 Spencer St., 860–738–6985).

Regional Office

Hartford (Bldg 2E—RM 5137, 555 Willard Ave.; Newington, 06111–2693, statewide 1–800–827–1000).

Vet Centers

Wethersfield 06109 (30 Jordan Lane, 860–563–2320).
Norwich 06360 (2 Cliff St., 860–887–1755).
West Haven 06516 (141 Captain Thomas Blvd., 203–932–9899).

DELAWARE

VA Medical Center

Wilmington 19805 (1601 Kirkwood Highway, 302–994–2511 or 800–461–8262).

Clinics

Millsboro 19966 (214 W. DuPont Highway, 302–934–0195).
Seaford 19973 (121 S Front St., 302–628–8324).

Regional Office

Wilmington 19805 (1601 Kirkwood Hwy., local, 302–994–2511).

Vet Center

Wilmington 19805 (1601 Kirkwood Hwy., Bldg. 3, 302–994–1660).

DISTRICT OF COLUMBIA

VA Medical Center

Washington 20422 (50 Irving Street, NW., 202–745–8000 or 888–553–0242).

Clinic

Washington 20032 (820 Chesapeake Street, SE., 202–745–8685).

Regional Office

Washington, D.C., 20421 (1722 I St., N.W., local, 1–800–827–1000).

Vet Center

Washington, DC 20011 (1250 Taylor St., NW., 202–726–5212).

FLORIDA

VA Medical Centers

Bay Pines 33744 (10000 Bay Pines Blvd., Mailing Address P.O. Box 5005, Bay Pines, FL 33744, 727–398–6661/888–820–0230).

Gainesville 32608–1197 (1601 SW. Archer Rd., 352–376–1611 or 800–324–8387).
Lake City 32025–5808 (619 S. Marion Avenue, 386–755–3016 or 800–308–8387).
Miami 33125 (1201 N.W. 16th St., 305–575–7000 or 888–276–1785).
Orlando 32803 (5201 Raymond St., 407–629–1599 or 800–922–7521).
Tampa 33612 (13000 Bruce B. Downs Blvd., 813–972–2000 or 888–716–7787).
West Palm Beach 33410–6400 (7305 N. Military Trail, 561–422–8262 or 800–972–8262).

Clinics

Boca Raton 33433 (901 Meadows Rd., 561–416–8995).
Brooksville 34613 (14540 Cortez Blvd., Suite 200, 352–597–8287).
Coral Springs 33065 (9900 West Sample Road, Suite 100, 954–575–4940).
Daytona Beach 32114 (551 National Health Care Dr., 386–323–7500).
Deerfield Beach 33442 (2100 S.W. 10th St., 954–570–5572).
Delray Beach 33445 (4800 Linton Blvd., Building E, Suite 300, 561–495–1973).
Dunedin 34698 (1721 Main St., 727–734–5276).
Ellenton 34222 (4333 U.S. Highway 301 North, 941–721–0649).
Fort Myers 33916 (3033 Winkler Extension, 239–939–3939).
Ft. Pierce 34950 (727 North US 1, 772–595–5150).
Hollywood 33021 (3702 Washington St., Suite 201, 954–986–1811).
Hollywood 33024 (Pembroke Pines, 7369 W. Sheridan St., Suite 102, 954–894–1668).
Homestead 33030 (950 Krome Avenue, Suite 401, 305–248–0874).
Jacksonville 32206 (1833 Boulevard, 904–232–2751).
Key Largo 33037 (105662 Overseas Highway, 305–451–0164).
Key West 33040 (1300 Douglas Circle, Building L–15, 305–293–4609).
Kissimmee 34741 (2285 North Central Avenue, 407–518–5004).
Lakeland 33803 (3240 S. Florida Avenue, 863–701–2470) Lecanto 34461 (2804 W. Marc Knighton Ct., Suite A, 352–746–8000).
Leesburg 34748 (711 W. Main St., 352–435–4000).
Miami 33135 (Healthcare for Homeless Vets., 1492 West Flagler St., 305–541–5864).
Miami 33135 (Substance Abuse Clinic, 1492 West Flagler St., #101, 305–541–8435).
Naples 34104 (2685 Horseshoe Drive—Suite 101, 239–659–9188).
New Port Richey 34654 (9912 Little Road, 727–869–4100).
Oakland Park 33334–3496 (Ft Lauderdale, 5599 North Dixie Highway, 954–771–2101).
Ocala 34470 (1515 Silver Springs Blvd., 352–369–3320).
Okeechobee 34972 (1201 N. Parrot Avenue, 863–824–3232).
Panama City Beach 32407 (6703 West Highway 98, 850–636–7000).
Panama City Beach 32407–7018 (Naval Support Activity-Panama City, 101 Vernon Ave #387, 850–636–7000).
Pembroke Pines (Pembroke Pines, 7369 W. Sheridan St., Suite 102, 954–894–1668).
Pensacola 32503 (312 Kenmore Road, 850–476–1100).
Port Charlotte 33952 (4161 Tamiami Trail Unit 4, 941–235–2710).
Sanford 32771 (1403 Medical Plaza Drive, Suite 109, 407–323–5999).
Sarasota 34233 (5682 Bee Ridge Rd., Suite 100, 941–371–3349).
Sebring 33870 (3760 U.S. Highway 27 South, 863–471–6227, Mental Health Phone 863–314–0325).
St. Augustine 32086 (1955 U.S. 1 South, Suite 200, 904–829–0814 or 866–401–8387).
St. Petersburg 33711 (3420 8th Avenue South, 727–322–1304).
Stuart 34997 (3501 S E Willoughby Boulevard, 772–288–0304).
Tallahassee 32308 (1607 St. James Ct., 850–878–0191).
The Villages 32162 (Laurel Lake Prof. Park, 1950 Laurel Manor Dr., Bldg. 240, 352-205–8900).
Vero Beach 32960 (372 17th Street, 772–299–4623).
Viera 32940 (2900 Veterans Way, 321–637–3788).
Zephyrhills 33541 (6937 Medical View Ln., 813–780–2550).

Regional Office

St. Petersburg 33708 (mailing address: P.O. Box 1437, 33731; physical address: 9500 Bay Pines Blvd., statewide 1–800–827–1000).

Benefits Offices

Fort Lauderdale 33301 (VR&E, 299 East Broward Blvd., Room 324, 1–800–827–1000).
Jacksonville 32256 (VR&E, 7825 Baymeadows Way, Suite 120–B, 1–800–827–1000).
Orlando 32801 (1000 Legion Pl., VRE–Suite 1500, C&P–Suite 1550, 1–800–827–1000).
Pensacola 32503–7492 (C&P, 312 Kenmore Rd., Rm. 1G250, 1–800–827–1000).
West Palm Beach 33410 (C&P, 7305 North Military Tr., Suite 1A–167, 1–800–827–1000).

Vet Centers

Ft. Lauderdale 33304 (713 N.E. 3rd Ave., 954–356–7926).
Gainesville 32607 (105 NW 75th St., Suite 2, 352–331–1408).
Jacksonville 32202 (300 East State St., 904–232–3621).
Melbourne 32935 (2098 Sarno Rd., 321–254–3410).
Miami 33122 (8280 NW 27th St., Suite 511, 305–859–8387).
Orlando 32822 (5575 S. Semoran Blvd., Suite 36, 407–857–2800).
Palm Beach 33461 (2311 10th Ave., North 13, 561–585–0441).
Pensacola 32501 (4501 Twin Oaks Dr., 850–456–5886).
Sarasota 34231 (4801 Swift Rd., 941–927–8285).
St. Petersburg 33713 (2880 1st Ave., N., 727–893–3791).
Tallahassee 32303 (548 Bradford Rd., 850–942–8810).
Tampa 33604 (8900 N. Armenia Ave., Ste. 312, 813–228–2621).

National Cemeteries

Barrancas 32508–1054 (80 Hovey Rd., Naval Air Station, Pensacola, 850–453–4846).
Bay Pines 33504–0477 (10000 Bay Pines Blvd., North Bay Pines, 727–398–9426).
Florida 33513 (6502 SW 102nd Ave., Bushnell, 352–793–7740).
Jacksonville 32202 (300 N. Hogan St.).
St. Augustine 32084 (104 Marine St., 352–793–7740).
South Florida 33467 (6501 South State Road 7, Lake Worth, 561–649–6489).

GEORGIA

VA Medical Centers

Augusta 30904–6285 (1 Freedom Way, 706–733–0188 or 800–836–5561).
Decatur 30033 (1670 Clairmont Road, 404–321–6111 or 800–944–9726).
Dublin 31021 (1826 Veterans Blvd., 478–272–1210 or 800–595–5229).

Clinics

Aiken 29803 (951 Millbrook Rd., 803–643–9016).
Albany 31701 (417 4th Avenue, 229–446–9000).
Athens 30601 (9249 Highway 29, 706–227–4534).
Columbus 31906 (1310 13th St., 706–257–7200).
Decatur 30030 (755 Commerce Dr., 2nd Floor, 404–417–5200).
East Point 30344 (1513 Cleveland Ave., 404–321–6111 x2600).
Lawrenceville 30043 (1970 Riverside Pkwy, 404–417–1750).
Macon 31220 (5398 Thomaston Road, Suite B, 478–476–8868).
Oakwood 30566 (3931 Munday Mill Rd., 404–728–8212).
Rome 30161 (30 Chateau Dr, SE, 706–235–6581).
Savannah 31406 (325 West Montgomery Crossroads, 912–920–0214).
Smyrna 30082 (562 Concord Road, 404–417–1760).
Valdosta 31602 (2841 N. Patterson Street, 229–293–0132).

Regional Office

Decatur 30033 (1700 Clairmont Rd., statewide 1–800–827–1000).

Vet Centers

Atlanta 30324 (1440 Dutch Valley Place, Suite G, 404–347–7264).
Macon 31201 (750 Riverside Dr., 478–272–1210 ext. 3883/4).
Savannah 31406 (8110A White Bluff Rd., 912–652–4097).

National Cemeteries

Georgia 30114 (2025 Mt. Carmel Church Lane, Canton, 866–236–8159).
Marietta 30060 (500 Washington Ave., 866–236–8159).

GUAM

Clinic

Agana Heights 96919 (U.S. Naval Hospital, Bldg–1, E–200, Box 7608, 671–344–9200).

Benefits Office/Vet Center

Hagatna 96910 (Reflection Center, #201, 222 Chalan Santo Papa St., 671–472–7161).

HAWAII

Medical Center

Honolulu 96819–1522 (459 Patterson Rd., E Wing) (toll-free from Hawaii, Guam, Saipan, Rota and Tinian at 1–800–827–1000; toll-free from American Samoa at 1–877–899–4400).

Clinics

Hilo 96720 (1285 Wainuenue Ave., Suite 211, 808–935–3781).
Honolulu PTSD 96819 (3375 Koapaka St., 808–566–1546).
Kauai; Lihue 96766 (3–3367 Kuhio Hwy., Suite 200, 808–246–0497).
Kona; Kailua-Kona 96740 (75–377 Hualalai Rd., 808–329–0774).
Maui; Kahului 96732 (203 Ho'ohana St., Suite 303, 808–871–2454).

Regional Office

Honolulu 96819–1522 (459 Patterson Rd., E Wing. Mailing address: PO Box 29020, Honolulu, HI 96820) (toll-free from Hawaii, Guam, Saipan, Rota and Tinian, 1–800-827–1000; toll-free from American Samoa, 1–877–899–4400).

VR&E Benefits Offices

Hilo 96720 (1285 Waianuenue, 2nd Floor, 808–935–6691).
Kahului 96732 (203 Ho'ohana St., 808–873–9426).

Vet Centers

Hilo 96720 (120 Pu'uhonu St., Suite 2, 808–969–3833).
Honolulu 96814 (1680 Kapiolani Blvd., Suite F.3, 808–973–8387).
Kailua-Kona 96740 (Hale Kui Plaza, Suite 207, 73–4976 Kamanu St. 808–329–0574).
Lihue 96766 (3–3367 Kuhio Hwy., Suite 101, 808–246–1163).
Wailuku 96793 (35 Lunalilo, Suite 101, 808–242–8557).

National Cemetery

Nat. Cem. of the Pacific 96813–1729 (2177 Puowaina Dr., Honolulu, 808–532–3720).

IDAHO

Medical Center

Boise 83702 (500 West Fort St., 208–422–1000).

Clinics

Caldwell 83605 (120 E. Pine St., 208–454–4820).
Pocatello 83201 (444 Hospital Way, Suite 801, 208–232–6214).
Salmon 83467 (111 Lillian St., #203, 208–756–8515).
Twin Falls 83301 (260 2nd Ave, E., 208–732–0947).

Regional Office

Boise 83702 (805 W. Franklin St., statewide, 1–800–827–1000).

Vet Centers

Boise 83705 (5440 Franklin Rd., Suite 100, 208–342–3612).
Pocatello 83201 (1800 Garrett Way, 208–232–0316).

ILLINOIS

VA Medical Centers

Chicago 60612 (820 South Damen Ave., 312–569–8387).
Danville 61832–5198 (1900 East Main Street, 217–554–3000 or 800–320–8387).
Hines 60141 (5th & Roosevelt Rd., P.O. Box 5000, 708–202–8387).
Marion 62959 (2401 West Main, 618–997–5311).
North Chicago 60064 (3001 Green Bay Road, 847–688–1900 or 800–393–0865).

Clinics

Aurora 60506 (1700 N. Landmark Road, 630–859–2504).
Belleville 62223 (6500 W Main St., 314–286–6988).
Chicago 60620 (7731 S Halsted St., 773–962–3700).
Chicago 60611 (Lakeside, 333 E. Huron, 312–569–8387).
Chicago Heights 60411 (30 E. 15th Street, Suite 207, 708–756–5454).
Decatur 62526–9381 (3035 East Mound Road, 217–875–2670).
Effingham 62401 (1901 S 4th St., Suite 21, 217–347–7600).
Elgin 60123 (450 W. Dundee Rd., 847–742–5920).
Evanston 60202 (107—109 Clyde St., 847–869–6315).
Freeport 61032 (1301 Kiwanis Dr., 815–235–4881).
Galesburg 61401 (387 East Grove, 309–343–0311).
Joliet 60435 (2000 Glenwood Ave., 815–744–0492).
LaSalle 61301 (2970 Chartres, 815–223–9678).
Manteno 60950 (Illinois Veterans Home, One Veterans Dr., 815–468–1027).
McHenry 60050 (620 South Route 31, 815–759–2306).
Mt. Vernon 62864 (1 Doctors Park Rd., 618–246–2910).
Oak Lawn 60453 (4700 W. 95th St., 708–499–3675).
Oak Park 60302 (149 S. Oak Park Ave., 708–386–3008).
Peoria 61605–2400 (411 Dr. Martin Luther King Jr. Dr., 309–497–0790).
Quincy 62301 (721 Broadway, 217–224–3366).
Rockford 61108 (4940 East State St., 815–227–0081).
Springfield 62702 (700 North 7th Street, Suite C, 217–522–9730).

Regional Office

Chicago 60612 (2122 W. Taylor St., statewide 1–800–827–1000).

Vet Centers

Chicago 60620 (7731 S. Halsted St., Suite 200, 773–962–3740).
Chicago Heights 60411 (1600 S. Halsted St., 708–754–0340).
East St. Louis 62203 (1265 N. 89th St., Suite 5, 618–397–6602).
Evanston 60202 (565 Howard St., 847–332–1019).
Moline 61265 (1529 46th Ave., 6, 309–762–6954).
Oak Park 60302 (155 S. Oak Park Blvd., 708–383–3225).
Peoria 61603 (3310 N. Prospect Rd., 309–671–7300).
Springfield 62702 (624 S. 4th St., 217–492–4955).

National Cemeteries

Abraham Lincoln 60421 (27034 South Diagonal Rd., Elwood, 815–423–9958).
Alton 62003 (600 Pearl St., 314–260–8720).
Camp Butler 62707 (5063 Camp Butler Rd., Springfield, 217–492–4070).
Danville 61832 (1900 East Main St., 217–554–4550).
Mound City 62963 (Junction Highways 37 & 51, 314–260–8720).
Quincy 62301 (36th and Maine St., 309–782–2094).
Rock Island 61299–7090 (Rock Island Arsenal, Bldg. 118, 309–782–2094).

INDlANA

VA Medical Centers

Fort Wayne 46805 (2121 Lake Ave., 260–426–5431 or 800–360–8387).
Indianapolis 46202 (1481 W. 10th St., 317–554–0000 or 888–878–6889).
Marion 46953–4589 (1700 East 38th St., 765–674–3321 or 800–360–8387).

Clinics

Bloomington 47403 (455 South Landmark Avenue, 812–336–5723, or toll free 877–683–0865).
Crown Point 46307 (9330 S. Broadway, 219–662–5000).
Evansville 47713 (500 E Walnut St., 812–465–6202).
Greendale 47025 (1600 Flossie Dr., 812–539–2313).
Muncie 47304–6357 (3500 W. Purdue Ave., 765–284–6822).
New Albany 47150 (811 Northgate Blvd, 502–287–4100).
Richmond 47374 (4351 South A St., 765–973–6915).
South Bend 46614–9668 (5735 S. Ironwood Road, 574–299–4847).
Terre Haute 47802 (110 W Honeycreek Pkwy, 812–232–2890).
West Lafayette 47906 (3851 N. River Road, 765–464–2280).

Regional Office

Indianapolis 46204 (575 N. Pennsylvania St., statewide 1–800–827–1000).

Vet Centers

Evansville 47711 (311 N. Weinbach Ave., 812–473–5993 or 473–6084).
Fort Wayne 46802 (528 West Berry St., 260–460–1456).
Merrillville 46410 (6505 Broadway Ave., 219–736–5633).
Indianapolis 46208 (3833 N. Meridian St., Suite 120, 317–927–6440).

National Cemeteries

Crown Hill 46208 (700 W. 38th St., Indianapolis, 765–674–0284).
Marion 46952 (1700 E. 38th St., 765–674–0284).
New Albany 47150 (1943 Ekin Ave., 502–893–3852).

IOWA

VA Medical Centers

Des Moines 50310–5774 (3600 30th St., 515–699–5999 or 800–294–8387).
Iowa City 52246–2208 (601 Highway 6 West, 319–338–0581 or 800–637–0128).
Knoxville 50138 (1515 W. Pleasant Street, 641–842–3101 or 800–816–8878).

Clinics

Bettendorf 52722 (2979 Victoria St., 563–332–8528).
Dubuque 52001 (Mercy Health Center, 250 Mercy Dr., 563–589–8899).
Fort Dodge 50501 (2419 2nd Avenue N, 515–576–2235).
Mason City 50401 (520 S. Pierce, Suite 150, 641–421–8077).
Sioux City 51104 (1551 Indian Hills Drive, Suite 206, 712–258–4700).
Spirit Lake 51360 (1310 Lake St., 712–336–6400).
Waterloo 50701 (1015 S Hackett Rd., 319–235–1230).

Regional Office

Des Moines 50309 (210 Walnut St., Rm. 1063, statewide 1–800–827–1000).

Vet Centers

Cedar Rapids 52402 (1642 42nd St. N.E., 319–378–0016).
Des Moines 50310 (2600 Martin Luther King Jr. Pkwy., 515–284–4929).
Sioux City 51104 (1551 Indian Hills Dr., Suite 214, 712–255–3808).

National Cemetery

Keokuk 52632 (1701 J St., 309–782–2094).

KANSAS

VA Medical Centers

Leavenworth 66048–5055 (4101 S. 4th St., 913–682–2000 or 800–952–8387).
Topeka 66622 (2200 SW, Gage Boulevard, 785–350–3111 or 800–574–8387).
Wichita 67218 (5500 E. Kellogg, 316–685–2221 or 888–878–6881).

Clinics

Abilene 67410 (510 NE 10th St., 785 263–2100 ext. 161).
Chanute 66720 (Neosho Memorial Medical Center, 629 South Plummer, 620–431–4000 ext. 1553).
Emporia 66801 (Newman Hospital, 919 W. 12th Avenue, Suite D, 620–342–7432).
Ft. Dodge 67801 (300 Custer, 1–888–878–6881 x41040).
Ft. Scott 66701 (Newman Young Clinic: 902 Horton St., 620–223–8400, ext 8655).
Garnett 66032 (Anderson County Hospital: 421 South Maple, 785–448–3131 ext. 309).
Hays 67601 (Hays Clinic: 207–B East Seventh, 1–888–878–6881 x41000).
Holton 66436 (Holton Comm. Hosp. 1110 Columbine Dr., 785–364–2116 x115 or 154).
Junction City 66441 (715 Southwind Dr., 800–574–8387 ext. 54670).
Kansas City 66102 (21 N 12th St., Bethany Med. Blg., #110, 1–800–952–8387 x56990).
Lawrence 66049 (2200 Harvard Road, 800–574–8387 ext. 54650) Liberal 67901 (Liberal Clinic: 2 Rock Island Road, Suite 200, 620–626–5574).
Paola 66071 (510 South Hospital Drive, 816–922–2160).
Parsons 67357 (1401 North Main Street, 1–888–878–6881 x41060).
Russell 67665 (Regional Hosp. Medical Arts Blg., 200 S. Main St., 785–483–3131x155).
Salina 67401 (1410 E. Iron, Suite 1, 1–888–878–6881 x41020).
Seneca 66538 (Nemaha Valley Hosp., 1600 Community Dr., 785–336–6181 x162).

Regional Office

Wichita 67218 (Robert J. Dole Regional Office, 5500 E. Kellogg Ave., 1–800–827–1000).

Vet Center

Wichita 67211 (413 S. Pattie, 316–265–3260).

National Cemeteries

Fort Leavenworth 66027 (395 Biddle Blvd., 913–758–4105).
Fort Scott 66701 (900 East National Ave., 620–223–2840).
Leavenworth 66048 (4101 South 4th St., Traffic Way, 913–758–4105).

KENTUCKY

VA Medical Centers

Lexington-Cooper Dr. Div. 40502 (1101 Veterans Dr., 859–233–4511 or 888–824–3577).
Lexington-Leestown Div. 40511 (2250 Leestown Rd., 859–233–4511 or 888–824–3577).
Louisville 40206 (800 Zorn Avenue, 502–287–4000 or 800–376–8387).

Clinics

Bellevue 41073 (103 Landmark Dr., 859–392–3840).
Bowling Green 42103 (Hartland Medical Plaza, 1110 Wilkinson Trace Cir., 270–796–3590).
Florence 41042 (7711 Ewing, 859–282–4480).
Ft. Campbell 42223 (Desert Storm Ave. Building 39, 270–798–4118).
Ft Knox 40121 (851 Ireland Loop, 502–624–9396).
Hanson 42413 (926 Veterans Drive, 270–322–8019).
Louisville 40207 (4010 Dupont Circle, 502–287–6986).
Louisville-Newburg 40218 (3430 Newburg Rd., 502–287–6223).
Louisville-Shively 40216 (3934 North Dixie Highway, Suite 210, 502–287–6000).
Louisville-Standiford Field 40213 (1101 Grade Ln., 502–413–4635).
Paducah 42001 (2620 Perkins Creek Dr., 270–444–8465).
Prestonsburg 41653 (Highlands Reg., Med., 5000 KY RT 321 Box 668, 606–886–1970).
Somerset 42503 (104 Hardin Ln., 606–676–0786).

Regional Office

Louisville 40202 (321 W. Main St., Ste., 390, statewide 1–800–827–1000).

Vet Centers

Lexington 40507 (301 E. Vine St., Suite C, 859–253–0717).
Louisville 40208 (1347 S. 3rd St., 502–634–1916).

National Cemeteries

Camp Nelson 40356 (6980 Danville Rd., Nicholasville, 859–885–5727).
Cave Hill 40204 (701 Baxter Ave., Louisville, 502–893–3852).
Danville 40442 (277 N. First St., 859–885–5727).
Lebanon 40033 (20 Highway 208, 502–893–3852).
Lexington 40508 (833 W. Main St., 859–885–5727).
Mill Springs 42544 (9044 West Highway 80, Nancy, 859–885–5727).
Zachary Taylor 40207 (4701 Brownsboro Rd., Louisville, 502–893–3852).

LOUISIANA

VA Medical Centers

Alexandria 71306 (: P. O. Box 69004, 318–473–0010 or 800–375–8387).
Shreveport 71101–4295 (510 E. Stoner Ave., 318–221–8411 or 800–863–7441).

Clinics

Baton Rouge 70809 (7968 Essen Park Ave., 225–761–3400).
Hammond 70403 (1131 South Morrison Ave., 985–902–5026).
Houma 70360 (1750 Martin Luther King Jr Blvd Ste 107, 985–851–0188).
Jennings 70546 (1907 Johnson St., 337–824–1000).
Lafayette 70501 (2100 Jefferson St., 337–261–0734).
LaPlace 70068 (501 Rue De Sante, Suite 10, 504–565–4705).
Monroe 71203 (250 De Siard Plaza Dr., 318–343–6100).
New Orleans 70161–1011 (1601 Perdido St., Mailing Address: P.O. Box 61011, 800–935–8387/504–412–3700).
Slidell 70461 (340 Gateway Dr., 1–800–935–8387).

Regional Office

Gretna 70056 (671A Whitney Ave., statewide 1–800–827–1000).

Vet Centers

Baton Rouge 70809 (5207 Essen Lane, Suite 2, 225–757–0045).
Kenner 70062 (2200 Veterans Blvd., Suite 114, 504–464–4743).
Shreveport 71104 (2800 Youree Dr., Bldg. 1, Suite 1, 318–861–1776).

National Cemeteries

Alexandria 71360 (209 E. Shamrock St., Pineville, 601–445–4981).
Baton Rouge 70806 (220 N. 19th St., 225–654–3767).
Port Hudson 70791 (20978 Port Hickey Rd., Zachary, 225–654–3767).

MAINE

VA Medical Center

Augusta 04330 (1 VA Center, 207–623–8411 or 877–421–8263).

Clinics

Bangor 04401 304 Hancock St., Suite 3B, 207–561–3600).
Calais 04619 (50 Union St., 207–904–3700).
Caribou 04736 (163 Van Buren Drive, Suite 6, 207–493–3800).

Lincoln 04457 (99 River Road, 207–403–2000).
Rumford 04726 (431 Franklin St., 207–369–3200).
Saco 04072 (655 Main St., 207–294–3100).

Vet Centers

Bangor 04401 (368 Harlow St., 207–947–3391).
Caribou 04619 (456 York St., York Street Complex, 207–496–3900).
Lewiston 04240 (Pkwy Complex, 29 Westminster St., 207–783–0068).
Portland 04103 (475 Stevens Ave., 207–780–3584).
Springvale 04083 (628 Main St., 207–490–1513).

National Cemetery

Togus 04330 (1 VA Center, 508–563–7113).

MARYLAND

VA Medical Centers

Baltimore 21201 (10 North Greene St., 410–605–7000 or 800–463–6295).
Baltimore-Rehabilitation and Extended Care Center 21218 (3900 Loch Raven Boulevard, 410–605–7000).
Perry Point 21902 (410–642–2411 or 800 949–1003).

Clinics

Baltimore-Loch Raven 21218 (3901 the Alameda, 410–605–7651).
Cambridge 21613 (830 Chesapeake Dr., 410–228–6243 or 877–864–9611).
Charlotte Hall 20622 (State Veterans Home, 29431 Charlotte Hall Rd., 301–884–7102).
Cumberland 21502 (200 Glenn St., 301–724–0061).
Fort Howard 21052 (9600 North Point Rd., 410–477–1800 or 800–351–8387).
Glen Burnie 21061 (808 Landmark Dr., Suite 128, 410–590–4140).
Greenbelt 20770 (7525 Greenway Center Dr., Professional Cntr., #T–4, 301–345–2463).
Hagerstown 21742 (Hub Plaza Bldg, 1101 Opal Ct., 301–665–1462).
Pocomoke 21851 (101B Market St., 410–957–6718).

Regional Office

Baltimore 21201 (31 Hopkins Plaza Federal Bldg., 1–800–827–1000).

Vet Centers

Baltimore 21207 (6666 Security Blvd., Suite 2, 410–277–3600).
Cambridge 21613 (5510 West Shore Dr., 410–228–6305 ext. 4123).
Elkton 21921 (103 Chesapeake Blvd., Suite A, 410–392–4485).
Silver Spring 20910 (1015 Spring St., Suite 101, 301–589–1073).

National Cemeteries

Annapolis 21401 (800 West St., 410–644–9696).
Baltimore 21228 (5501 Frederick Ave., 410–644–9696).
Loudon Park 21228 (3445 Frederick Ave., Baltimore, 410–644–9696).

MASSACHUSETTS

VA Medical Centers

Bedford 01730 (200 Springs Rd., 781–687–2000 or 800–422–1617).
Brockton 02301 (940 Belmont St., 508–583–4500).
Jamaica Plain 02130 (150 South Huntington Ave., 617–232–9500).
Leeds 01053–9764 (Northampton VA, 421 N Main St., 413–584–4040 or 800–893–1522).
West Roxbury 02132 (1400 VFW Parkway, 617–323–7700).

Clinics

Boston 02114 (251 Causeway St., 617–248–1000).
Dorchester 02121 (895 Blue Hill Ave, 617–822–7146).
Fitchburg 01420 (Burbank Hospital, 275 Nichols Rd., 978–342–9781).
Framingham 01702 (61 Lincoln St., Suite 112, 508–628–0205).
Gloucester 01930 (Addison Gilbert Hosp., 298 Washington St., 978–282–0676 x1782).
Greenfield 01301 (143 Munson St., 413–773–8428).
Haverhill 01830 (108 Merrimack St., 978–372–5207).
Hyannis 02601 (145 Falmouth Rd., 508–771–3190).
Lowell 01852 (130 Marshall Rd., 978–671–9000).
Lynn 01904 (225 Boston Rd., Suite 107, 781–595–9818).
Martha's Vineyard 02557 (Hospital Rd., 508–693–0410).
Nantucket 02554 (Nantucket Cottage Hospital, 57 Prospect St., 508–825–VETS).
New Bedford 02740 (174 Elm St., 508–994–0217).
Pittsfield 01201 (73 Eagle St., 413–443–4857).
Quincy 02169 (Quincy Medical Center, 2nd floor, 114 Whitwell St., 617–376–2010).
Springfield 01104 (25 Bond St., 413–731–6000).
Worcester 01605 (605 Lincoln St., 508–856–0104).

Regional Office

Boston 02203–0393 (JFK Federal Building, Room 1265, Government Center, statewide 1–800–827–1000) (Towns of Fall River & New Bedford, counties of Barnstable, Dukes, Nantucket, Bristol, part of Plymouth served by Providence, R.I., VA Regional Office).

Vet Centers

Boston 02215 (665 Beacon St., 617–424–0665).
Brockton 02401 (1041–L Pearl St., 508–580–2730).
Hyannis 02601 (474 West Main St., (508–778–0124).
Lowell 01852 (73 East Merrimack St., 978–453–1151).
New Bedford 02740 (468 North St., 508–999–6920).
Springfield 01103 (1985 Main St., Northgate Plaza, 413–737–5167).
Worcester 01605 (691 Grafton St., 508–753–7902).

National Cemetery

Massachusetts 02532 (Connery Ave., Bourne, 508–563–7113).

MICHIGAN

VA Medical Centers

Ann Arbor 48105 (2215 Fuller Rd., 734–769–7100 or 800–361–8387).
Battle Creek 49015 (5500 Armstrong Rd., 269–966–5600 or 888–214–1247).
Detroit 48201 (4646 John R. St., 313–576–1000 or 800–511–8056).
Iron Mountain 49801 (325 East H St., 906–774–3300 or 800–215–8262).
Saginaw 48602 (1500 Weiss St., 989–497–2500 or 800–406–5143).

Clinics

Benton Harbor 49022 (115 Main St., 269–934–9123).
Flint 48532 (G–3267 Beecher Rd., 810–720–2913).
Gaylord 49735 (806 S. Otsego, 989–732–7525).
Grand Rapids 49505 (3019 Coit St., NE, 616–365–9575).
Hancock 49930–1495 (787 Market St., Quincy Center Suite 9, 906–482–7762).
Ironwood 49938 (629 W. Cloverland Dr., Suite 1, 906–932–0032).
Jackson 49203 (Townsend Family Med., 400 Hinckley Blvd., Suite 300, 517–782–7436).
Kincheloe 49788 (Sault Ste. Marie Clinic: 16523 S. Watertower Dr., #1, 906–495–3030).
Lansing 48910 (2025 S. Washington Ave., 517–267–3925).
Marquette 49855 (425 Fisher St., 906–226–4618).
Menominee 49858 (1101 10th Ave., Suite 101, 906–863–1286).
Muskegon 49442 (165 E. Apple Ave., Suite 201, 231–725–4105).
Oscoda 48750 (5671 Skeel Ave., Suite 4, 989–747–0026).
Pontiac 48340 (1701 Baldwin Ave., Suite 101, 248–409–0585).
Traverse City 49684 (3271 Racquet Club Dr., 231–932–9720).
Yale 48097 (7470 Brockway Dr., 810–387–3211).

Regional Office

Detroit 48226 (Patrick V. McNamara Federal Bldg., 477 Michigan Ave., Rm. 1400, 1–800–827–1000).

Vet Centers

Dearborn 48124–3438 (2881 Monroe St., Suite 100, 313–277–1428).
Detroit 48201 (4161 Cass Ave., 313–831–6509).
Escanaba 49829 (Willow Creek Professional Bldg., 3500 Ludington St.).
Grand Rapids 49507 (1940 Eastern SE, 616–243–0385).
Saginaw 48603 (4048 Bay Rd., 989–321–4650).

National Cemeteries

Fort Custer 49012 (15501 Dickman Rd., Augusta, 269–731–4164).
Great Lakes 48442 (4200 Belford Rd., Holly, 866–348–8603).

MINNESOTA

VA Medical Centers

Minneapolis 55417 (One Veterans Dr., 612–725–2000 or 866–414–5058).
St. Cloud 56303 (4801 Veterans Dr., 320–252–1670 or 800–247–1739).

Clinics

Bemidji 56601 (705 5th St., 218–755–6360).

Brainerd 56401 (11800 State Hwy 18, 218–855–1115).
Fergus Falls 56537 (Veterans Home, 1821 North Park St., 218–739–1400).
Hibbing 55746 (1101 East 37th St., Suite 220, 218–263–9698).
Maplewood 55109 (2785 White Bear Ave., Suite 210, 651–290–3040).
Montevideo 56265 (1025 North 13th St., 320–269–2222).
Rochester 55902 (1617 Skyline Dr., 507–252–0885).
St. James 56081 (1101 Moultin and Parsons Dr., 507–375–3391).

Regional Office

St. Paul 55111 (Bishop Henry Whipple Federal Bldg., 1 Federal Dr., 1–800–827–1000) (Counties of Becker, Beltrami, Clay, Clearwater, Kittson, Lake of the Woods, Mahnomen, Marshall, Norman, Otter Tail, Pennington, Polk, Red Lake, Roseau, Wilkin served by Fargo, N.D., VA Regional Office).

Vet Centers

Duluth 55802 (405 E. Superior St., 218–722–8654)
St. Paul 55114 (2480 University Ave., 651–644–4022)

National Cemetery

Fort Snelling 55450–1199 (7601 34th Ave. So., Minneapolis, 612–726–1127).

MISSISSIPPI

Medical Centers

Biloxi 39531 (400 Veterans Ave., 228–523–5000 or 800–296–8872).
Jackson 39216 (1500 E. Woodrow Wilson Dr., 601–362–4471 or 800–949–1009, instate).

Clinics

Byhalia 38611 (12 East Brunswick St., 662–838–2163).
Columbus 39702 (824 Alabama St., 662–244–0391).
Greenville 38703 (1502 S Colorado St., 662–332–9872).
Hattiesburg 39401 (231 Methodist Blvd., 601–296–3530).
Houlka 38850 (106 Walker St., 662–568–3316).
Kosciusko 39090 (332 Hwy 12W, 662–289–1800).
Meadville 39653 (595 Main Street East, 601–384–3650).
Meridian 39301 (13th St., 601–482–7154).
Natchez 39120 (46 Sgt Prentiss Dr., Ste. 16, 601–442–7141).

Regional Office

Jackson 39216 (1600 E. Woodrow Wilson Ave., statewide 1–800–827–1000).

Vet Centers

Biloxi 39531 (288 Veterans Ave., 228–388–9938).
Jackson 39216 (1755 Lelia Dr., Suite 104, 601–965–5727).

National Cemeteries

Biloxi 39535–4968 (P.O. Box 4968, 400 Veterans Ave., 228–388–6668).
Corinth 38834 (1551 Horton St., 901–386–8311).
Natchez 39120 (41 Cemetery Rd., 601–445–4981).

MISSOURI

VA Medical Centers

Columbia 65201–5297 (800 Hospital Dr., 573–814–6000 or 800–349–8262).
Kansas City 64128 (4801 Linwood Blvd., 816–861–4700 or 800–525–1483).
Poplar Bluff 63901 (1500 N. Westwood Blvd., 573–686–4151).
Saint Louis-Jefferson Barracks 63125–4101 (1 Jefferson Barracks Dr., 314–652–4100 or 800–228–5459).
Saint Louis-John Cochran Div. 63106 (915 N. Grand Blvd., 314–652–4100 or 800–228–5459).

Clinics

Belton 64012 (17140 Bel-Ray Pl., 816–922–2161).
Camdenton 65020 (Lake of the Ozarks Clinic, 246 E Highway 54, 573–317–1150).
Cameron 64429 (1111 Euclid Dr., 816–922–2500 ext. 54251).
Cape Girardeau 63701 (2420 Veterans Memorial Dr., 573–339–0909).
Farmington 63640 (1580 W. Columbia St., 573–760–1365).
Ft. Leonard Wood 65473 (126 Missouri Ave., Box 1239, 573–329–8305).
Kirksville 63501 (1108 East Patterson, Suite 9, 660–627–8387).
Mexico 65265 (Missouri Veterans Home, One Veterans Dr., 573–581–9630).
Mt Vernon 65712 (600 N Main, 417–466–0118).
Nevada 64772 (322 South Prewitt, 417–448–8905).
Salem 65560 (Hwy 72 North, 573–729–6626 or 1–888–557–8262).
St. Charles 63304 (7 Jason Ct., 314–286–6988).
St. James 65559–1999 (Missouri Veterans Home, 620 N. Jefferson, St., 573 265–0448).
St. Joseph 64506 (1314 North 36th St., Suite A, 1–800–952–8387 ext 56925).
St. Louis 63136 (10600 Lewis and Clark Blvd., 314–286–6988).
Warrensburg 64093 (1300 Veterans Dr., 816 922–2500 ext. 54281).
West Plains 65775 (1211 Missouri Ave, 417–257–2454).

Regional Office

St. Louis 63103 (400 South 18th St., statewide 1–800–827–1000).

Benefits Office

Kansas City 64128 (4801 Linwood Blvd., 816–922–2660 or 1–800–525–1483, x 52660).

Vet Centers

Kansas City 64111 (301 E. Armour Rd., 816–753–1866).
St. Louis 63103 (2345 Pine St., 314–231–1260).

National Cemeteries

Jefferson Barracks 63125 (2900 Sheridan Rd., St. Louis, 314–260–8720).
Jefferson City 65101 (1024 E. McCarty St., 314–260–8720).
Springfield 65804 (1702 E. Seminole St., 417–881–9499).

MONTANA

VA Medical Centers

Fort Harrison 59636–1500 (3687 Veterans Drive, P.O. Box 1500, 406–442–6410).

Clinics

Anaconda 59711 (118 East 7th St., 406–563–6090).
Billings 59102 (2345 King Avenue West, 406–651–5670).
Cut Bank 59427 (Glacier Community Health, 519 East Main St., 406–873–5670).
Bozeman 59715 (300 N. Wilson, Suite 703G, 406–522–8923).
Glasgow 59230 (621 3rd St., South, Suite 107, 406–228–3554).
Glendive 59330 (2000 Montana Ave., 406–488–2307).
Great Falls 59405 (1417–9th St., South, Suite 200, 877–468–8387 opt 3).
Kalispell 59901 (31 Three Mile Dr., Ste. 102, 406–751–5980).
Miles City 59301 (Clinic/Nursing Home, 210 S. Winchester, 406–874–5600).
Missoula 59808 (2687 Palmer St., Suite C, 877–468–8387 (temp)).

Regional Office

Fort Harrison 59636 (3633 Veterans Dr., PO Box 1500, 1–800–827–1000).

Vet Centers

Billings 59102 (1234 Ave., C, 406–657–6071).
Missoula 59802 (500 N. Higgins Ave., 406–721–4918).

NEBRASKA

VA Medical Centers

Grand Island 68803–2196 (2201, No. Broadwell Ave., 308–382–3660/866–580–1810).
Lincoln 68510 (600 South 70th St., 402–489–3802/866–851–6052).
Omaha 68105 (4101 Woolworth Ave., 402–346–8800/800–451–5796).

Clinics

Alliance 69301 (524 Box Butte Ave., 605–745–2000 ext. 2474).
Norfolk 68701 (301 N 27th St, Suite #1, 402–844–8000).
North Platte 69101 (600 East Francis, Suite 3, 308–532–6906).
Rushville/Gordon 69343 (300 E. 8th St., 605–745–2000 ext. 2474).
Scottsbluff 69361 (1720 E Portal Place, 308–220–3930).
Sidney 69162 (1116 10th Ave., 308–254–5575).

Regional Office

Lincoln 68516 (5631 S. 48th St., statewide 1–800–827–1000).

Vet Centers

Lincoln 68508 (920 L St., 402–476–9736).
Omaha 68131 (2428 Cuming St., 402–346–6735).

National Cemetery

Fort McPherson 69151–1031 (12004 S. Spur 56A, Maxwell, 888–737–2800).

NEVADA

VA Medical Centers

Las Vegas 89106 (901 Rancho Lane, Mailing Address: P.O. Box 360001, North Las Vegas, NV 89036, 702–636–3000/888–633–7554).
Reno 89502 (1000 Locust Street, 775–786–7200 or 888–838–6256).

Clinics

Ely 89301 (William B. Ririe Hospital, 6 Steptoe Circle, 775–289–3612).
Fallon 89406 (Lahontan Valley Outpatient Clinic: 345 West A St., 775–428–6161).
Henderson 89014 (2920 N. Greenvalley Pkwy., Suite 215, 702–636–6363).
Las Vegas 89106 (Center for Homeless Veterans, 916 West Owens Ave., 702–636–6380).
Minden 89423 (Carson Valley Clinic, 925 Ironwood Dr., #2102, 888–838–6256 x4000).
Pahrump 89048 (2100 E. Calvada Blvd., 775–727–7535).

Regional Office

Reno 89520 (5460 Reno Corporate Dr., statewide 1–800–827–1000).

Benefits Office

Las Vegas 89107 (4800 Alpine Pl., Suite 12, 1–800–827–1000).

Vet Centers

Las Vegas 89146 (1919 So. Jones Blvd., Suite A., 702–251–7873).
Reno 89503 (1155 W. 4th St., Suite 101, 775–323–1294).

NEW HAMPSHIRE

VA Medical Center

Manchester 03104 (718 Smyth Road, 603–624–4366 or 800–892–8384).
Conway 03818 (7 Greenwood Ave., 603–447–3500 ext. 11).
Littleton 03561 (Littleton Regional Hospital, 600 St. Johnsbury Rd., 603–444–9328).
Portsmouth 03803 (Pease Intl., Tradeport 302 Newmarket St., 603–624–4366 x5500).
Somersworth 03878 (200 Route 108, 603–624–4366, Ext. 5700).
Tilton 03276 (NH Veterans Home, 139 Winter St., 603–624–4366 ext. 5600).

Regional Office

Manchester 03101 (Norris Cotton Federal Bldg., 275 Chestnut St., 1–800–827–1000).

Vet Center

Manchester 03104 (103 Liberty St., 603–668–7060/61).

NEW JERSEY

VA Medical Centers

East Orange 07018 (385 Tremont Avenue, 973–676–1000).
Lyons 07939 (151 Knollcroft Road, 908–647–0180).

Clinics

Brick 08724 (970 Rt. 70, 732–206–8900).
Cape May 08204 (1 Monroe Ave., 609–898–8700).
Elizabeth 07206 (654 East Jersey Street, Suite 2A, 908–994–0120).
Fort Monmouth 07703 (Paterson Army Health Clinic, Building 1075, Stephenson Ave., 732–532–4500).
Ft. Dix 08640 (Marshall Hall, 8th and Alabama, 609–562–2999).
Hackensack 07601 (385 Prospect Avenue, 201–487–1390).
Jersey City 07302 (115 Christopher Columbus Dr., 201–435–3055/3305).
Morristown 07960 (340 West Hanover Ave., 973–539–9791/9794).
New Brunswick 08901 (317 George Street, 732–729–0646/9555).
Newark 07102 (20 Washington Place, 973–645–1441).
Paterson 07503 (275 Getty Ave., St. Joseph's Hospital & Med. Center, 973–247–1666).
Sewell 08080–2525 (211 County House Road, 856–401–7665).
Trenton 08611–2425 (171 Jersey Street, Bldg. 36, 609–989–2355).
Ventnor 08406 (6601 Ventnor Avenue, Suite 406, 609–823–3122).
Vineland 08360 (Veterans Memorial Home, Northwest Boulevard, 856–692–1588).
Vineland 08360 (1051 West Sherman Ave., 856–692–2881).

Regional Office

Newark 07102 (20 Washington Pl., statewide 1–800–827–1000) (Philadelphia, PA Regional Office serves counties of Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Salem).

Vet Centers

Bloomfield 07003 (2 Broad St., Suite 703, 973–748–0980).
Jersey City 07302 (115 Christopher Columbus Dr., Suite 200, 201–748–4467).
Ewing 08618 (934 Parkway Ave., 2nd Fl., 609–882–5744).
Ventnor 08406 (6601 Ventnor Ave., Suite 105, 609–487–8387).

National Cemeteries

Beverly 08010 (916 Bridgeboro Rd., 609–880–0827).
Finn's Point 08079 (Box 542, R.F.D. 3, Fort Mott Rd., Salem, 609–880–0827).

NEW MEXICO

VA Medical Center

Albuquerque 87108–5153 (1501 San Pedro Dr., SE., 505–265–1711 or 800–465–8262).

Clinics

Alamogordo 88310 (1410 Aspen, 505–437–7000).
Artesia 88210–3712 (1700 W. Main St., 505–746–3531).
Clovis 88101 (921 East Llano Estacado, 505–763–4335).
Espanola 87532 (620 Coronado St., Suite B, 505–753–7395).
Farmington 87401–5638 (1001 W. Broadway, Suite B, 505–326–4383).
Gallup 87301 (320 Hwy 564, 505–722–7234).
Hobbs 88340 (1601 N Turner (4th Floor), 505–391–0354).
Las Cruces 88001 (1635 Don Roser, 505–522–1241).
Las Vegas 87701 (1235 8th St., Las Vegas, 505–425–6788).
Raton 87440–2234 (1275 S. 2nd St., 505–445–2391).
Santa Fe 87505 (2213 Brothers Road, Suite 600, 505–986–8645).
Silver City 88601 (1302 32nd St., 505–538–2921).
Truth or Consequences 87901 (1960 North Date St., 505–894–7662).

Regional Office

Albuquerque 87102 (Dennis Chavez Federal Bldg., 500 Gold Ave., S.W., statewide 1–800–827–1000).

Vet Centers

Albuquerque 87104 (1600 Mountain Rd. NW., 505–346–6562).
Farmington 87402 (4251 E. Main, Suite C, 505–327–9684).
Las Cruces 88001 (230 S. Water St., 575–523–9826).
Santa Fe 87505 (2209 Brothers Rd., Suite 110, 505–988–6562).

National Cemeteries

Fort Bayard 88036 (P.O. Box 189, 915–564–0201).
Santa Fe 87501 (501 N. Guadalupe St., 505–988–6400 or toll-free 877–353–6295).

NEW YORK

VA Medical Centers

Albany 12208 (113 Holland Ave., 518–626–5000).
Batavia 14020 (222 Richmond Ave., 585–297–1000 or 888–798–2302).
Bath 14810 (76 Veterans Ave., 607–664–4000 or 877–845–3247).
Bronx 10468 (130 West Kingsbridge Rd., 718–584–9000 or 800–877–6976).
Brooklyn 11209 (800 Poly Place, 718–836–6600).
Buffalo 14215 (3495 Bailey Ave., 716–834–9200 or 800–532–8387).
Canandaigua 14424 (400 Fort Hill Ave., 585–394–2000).
Castle Point 12511 (Route 9D, 845–831–2000 or 800–269–8749).
Montrose 10548 (2094 Albany Post Rd., Route 9A, P.O. Box 100, 914–737–4400 ext. 2400 or 800–269–8749).
New York 10010 (423 East 23rd Street, 212–686–7500).
Northport 11768 (79 Middleville Road, 631–261–4400 or 800–551–3996).
Syracuse 13210 (800 Irving Ave., 315–425–4400 or 800–792–4334).

Domicialiaries

Jamaica 11425 (St. Albans Primary & Extended Care Center, 179–00 Linden Blvd. & 179 St., 718–526–1000).
Montrose 10548 ((2094 Albany Post Rd., Route 9A, P.O. Box 100, 914–737–4400).

Clinics

Auburn 13021 (17 Lansing St., 315–255–7002).
Bainbridge 13733 (109 North Main St., 607–967–8590).
Binghamton 13901 (Garvin Building, 425 Robinson St., 607–772–9100).
Bronx 10459 (953 Southern Blvd., 718–741–4900).
Brooklyn 11201 (40 Flatbush Ave. Extension, 8th Fl., 718–439–4300).
Carmel 10512 (Warwick Savings Bank, 2nd Fl, 1875 Rt 6, 845–228–Carthage 13619 (3 Bridge St., 315–493–4180).

Catskill 12414 (Columbia Greene Medical Arts Building, Suite A102, 159, Jefferson Hgts, 518–943–7515).
Clifton Park 12065 (1673 Route 9, 518–383–8506).
Cortland 13045 (1104 Commons Avenue, 607–662–1517).
Dunkirk 14048 (166 East 4th St., 800–310–5001).
Elizabethtown 12932 (PO Box 277 Park St., 518–873–3295).
Elmira 14901 (200 Madison Avenue, Suite 2E, 877–845–3247).
Fonda 12068 (2623 State Highway 30A, 518–853–1247).
Glens Falls 12801 (84 Broad St., 518–798–6066).
Goshen 10924 (30 Hatfield Lane, Suite 204, 845–294–6927).
Ithaca 14850 (10 Arrowwood Drive, 607–274–4680).
Jamestown 14701 (The Resource, Center, 896 East Second St., 716–661–1447).
Kingston 12401 (63 Hurley Ave., 845–331–8322).
Lackawanna 14218 (OLV Family Care Center, 227 Ridge Rd., 716–822–5944).
Lockport 14094 (Ambulatory Care Center, 5875 S. Transit Rd., 716–433–2025).
Malone 12953 (183 Park St., 518–481–2545).
Massena 13662 (Memorial Hospital, 1 Hospital Dr., 315–769–4253).
Monticello 12701 (60 Jefferson Street, Unit 3, Lower Parking Lot, 845 791–4936).
New City 10970 (20 Squadron Blvd., 845–634–8942).
New York 10027 (55 West 125th St., 212–828–5265).
New York 10011 (Opiate Substitution Program, 437 W 16 St., 212–462–4461).
Niagara Falls 14301–2300 (2201 Pine Avenue, 1–800–223–4810 ext. 65295).
Olean 14760–2658 (465 North Union St., 716–373–7709).
Oswego: 13126 (105 County Route 45A Suite 400, 315–343–0925).
Patchogue 11772 (4 Phyllis Drive, 631–475–6610/PC 631–758–4419).
Pine Plains 12567 (2881 Church St., Rt. 199, 518–398–9240).
Plainview 11803 (1425 Old Country Rd., 516–572–8567/PC 516–694–6008).
Plattsburgh 12901 (80 Sharron Ave. 518–561–6247).
Port Jervis 12771 (150 Pike St., 845–856–5396).
Poughkeepsie 12603 (Rt. 55, 488 Freedom Plains Rd., Suite 120, 845–452–5151).
Rochester 14620 (465 Westfall Rd., 585–463–2600).
Rome 13441 (125 Brookley Road, Building 510, 315–334–7100).
Schenectady 12308 (1322 Gerling Street, Sheridan Plaza, 518–346–3334).
Staten Island 10314 (1150 South Ave, 3rd Floor—Suite 301, 718–761–2973).
Sunnyside 11104 (41–03 Queens Blvd., 718–741–4800).
Troy 12180 (295 River St., 518–274–7707).
Warsaw 14569 (Wyoming Co. Community Hospital, 400 N. Main St., 585–786–2233).
Wellsville 14895 (3458 Riverside Dr., Route 19, 1–877–845–3247).
Westhampton 11978 (Community Air Base: 150 Old Riverhead Rd., 631–898–0599).
White Plains 10601 (23 South Broadway, 914–421–1951).
Yonkers 10705 (124 New Main St., 914–375–8055).

Regional Offices

Buffalo 14202 (Niagara Center, 130 S. Elmwood Ave., 1–800–827–1000. Serves counties not served by New York City VA Regional Office.)
New York City 10014 (245 W. Houston St., statewide 1–800–827–1000. Serves counties of Albany, Bronx, Clinton, Columbia, Delaware, Dutchess, Essex, Franklin, Fulton, Greene, Hamilton, Kings, Montgomery, Nassau, New York, Orange, Otsego, Putnam, Queens, Rensselaer, Richmond, Rockland, Saratoga, Schenectady, Schoharie, Suffolk, Sullivan, Ulster, Warren, Washington, Westchester.).

Benefits Offices

Albany 12208 (113 Holland Ave., 1–800–827–1000) Rochester 14620 (465 Westfall Rd., 1–800–827–1000).
Syracuse 13202 (344 W. Genesee St., 1–800–827–1000).

Vet Centers

Albany 12205 (17 Computer Drive West., 518–626–5130).
Babylon 11702 (116 West Main St., 631–661–3930).
Bronx 10458 (130 West Kingsbridge Rd., Rm. 7A–13, 718–367–3500).
Brooklyn 11201 (25 Chapel St., Suite 604, 718–624–2765).
Buffalo 14202 (564 Franklin St., 716–882–0505).
New York 10004 (32 Broadway, Suite 200, 212–742–9591).
New York 10027 (55 West 125th St., 11th Fl., 212–426–2200).
Rochester 14620 (1867 Mt. Hope Ave., 585–232–5040).
Staten Island 10301 (150 Richmond Terrace, 718–816–4499).
Syracuse 13210 (716 E. Washington St., 315–478–7127).
White Plains 10601 (300 Hamilton Ave., 1st Fl., 914–682–6250).
Watertown 02601 (210 Court St., 315–782–0217).
Woodhaven 11421 (75–10B 91st Ave., 718–296–2871).

National Cemeteries

Bath 14810 (76 Veterans Ave., San Juan Ave., 607–664–4853).
Calverton 11933–1031 (210 Princeton Blvd., 631–727–5410/5770).
Cypress Hills 11208 (625 Jamaica Ave., Brooklyn, 631–454–4949).
Long Island 11735–1211 (2040 Wellwood Ave., Farmingdale, 631–454–4949).
Saratoga 12871–1721 (200 Duell Rd., Schuylerville, 518–581–9128).
Woodlawn 14901 (1825 Davis St., Elmira, 607–732–5411).

NORTH CAROLINA

VA Medical Centers

Asheville 28805 (1100 Tunnel Road, 828–298–7911 or 800–932–6408).
Durham 27705 (508 Fulton St., 919–286–0411).
Fayetteville 28301 (2300 Ramsey St., 910–488–2120 or 800–771–6106).
Salisbury 28144 (1601 Brenner Avenue, 704–638–9000 or 800–469–8262).

Clinics

Charlotte 28262 (Presbyterian Plaza 8401 Medical Ctr. Dr. #350, 704–547–0020).
Durham 27705 (1824 Hillandale Road, 919–383–6107).
Greenville 27858 (800 Moye Blvd., 252–830–2149).
Jacksonville 28540 (1021 Hargett St., 910–219–1339).
Morehead City 28557 (5420 Highway 70, 252–240–2349).
Raleigh 27610 (3305 Sungate Blvd., 919–212–0129).
Wilmington 28401 (1606 Physicians Dr., Suite 104, 910–362–8811).
Winston-Salem 27103 (190 Kimel Park Drive, 336–768–3296).

Regional Office

Winston-Salem 27155 (Federal Bldg., 251 N. Main St., statewide 1–800–827–1000, nationwide Loan Guaranty Certificate of Eligibility Center 1–888–244–6711).

Vet Centers

Charlotte 28202 (223 S. Brevard St., Suite 103, 704–333–6107).
Fayetteville 28311 (4140 Ramsey St., Suite 110, 910–488–6252).
Greensboro 27406 (2009 S. Elm-Eugene St., 336–333–5366).
Greenville 27858 (150 Arlington Blvd., Suite B, 252–355–7920).
Raleigh 27604 (1649 Old Louisburg Rd., 919–856–4616).

National Cemeteries

New Bern 28560 (1711 National Ave., 252–637–2912).
Raleigh 27610–3335 (501 Rock Quarry Rd., 252–637–2912) Salisbury 28144 (202 Government Rd., 704–636–2661/4621).
Wilmington 28403 (2011 Market St., 252–637–2912).

NORTH DAKOTA

VA Medical Center

Fargo 58102 (2101 Elm Street, 701–232–3241 or 800–410–9723).

Clinics

Bismarck 58503 (2700 State Street, 701–221–9152).
Dickinson 58601 (33 9th Street, 701–483–6017).
Grafton 58237 (Developmental Center Health Bldg., West Sixth St., 701–352–4059).
Jamestown 58401 (419 Fifth Street NE, 701–952–4787).
Minot 58705 (10 Missile Avenue, 701–727–9800).
Williston 58801 (3 Fourth Street East, Suite 104, 701–577–9838).

Regional Office

Fargo 58102 (2101 Elm St., statewide 1–800–827–1000).

Vet Centers

Bismarck 58501 (1684 Capital Way, 701–224–9751).
Fargo 58103 (3310 Fiechtner Dr., Suite 100, 701–237–0942).

Minot 58701 (2041 3rd St. N.W., 701–852–0177).

OHIO

VA Medical Centers

Brecksville 44141 (10000 Brecksville Rd., 440–526–3030).
Chillicothe 45601 (17273 State Route 104, 740–773–1141 or 800–358–8262).
Cincinnati 45220 (3200 Vine Street, 513–861–3100 or 888–267–78730).
Cleveland 44106 (10701 East Blvd., 216–791–3800).
Columbus 43203 (543 Taylor Avenue, 614–257–5200 or 888–615–9448).
Dayton 45428 (4100 W. 3rd Street, 937–268–6511 or 800–368–8262).

Clinics

Akron 44319 (55 W. Waterloo 330–724–7715).
Ashtabula 44004 (1230 Lake Avenue, 440–964–6454).
Athens 45701 (510 West Union Street 740–593–7314).
Cambridge 43727 (2146 Southgate Pkwy., 740–432–1963).
Canton 44702 (733 Market Avenue South, 330–489–4600).
Cincinnati 45245 (4355 Ferguson Drive, Suite 270, 513–943–3680).
Cleveland 44113 (4242 Loraine Ave., 216–939–0699).
East Liverpool 43920 (15655 St Rt. 170, 330–386–4303).
Grove City 43123 (1955 Ohio Avenue, 614–257–5800).
Hamilton 45011 (1755–C South Erie Highway, 937–378–3413).
Lancaster 43130 (1550, Sheridan Drive Ste. 100, 740–653–6145).
Lima 45804 (1303 Bellefontaine Ave., 419–222–5788).
Lorain 44052 (205 West 20th Street, 440–244–3833).
Mansfield 44906 (1456 Park Avenue West, 419–529–4602).
Marietta 45750 (418 Colegate Drive, 740–568–0412).
Marion 43302 (1203 Delaware Avenue, Corporate Center #2, 740–223–8089).
Middletown: 45042 (675 North University Boulevard, 513–423–8387).
New Philadelphia 44663 (1260 Monroe Ave., Suite 1A, New 330) 602–5339).
Newark 43055 (Tamarck Rd., 740–788–8328).
Painesville 44077 (7 West Jackson Street, 440–357–6740).
Portsmouth 45622 (621 Broadway Street, 740–353–3236).
Ravenna 44266 (6751 N. Chestnut St., 330–296–3641) Sandusky 44870 (3416 Columbus Avenue, 419–625–7350).
Springfield 45505 (512 South Burnett Road, 937–328–3385).
St. Clairsville 43950 (107 Plaza Dr., 740–695–9321).
Toledo 43614 (3333 Glendale Avenue, 419–259–2000).
Warren 44485 (1400 Tod Ave. (NW), 330–392–0311).
Youngstown 44505 (2031 Belmont Avenue, 330–740–9200).
Zanesville 43701 (840 Bethesda Dr. Bldg. 3A, 740–453–7725).

Regional Office

Cleveland 44199 (Anthony J. Celebrezze Fed. Bldg., 1240 E. 9th St., 1–800–827–1000)
Benefits Offices
Cincinnati 45202 (36 E. Seventh St., Suite 210, 1–800–827–1000).
Columbus 43215 (Federal Bldg., Rm. 309, 200 N. High St., 1–800–827–1000).

Vet Centers

Cincinnati 45203 (801–B W. 8th St., 513–763–3500).
Cleveland Heights 44118 (2022 Lee Rd., 216–932–8471).
Columbus 43215 (30 Spruce St., 614–257–5550).
Dayton 45402 (111 W 1st St., Suite 101, 937–461–9150).
Parma 44129 (5700 Pearl Rd., Suite 102, 440–845–5023).

National Cemeteries

Dayton 45428–1088 (4100 W. Third St., 937–262–2115).
Ohio Western Reserve 44270 (10175 Rawiga Rd., Rittman, 330–335–3069).

OKLAHOMA

VA Medical Centers

Muskogee 74401 (1011 Honor Heights Drive, 918–577–3000 or 888–397–8387).
Oklahoma City 73104 (921 N.E. 13th Street, 405–270–0501 or 866–835–5273).

Clinics

Ardmore: 73401(1015 S. Commerce, 580–223–2266).
Fort Sill 73503 (4303 Pittman and Thomas Bldg. 580–353–1131).
Konawa 74849 (527 W 3rd St. P.O. Box 358, 580–925–3286).
Tulsa 74145 (9322 East 41st St., 918–628–2500).
Ponca City 74601 (215 N. 3rd, 580–762–1777).

Regional Office

Muskogee 74401 (Federal Bldg., 125 S. Main St., Compensation & Pension: 1–800–827–1000, Education National Call Center: 1–888–442–4551, National Direct Deposit: 1–877–838–2778).

Benefits Office

Oklahoma City 73102 (Federal Campus, 301 NW 6th St., Suite 113, 1–800–827–1000).

Vet Centers

Oklahoma City 73118 (1024 N.W. 47th, 405–270–5184).
Tulsa 74112 (1408 S. Harvard, 918–748–5105).

National Cemeteries

Fort Gibson 74434 (1423 Cemetery Rd., 918–478–2334).
Fort Sill 73538 (2648 NE Jake Dunn Rd., 580–492–3200).

OREGON

VA Medical Centers

Portland 97239 (3710 SW U.S. Veterans Hospital Rd., 503–220–8262 or outside Portland area 800–949–1004).
Roseburg 97470 (913 NW Garden Valley Blvd., 541–440–1000 or 800–549–8387).

Domiciliary

White City 97503 (8495 Crater Lake Hwy., 541–826–2111).

Clinics

Bandon 97411 (1010 1st Street, SE, Suite 100, 541–347–4736).
Bend 97701 (2115 NE Wyatt Ct., Suite 201, 503–220–8262 or outside Portland area 800–949–1004 x 51494).
Brookings 97415 (555 Fifth Street, 541–412–1152).
Eugene 97404 (100 River Ave., 541–607–0897).
Klamath Falls 97601 (2819 Dahlia St., 541–273–6206).
Ontario 97914 (20 SW 3rd, 208–422–1303).
Portland 97220 (10535 NE Glisan St., Gateway Medical Bldg., 2nd Fl., 503–220–8262 or outside Portland area 800–949–1004).
Salem 97301 (1660 Oak Street, SE, 503–220–8262 or outside Portland 800–949–1004).
Warrenton 97146 (91400 Rilea Neacoxie St., Building 7315, 503–220–8262 or outside Portland area 800–949–1004).

Regional Office

Portland 97204 (Edith Green/Wendell Wyatt Federal Building, 1220 S.W. Third Ave., 1–800–827–1000).

Vet Centers

Eugene 97403 (1255 Pearl St., 541–465–6918).
Grants Pass 97526 (211 S.E. 10th St., 541–479–6912).
Portland 97220 (8383 N.E. Sandy Blvd., Suite 110, 503–273–5370).
Salem 97301 (617 Chemeketa St., N.E., 503–362–9911).

National Cemeteries

Eagle Point 97524 (2763 Riley Rd., 541–826–2511).
Roseburg 97470 (1770 Harvard Blvd, 541–826–2511).
Willamette 97266–6937 (11800 S.E. Mt. Scott Blvd., Portland, 503–273–5250).

PENNSYLVANIA

VA Medical Centers

Latona 16602 (2907 Pleasant Valley Boulevard, 814–943–8164).
Butler 16001 (325 New Castle Road, 724–287–4781 or 800–362–8262).
Coatesville 19320 (1400 Black Horse Hill Road, 610–384–7711).
Erie 16504 (135 East 38 Street, 814–868–8661 or 800–274–8387).
Lebanon 17042 (1700 South Lincoln Avenue, 717–272–6621 or 800–409–8771).
Philadelphia 19104 (University and Woodland Aves., 800–949–1001 or 215–823–5800).
Pittsburgh 15260 (Delafield Road, 866–482–7488 or 412–688–6000).
Pittsburgh 15206 (Highland Drive Division 7180 Highland Drive, 412–365–4900 or 1–866–4VAPITT).
Pittsburgh 15240 (University Drive Division University Drive, 1–866–482–7488).
Wilkes-Barre 18711 (1111 East End Blvd., 570–824–3521 or 877–928–2621).

Clinics

Allentown 18103 (3110 Hamilton Boulevard, 610–776–4304).
Bangor 18013 (701 Slate Belt Boulevard, 610–599–0127).
Berwick 18603 (301 W. Third Street, 570–759–0351).
Camp Hill 17011 (25 N. 32nd Street, 717–730–9782).
DuBois 15801 (190 West Park Avenue, Suite 8, 814–375–6817).
Ellwood City 16117 (Ellwood City Hospital, Medical Arts Building, #201, 304 Evans Drive, 724–285–2203).
Foxburg 16036 (ACV Medical Center, 855 Route 58, Suite 1, 724–659–5601).
Frackville 17931 (10 East Spruce St., 570–621–4904) Greensburg 15601 (Hempfield Plaza, Route 30, 724–837–5200).
Hermitage 16148 (295 N. Kerrwood Dr., Suite 110, 724–346–1569).
Horsham 19044 (433 Caredean Dr., 215–823–6050).
Johnstown 15904 (1425 Scalp Ave., Suite 29, 814–266–8696).
Kittanning 16201 (Armstrong Memorial Hospital 1 Nolte Dr., 724–543–8711).
Lancaster 17605 (1861 Charter Lane, Green Field Corp. Center, #118, 717–290–6900).
Meadville 16335 (18955 Park Ave. Plaza, 814–337–0170).
Monaca 15061 (90 Wagner Rd., 724–216–0326).
New Castle 16101 (Jameson Hospital, 1000, S. Mercer Street, 724–285–2203).
Oil City 16301 (174 Bissell Avenue, 814–678–2631).
Oil City 16301 (Venango County Clinic, UPMC Northwest, 174 E Bissell Ave., 814–677–7591 or 800–274–8387).
Philadelphia 19106 (214 North 4th Street, 215–923–2600).
Pottsville 17901 (Good Sama. Med. Mall, 700 Schuylkill Manor Rd., #6, 570–621–4115).
Reading 19601 (St. Joseph's Community Center, 145 N. 6th St., 610–208–4717).
Sayre 18840 (1537 Elmira St., 570–888–6803).
Schuylkill 17972 (6 South Greenview Rd., 570–621–4115).
Smethport 16749 (406 Franklin Street, 814–887–5655).
Spring City 19475 (11 Independence Drive 610–948–0981).
Springfield 19064 (Crozer Keystone Healthplex, 194 W. Sproul, Rd., #105, 610–543–3246).
State College 16801 (3048 Enterprise Drive, 814–867–5415).
Tobyhanna 18466 (Tobyhanna Army Depot Building 220, 570–895–8341).
Uniontown 15401 (404 W. Main St., 724–439–4990).
Warren 16365 (3 Farm Colony Dr., 814–723–9763).
Washington 15301 (100 Ridge Avenue, 724–250–7790).
Wilkes-Barre 18711 (1111 East End Boulevard, 570–924–3521).
Williamsport 17701 (1705 Warren Ave., Werner Blg–3rd Fl., #304, 570–322–4791).
York 17402 (1797 Third Avenue, 717–854–2481 or 717–854–2322).

Regional Offices

Philadelphia 19101 (Regional Office and Insurance Center, P.O. Box 8079, 5000 Wissahickon Ave., 1–800–827–1000; Serves counties of Adams, Berks, Bradford, Bucks, Cameron, Carbon, Centre, Chester, Clinton, Columbia, Dauphin, Delaware, Franklin, Juniata, Lackawanna, Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Mifflin, Monroe, Montgomery, Montour, Northampton, Northumberland, Perry, Philadelphia, Pike, Potter, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, York.).
Pittsburgh 15222 (1000 Liberty Ave., statewide 1–800–827–1000. Serves remaining counties of Pennsylvania.).

Benefits Office

Wilkes-Barre 18702 (1123 East End Blvd., Bldg. 35, Suite 11, 1–800–827–1000).

Vet Centers

Erie 16501 (1000 State St., Suite 1&2, 814–453–7955).
Harrisburg 17102 (1500 N. 2nd St., Suite 2, 717–782–3954).
McKeesport 15131 (2001 Lincoln Way, 412–678–7704).
Philadelphia 19107 (801 Arch St., Suite 102, 215–627–0238).
Philadelphia 19120 (101 E. Olney Ave., 215–924–4670).
Pittsburgh 15205 (2500 Baldwick Rd., Suite 15, 412–920–1765).
Scranton 18505 (1002 Pittston Ave., 570–344–2676).
Williamsport 17701 (805 Penn St., 570–327–5281).

National Cemeteries

Indiantown Gap 17003–9618 (R.R. 2, P.O. Box 484, Indiantown Gap Rd., Annville, 717–865–5254).
Cemetery of the Alleghenies 15017 (1158 Morgan Rd., Bridgeville, 724–746–4363).
Philadelphia 19138 (Haines St. & Limekiln Pike, 609–877–5460).

PHILIPPINES

Clinic

Pasay City 1300 (2201 Roxas Blvd., 011–632–833–4566).

Regional Office

Manila 0930 (1131 Roxas Blvd., 011–632–528–6300, International Mailing Address PSC 501, FPO AP 96515–1100).

PUERTO RICO

Medical Center

San Juan 00921–3201 (10 Casia Street, 787–641–7582 or 800–449–8729).

Clinics

Arecibo 00612 (Victor Rojas II/Zona Industrial Carr. 129, 787–816–1818).
Guayama 00784 (FISA Bldg 1st Floor, Paseo Del Pueblo, km 0.3, lot no. 6, 787–866–8766).
Mayagüez 00680–1507 (Avenida Hostos #345, 787–265–8805).
Ponce 00716–2001 (Paseo Del Veterano #1010, 787–812–3030).

Regional Office

San Juan 00918–1703 (150 Carlos Chardon Ave., Suite 300. Send mail to Suite 232. Serving all Puerto Rico and the Virgin Islands, 1–800–827–1000).

Benefits Offices

Mayaguez 00680–1507 (Ave. Hostos 345, Carretera 2, Frente al Centro Medico, 1–800–827–1000).
Ponce 00731 (10 Paseo del Veterano, 1–800–827–1000).
Arecibo 00612 (Gonzalo Marin 50, 1–800–827–1000).

Vet Centers

Arecibo 00612–4702 (52 Gonzalo Marin St., 787–879–4510/4581).
Ponce 00731 (35 Mayo St., 787–841–3260).
San Juan 00921 (Condominio Med. Ctr. Plaza, Suite LC8A11, La Riviera, 787–749–4409).

National Cemetery

Puerto Rico 00961 (Ave. Cementerio Nacional 50, Barrio Hato Tejas, Bayamon, 787–798–8400).

RHODE ISLAND

VA Medical Center

Providence 02908 (830 Chalkstone Avenue, 401–273–7100 or 866–590–2976).

Clinic

Middletown 02842 (One Corporate Place, 401–847–6239).

Regional Office

Providence 02903 (380 Westminster St.; statewide, 1–800–827–1000).

Vet Center

Warwick 02889 (2038 Warwick Ave., 401–739–0167).

SOUTH CAROLINA

VA Medical Centers

Charleston 29401 (109 Bee Street, 843–577–5011 or 888–878–6884).
Columbia 29209 (6439 Garners Ferry Road, 803–776–4000).

Clinics

Anderson 29621 (1702 E. Greenville Street, 864–224–5450).
Beaufort 29902 (Pickney Road, 843–770–0444).
Florence 29505 (514–H Dargan St., 843–292–8383).
Greenville 29605 (3510 Augusta Rd., 864–299–1600).
Myrtle Beach 29577 (3381 Phillis Blvd., 843–477–0177).
North Charleston 29406 (9237 University Blvd, 843–789–6400).
Orangeburg 29118 (1767 Villagepark Drive, 803–533–1335).
Rock Hill 29730 (205 Piedmont Blvd, 803–366–4848).
Sumter 29150 (407 North Salem Avenue, 803–938–9901).

Nursing Home

Walterboro 29488 (2461 Sidneys Road, Veterans Victory House, 843–538–3000).

Regional Office

Columbia 29201 (1801 Assembly St., statewide 1–800–827–1000).

Vet Centers

Columbia 29201 (1513 Pickens St., 803–765–9944).

Greenville 29601 (14 Lavinia Ave., 864–271–2711).
North Charleston 29406 (5603–A Rivers Ave., 843–747–8387).

National Cemeteries

Beaufort 29902–3947 (1601 Boundary St., 843–524–3925).
Florence 29501 (803 E. National Cemetery Rd., 843–669–8783).

SOUTH DAKOTA

VA Medical Centers

Fort Meade 57741 (113 Comanche Road, 605–347–2511 or 800–743–1070).
Hot Springs 57747 (500 North 5th Street, 605–745–2000 or 800–764–5370).
Sioux Falls 57117 (2501 W. 22nd St., P.O. Box 5046, 605–336–3230 or 800–316–8387).

Clinics

Aberdeen 57401 (1440 15th Avenue NW, 605–622–2640).
Eagle Butte 57625 (15 Main Street, 605–964–8000).
Mission 57555 (153 Main Street, 605–856–2295).
Pierre 57501 (1601 North Harrison, Suite 6, 605–945–1710).
Pine Ridge (605–867–2393).
Rapid City 57701 (3525 5th Street, 605–718–1095).
Winner 57580 (1436 E. 10th St., 605–842–2443).

Regional Office

Sioux Falls 57117 (P.O. Box 5046, 2501 W. 22nd St., statewide 1–800–827–1000).

Vet Centers

Martin 57551 (East Hwy 18, 605–685–1300).
Rapid City 57701 (621 6th St., Suite 101 Kansas City St., 605–348–0077).
Sioux Falls 57104 (601 S. Cliff Ave., Suite C, 605–330–4552).

National Cemeteries

Black Hills 57785 (20901 Pleasant Valley Dr., Sturgis, 605–347–3830).
Fort Meade 57785 (P.O. Box 640, Old Stone Rd., Sturgis, 605–347–3830).
Hot Springs 57747 (500 N 5th St., 605–347–3830).

TENNESSEE

VA Medical Centers

Memphis 38104 (1030 Jefferson Avenue, 901–523–8990 or 800–636–8262).
Mountain Home 37684 (Corner of Lamont and Sydney Streets, P.O. Box 4000, 423–926–1171 or 877–573–3529).
Murfreesboro 37129 (3400 Lebanon Pike, 615–867–6000 or 800–876–7093).
Nashville 37212 (1310 24th Avenue South, 615–327–4751 or 800–228–4973).

Clinics

Arnold Air Force Base 37389 (225 First Street, 931–454–6134).
Chattanooga 37411 (150 Debra Rd., Suite 5200, Bldg. 6200, 423–893–6500).
Clarksville 37043 (1731 Memorial St., Suite 110, 931–221–2171).
Cookeville 38501 (851 S. Willow Avenue, Suite 108, 931–284–4060).
Dover 37204 (1021 Spring Street, 931–232–5329).
Nashville 37204 (601 Benton Ave, Nashville, 615–292–9770).
Knoxville 37923 (9031 Cross Park Drive, 865–545–4592).
Savannah 38372 (765–A Florence Rd, 731–925–2300).

Regional Office

Nashville 37203 (110 9th Ave., South, statewide 1–800–827–1000).

Vet Centers

Chattanooga 37411 (951 Eastgate Loop Rd., Bldg. 5700, Suite 300, 423–855–6570).
Johnson City 37604 (1615A W. Market St., 423–928–8387).
Knoxville 37914 (2817 E. Magnolia Ave., 865–545–4680).
Memphis 38104 (1835 Union, Suite 100, 901–544–0173).
Nashville 37217 (Airpark Bus. Cen. 1, Suite A–5, 1420 Donelson Pike, 615–366–1220).

National Cemeteries

Chattanooga 37404 (1200 Bailey Ave., 423–855–6590).
Knoxville 37917 (939 Tyson St., N.W., 423–855–6590).
Memphis 38122 (3568 Townes Ave., 901–386–8311).
Mountain Home 37684 (P.O. Box 8, VAMC, Bldg. 117, 423–979–3535).
Nashville 37115–4619 (1420 Gallatin Rd. S., Madison, 615–860–0086).

TEXAS

VA Medical Centers

Amarillo 79106 (6010 Amarillo Boulevard West, 806–355–9703 or 800–687–8262).
Big Spring 79720 (300 Veterans Blvd., 432–263–7361 or 800–472–1365).
Bonham 75418 (1201 E. 9th Street, 903–583–2111 or (800) 924–8387).
Dallas 75216 (4500 South Lancaster Road, 214–742–8387 or 800–849–3597).
El Paso 79930 (5001 North Piedras Street, 915–564–6100 or 800–672–3782).
Harlingen 78550 (South Texas VA Health Care Center, 2106 Treasure Hills Blvd., 956–366–4500).
Houston 77030 (2002 Holcombe Blvd., 713–791–1414 or 800–553–2278).
Kerrville 78028 (3600 Memorial Blvd, 830–896–2020).
San Antonio 78229 (7400 Merton Minter Blvd., 210–617–5300 or 888–686–6350).
Temple 76504 (1901 Veterans Memorial Drive, 254–778–4811 or 800–423–2111).
Waco 76711 (4800 Memorial Drive, 254–752–6581 or 800–423–2111).

Clinics

Abilene 79602 (4225 Woods Place, 325–695–3252).
Austin 78741 (2901 Montopolis Drive, 512–389–1010).
Beaumont 77707 (3420 Veterans Circle, 409–981–8550 or 1–800–833–7734).
Beeville 78102 (302 S. Hillside Dr., 361–358–9912).
Bridgeport 76426 (808 Woodrow Wilson Ray Cir., 940–683–2297).
Brownwood 76801 (2600 Memorial Park Drive, 325–641–0568).
Cedar Park 78613 (701 Whitestone Boulevard, 512–260–1368).
Childress 79201 (1001 Hwy 83 North, 940–937–3636).
College Station 77845 (1605 Rock Prairie Rd., Ste. 212, 979–680–0361).
Conroe 77304 (800 Riverwood Ct., Ste. 100, 936–522–4000).
Corpus Christi 78405 (5283 Old Brownsville Road, 361–806–5600).
Denton 76205 (2223 Colorado Blvd., 940–213–4100).
Fort Worth 76104 (300 W. Rosedale Street, 817–335–2202 or 800–443–9672).
Fort Worth 76107 (855 Montgomery Street, 817–735–2228).
Fort Stockton 79735 (501 N. Main, 432–336–0700).
Galveston 77551 (6115 Avenue L, 409–741–0256 or 800–310–5001).
Granbury 76049 (2006 Fall Creek Hwy., 817–326–3440).
Greenville 75407 (4311 Wesley St., 903–455–5958).
Harlingen 78550 (1629 Treasure Hills Blvd., Suite 5–B, 956–366–4500).
Laredo 78041 (6551 Star Court, 956–523–7850, refills 1–800–209–7377).
Longview 75601 (1205 E. Marshal Ave., 903–247–8262 or 800–957–8262).
Lubbock 79412 (6104 Avenue Q South Drive, 806–472–3400).
Lufkin 75901 (1301 Frank Avenue, 936–637–1342 or 1–800–209–3120).
McAllen 78501 (2101 S. Colonel Rowe Blvd., 956–618–7100 or 866–622–5536).
New Braunfels 78130 (189 E. Austin, Suite 106, 830–629–3614).
Odessa 79762 (4241 N. Tanglewood, Suite 201, 432–550–0149).
Palestine 75801 (2000 So. Loop 256, Suite 124, 903–723–9006).
Paris 75462 (635 Stone Ave., 903–785–9900).
San Antonio 78240 (Frank M, Tejeda OPC, 5788 Eckhert Road, 210–699–2100).
San Antonio Dental Clinic 78299 (8410 Data Point, 210–949–8900).
San Angelo 76905 (2018 Pulliam, 325–658–6138).
San Antonio 78226 (1831 S. General McMullen, 210–434–1400).
San Antonio Greenway 78217 (2455 NE Loop 410, Ste. 100, 210–599–6000).
San Antonio Northern Hills 78217 (14100 Nacogdoches, Ste. 116, 210–653–8989).
San Antonio Pecan Valley 78222 (4243 E. Southcross, Ste. 205, 210–304–3500).
Sherman 75090 (2612 N. Loy Lake, Ste. 300, 903–891–8317).
Stamford 79553 (Box 911, Hwy 6 East, 325–773–2710).
Stratford 79084 (1220 Purnell, P.O. Box 1107, 806–396–2852).
Texas City 77591 (9300 Emmett F. Lowry Expressway, Suite 206, 409–986–1129 or 800–310–5001).
Tyler 75701 (3414 Golden Rd., 903–593–6064).
Victoria 77901 (1502 E. Airline Dr., Suite 40, 361–582–7700 or 800–209–7377).
Wichita Falls 76301 (1800 7th St., 940–723–2373).

Regional Offices

Houston 77030 (6900 Almeda Rd., statewide, 1–800–827–1000. Serves counties of

Angelina, Aransas, Atacosa, Austin, Bandera, Bee, Bexar, Blanco, Brazoria, Brewster, Brooks, Caldwell, Calhoun, Cameron, Chambers, Colorado, Comal, Crockett, DeWitt, Dimitt, Duval, Edwards, Fort Bend, Frio, Galveston, Gillespie, Goliad, Gonzales, Grimes, Guadeloupe, Hardin, Harris, Hays, Hidalgo, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kendall, Kennedy, Kerr, Kimble, Kinney, Kleberg, LaSalle, Lavaca, Liberty, Live Oak, McCulloch, McMullen, Mason, Matagorda, Maverlck, Medina, Menard, Montgomery, Nacogdoches, Newton, Nueces, Orange, Pecos, Polk, Real, Refugio, Sabine, San Augustine, San Jacinto, San Patricio, Schleicher, Shelby, Starr, Sutton, Terrell, Trinity, Tyler, Uvalde, Val Verde, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Wilson, Zapata, Zavala).

Waco 76799 (One Veterans Plaza, 701 Clay; statewide, 1–800–827–1000; serves the rest of the state. In Bowie County, the City of Texarkana is served by Little Rock, AR, VA Regional Office, 1–800–827–1000.).

Benefits Offices

Abilene 79602 (Taylor County Plaza Bldg., Suite 103, 400 Oak St., 1–800–827–1000).
Amarillo 79106 (6010 Amarillo Blvd. W., 1–800–827–1000).
Austin 78741 (2901 Montopolis Dr., Room 108, 1–800–827–1000).
Corpus Christi 78405 (4646 Corona Dr., Suite 150, 1–800–827–1000).
Dallas 75216 (4500 S. Lancaster Rd., 1–800–827–1000).
El Paso 79930 (5001 Piedras Dr., 1–800–827–1000).
Ft. Worth 76104–4856 (300 W. Rosedale St., 1–800–827–1000).
Lubbock 79410 (6104 Ave. Q S Drive, Rm. 132, 1–800–827–1000).
McAllen 78503 (109 Toronto Ave., 1–800–827–1000).
San Antonio 78240 (5788 Eckert Rd., 1–800–827–1000).
Temple 76504 (1901 Veterans Memorial Dr., Room 5G38 [BRB], 1–800–827–1000).
Tyler 75701 (1700 SSE Loop 323, Suite 310, 1–800–827–1000).

Vet Centers

Amarillo 79109 (3414 Olsen Blvd., Suite E., 806–354–9779).
Austin 78745 (1110 W. Will Cannon Dr., Suite 301, 512–416–1314).
Corpus Christi 78411 (4646 Corona, Suite 250, 361–854–9961).
Dallas 75231 (10501 N. Central Expressway, Suite 213, 214–361–5896).
El Paso 79925 (1155 Westmoreland, Suite 121, 915–772–0013).
Fort Worth 76104 (1305 W. Magnolia, Suite B, 817–921–9095).
Harker Heights 76548 (302 Millers Crossing, Suite #4, 254–953–7100).
Houston 77006 (2990 Richmond Ave., Suite 325, 713–523–0884).
Houston 77024 (701 N. Post Oak Rd., Suite 102, 713–682–2288).
Laredo 78041 (6020 McPherson Rd., 1A, 956–723–4680).
Lubbock 79410 (3208 34th St., 806–792–9782).
McAllen 78504 (801 Nolana, Suite 140, 956–631–2147).
Midland 79703 (3404 W. Illinois, Suite 1, 432–697–8222).
San Antonio 78212 (231 W. Cypress St., Suite 100, 210–472–4025).

National Cemeteries

Dallas-Fort Worth 75211 (2000 Mountain Creek Parkway, 214–467–3374).
Fort Bliss 79906 (Box 6342, 5200 Fred Wilson Rd., 915–564–0201).
Fort Sam Houston 78209 (1520 Harry Wurzbach Rd., San Antonio, 210–820–3891/3894).
Houston 77038 (10410 Veterans Memorial Dr., 281–447–8686).
Kerrville 78028 (VAMC, 3600 Memorial Blvd., 210–820–3891/3894).
San Antonio 78202 (517 Paso Hondo St., 210–820–3891/3894).

UTAH

VA Medical Center

Salt Lake City 84148 (500 Foothill Drive, 801–582–1565 or 800–613–4012).

Clinics

Fountain Green 84632 (300 W. 300 S., 435–623–3129).
Nephi 84648 (48 W. 1500 N., 435–623–3129).
Ogden 84403 (982 Chambers Street, 801–479–4105).
Orem 84057 (740 W. 800 N., Suite 440, 801–235–0953).
Roosevelt 84066 (210 W. 300 N. (75–3), 435–725–2082).
St. George 84770 (1067 East Tabernacle, Suite 7, 435–634–7608 Ext. 6000).

Regional Office

Salt Lake City 84158 (P.O. Box 581900, 550 Foothill Dr., statewide, 1–800–827–1000).

Vets Centers

Provo 84604 (1807 No. 1120 West, 801–377–1117).
Salt Lake City 84106 (1354 East 3300 South, 801–584–1294).

VERMONT

VA Medical Center

White River Junction 05009 (215 North Main Street, 802–295–9363 or 866–687–8387).

Clinics

Bennington 05201 (190 North Street, 802–447–6913).
Colchester 05446 (74 Hegeman Ave., 802–655–1356).
Rutland 05702 (215 Stratton Road, 802–773–3386).

Regional Office

White River Junction 05001 (215 N. Main St., 802–296–5177 or 1–800–827–1000 from within Vermont).

Vets Centers

South Burlington 05403 (359 Dorset St., 802–862–1806).
White River Junction 05001 (222 Holiday Inn Dr., #2 Gilman Office Complex, 802–295–2908 or 1–800–649–6603).

VIRGINIA

VA Medical Centers

Hampton 23667 (100 Emancipation Drive, 757–722–9961).
Richmond 23249 (1201 Broad Rock Boulevard, 804–675–5000 or 800–784–8381).
Salem 24153 (1970 Roanoke Boulevard, 540–982–2463 or 888–982–2463).

Clinics

Alexandria 22301 (6940 South Kings Highway, Suite #208, 703–313–0694).
Danville 24540 (100 Vicar Pl., 434–836–2100).
Fredericksburg 22401 (1960 Jefferson Davis Hwy., Suite 100, 540–370–4468).
Harrisonburg 22801 (847 Cantrell Avenue, Suite 100, 540–442–1773).
Martinsville 24112 (315 Hospital Way, Ste. 101, 276–632–5929).
Stephens City 22655 (106 Hyde Court, 540–869–0600).
Saltville 23470 (308 W. Main St., 276–496–4433).
Tazewell 24651 (123 Ben Bolt Ave., 276–988–2526).
Virginia Beach 23462 (244 Clearfield Ave., 757–726–6070).

Regional Office

Roanoke 24011 (210 Franklin Rd., S.W., statewide, 1–800–827–1000).

Vets Centers

Alexandria 22309 (8796 Sacramento Dr., Suite D&E, 703–360–8633).
Norfolk 23517 (2200 Colonial Ave., Suite 3, 757–623–7584).
Richmond 23230 (4902 Fitzhugh Ave., 804–353–8958).
Roanoke 24016 (350 Albemarle Ave., SW, 540–342–9726).

National Cemeteries

Alexandria 22314 (1450 Wilkes St., 703–221–2183/2184).
Balls Bluff 22075 (Rte. 7, Leesburg, 540–825–0027).
City Point 23860 (10th Ave. & Davis St., Hopewell, 804–795–2031).
Cold Harbor 23111 (6038 Cold Harbor Rd., Mechanicsville, 804–795–2031).
Culpeper 22701 (305 U.S. Ave., 540–825–0027).
Danville 24541 (721 Lee St., 704–636–2661).
Fort Harrison 23231 (8620 Varina Rd., Richmond, 804–795–2031).
Glendale 23231 (8301 Willis Church Rd., Richmond, 804–795–2031).
Hampton 23667 (Cemetery Rd. at Marshall Ave., 757–723–7104).
Hampton 23667 (VAMC, Emancipation Dr., 757–723–7104).
Quantico 22172 (P.O. Box 10, 18424 Joplin Rd. (Rte. 619), 703–221–2183/2184).
Richmond 23231 (1701 Williamsburg Rd., 804–795–2031).
Seven Pines 23150 (400 E. Williamsburg Rd., Sandston, 804–795–2031).
Staunton 24401 (901 Richmond Ave., 540–825–0027).
Winchester 22601 (401 National Ave., 540–825–0027).

VIRGIN ISLANDS

Clinics

St. Croix 00850–4701 (The Village Mall, RR 2 Box 10556, 340–774–6674).
St. Thomas 00802 (Havensight Mall, Building III (Upper), Suite 304 & 310, New Quarter, 340–774–6674).

Benefits

Served by San Juan, Puerto Rico, VA Regional Office, 1–800–827–1000.

Vets Centers

St. Croix 00850 (Box 12, R.R. 02, Village Mall, 113, RR2 Box 10556, Kingshill, 340–778–5553).
St. Thomas 00802 (9800 Buchaneer Mall, Suite 8, 340–774–6674).

WASHINGTON

VA Medical Centers

Seattle 98108 (1660 S. Columbian Way, 800–329–8387 or 206–762–1010).
Spokane 99205 (4815 N. Assembly Street, 509–434–7000 or 800–325–7940).
Tacoma 98493 (9600 Veterans Dr., 253–582–8440 or 800–329–8387).
Vancouver 98661 (1601 E. 4th Plain Blvd., 360–696–4061 or 800–949–1004).
Walla Walla 99362 (77 Wainwright Drive, 509–525–5200 or 888–687–8863).

Clinics

Bellevue 98005 (13033 Bel-Red Road, Suite 210, 425–214–1055).
Bremerton 98312 (925 Adele Avenue, 360–782–0129).
Federal Way 98003 (34617 11th Place South, 253–336–4142).
Richland 99352 (946 Stevens Drive, Suite C, 509–946–1020).
Seattle 98125 (12360 Lake City Way NE, Suite 200, 206–384–4382).
Wenatchee 98801 (2530 Chester-Kimm Road, 509–663–7615).
Yakima 98902 (717 Fruitvale Blvd., 509–966–0199).
Yakima Mental Health Clinic 98902 (1111 N. 1st Street, Suite 1, 509–457–2736).

Regional Office

Seattle 98174 (Fed. Bldg., 915 2nd Ave., statewide, 1–800–827–1000).

Benefits Offices

Fort Lewis 98433 (Waller Hall Rm. 700, P.O. Box 331153, 253–967–7106).
Bremerton 98337 (W. Sound Pre-Separation Center, 262 Burwell St., 360–782–9900).

Vets Centers

Bellingham 98226 (3800 Byron Ave., Suite 124, 360–733–9226).
Seattle 98121 (2030 9th Ave., Suite 210, 206–553–2706).
Spokane 99206 (100 N. Mullan Rd., Suite 102, 509–444–8387).
Tacoma 98409 (4916 Center St., Suite E, 253–565–7038).
Yakima 98901 (1111 N. First St., 509–457–2736).

National Cemetery

Tahoma 98042–4868 (18600 S.E. 240th St., Kent, 425–413–9614).

WEST VIRGINIA

VA Medical Centers

Beckley 25801 (200 Veterans Avenue, 304–255–2121 or 877–902–5142).
Clarksburg 26301 (One Medical Center Drive, 304–623–3461 or 800–733–0512).
Huntington 25704 (1540 Spring Valley Drive, 304–429–6741 or 800–827–8244).
Martinsburg 25405 (510 Butler Avenue, 304–263–0811 or 800–817–3807).

Clinics

Charleston 25304 (104 Alex Ln., 304–926–6001).
Franklin 26807 (314 Pine Street, 304–358–2355).
Logan 25601 (513 Dingess St., 304–752–8355).
Parkersburg 260101 (2311 Ohio Avenue, Suite A, 304–422–5114).
Parsons 26287 (206 Spruce Street, 304–478–2219).
Petersburg 26847 (Grant Memorial Hospital, P. O. Box 1019, 304–257–5817).
Sutton 26602 (93 Skidmore Lane, 304–765–3480).
Williamson 25661 (75 W 4th Ave, 304–235–2187).

Regional Office

Huntington 25701 (640 Fourth Ave., statewide 1–800–827–1000; counties of Brooke, Hancock, Marshall, Ohio, served by Pittsburgh, Pa., VA Regional Office).

Vets Centers

Beckley 25801 (101 Ellison Ave., 304–252–8220).
Charleston 25302 (521 Central Ave., 304–343–3825).
Huntington 25701 (3135 16th St. Rd., Suite 11, 304–523–8387).
Martinsburg 25401 (900 Winchester Ave., 304–263–6776).
Morgantown 26508 (1083 Greenbag Rd., 304–291–4303).
Princeton 24740 (905 Mercer St., 304–425–5653).
Wheeling 26003 (1206 Chapline St., 304–232–0587).

National Cemeteries

Grafton 26354 (431 Walnut St., 304–265–2044).
West Virginia 26354 (Rt. 2, Box 127, Grafton, 304–265–2044).

WISCONSIN

VA Medical Centers

Madison 53705 (2500 Overlook Terrace, 608–256–1901).
Milwaukee 53295 (5000 West National Avenue, 888–469–6614 or 414–384–2000).
Tomah 54660 (500 E. Veterans Street, 608–372–3971 or 800–872–8662).

Clinics

Appleton 54914 (10 Tri-Park Way, 920–831–0070).
Baraboo 53913 (626 14th Street, 608–356–9318).
Beaver Dam 53916 (215 Corporate Drive, 920–356–9415).
Chippewa Falls 54729 (2501 & 2503 County Hwy I, 715–720–3780).
Cleveland 53015 (1205 North Avenue, 920–693–5600).
Green Bay 54303 (141 Siegler Street, 920–497–3126).
Hayward 54843 (15748 County Road B, 715–934–5454).
Janesville 53545 (111 N. Main Street, 608–758–9300).
Kenosha 53140 (800 55th Street, 262–653–9286).
La Crosse 54601 (2600 State Road, Phone: 608–784–3886).
Loyal 54446 (141 N. Main Street, 715–255–9799).
Rhinelander 54501 (639 West Kemp Street, 715–362–4080).
Rice Lake 54843 (2700A College Drive, 715–236–3355).
Superior 54880 (3520 Tower Avenue, 715–392–9711) Union Grove 53182 (21425 Spring Street, 262–878–7000).
Wausau 54401 (515 South 32nd Avenue, 715–842–2834).
Wisconsin Rapids 54494 (710 East Grand Ave., PO Box 26, 715–424–3844).

Regional Office

Milwaukee 53214 (5400 W. National Ave., statewide 1–800–827–1000).

Vets Centers

Madison 53703 (706 Williamson St., 608–264–5342).
Milwaukee 53218 (5401 N. 76th St., 414–536–1301).

National Cemetery

Wood 53295–4000 (5000 W. National Ave., Bldg. 1301, Milwaukee, 414–382–5300).

WYOMING

VA Medical Centers

Cheyenne 82001 (2360 E. Pershing Blvd., 307–778–7550 or 888–483–9127).
Sheridan (1898 Fort Road, 307–672–3473 or 866–822–6714).

Clinics

Casper 82601 (4140 S. Poplar St., 307–235–4143 or 1–866–338–5168).
Gillette 82718 (1701 Phillips Circle, 307–685–0676 or 1–866–612–1887).
Newcastle 57555 (1124 Washington Blvd., 605–745–2000 ext. 2474).
Powell 82435 (777 Avenue H, 307–754–7257 or 1–888–284–9308).
Riverton 82501 (2300 Rose Lane, 307–857–1211 or 1–866–338–2609).
Rock Springs 82901 (3000 College Drive, Suite C, 307–362–6641 or 866–381–2830).

Benefits Office

Cheyenne 82001 (2360 E. Pershing Blvd., statewide 1–800–827–1000).

Vets Centers

Casper 82601 (1030 North Poplar, Suite B, 307–261–5355).
Cheyenne 82001 (3219 East Pershing Blvd., 307–778–7370).

[FR Doc. E9–14302 Filed 6–18–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Friday,
June 19, 2009

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 226

Endangered and Threatened Species; Designation of Critical Habitat for Atlantic Salmon (Salmo salar) Gulf of Maine Distinct Population Segment; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 0808061060–9710–02]

RIN 0648–AW77

Endangered and Threatened Species; Designation of Critical Habitat for Atlantic Salmon (Salmo salar) Gulf of Maine Distinct Population Segment

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

ACTION: Final rule.

SUMMARY: We, the National Marine Fisheries Service (NMFS), issue a final rule designating critical habitat for the Atlantic salmon (*Salmo salar*) Gulf of Maine Distinct Population Segment (GOM DPS). We previously determined that naturally spawned and several hatchery populations of Atlantic salmon which constitute the GOM DPS warrant listing as endangered under the Endangered Species Act of 1973, as amended (ESA). We are required to designate critical habitat for the GOM DPS as a result of this listing. We hereby designate as critical habitat 45 specific areas occupied by Atlantic salmon at the time of listing that comprise approximately 19,571 km of perennial river, stream, and estuary habitat and 799 square km of lake habitat within the range of the GOM DPS and in which are found those physical and biological features essential to the conservation of the species. The entire occupied range of the GOM DPS in which critical habitat is designated is within the State of Maine. We exclude approximately 1,256 km of river, stream, and estuary habitat and 100 square km of lake habitat from critical habitat pursuant to section 4(b)(2) of the ESA.

DATES: This rule becomes effective July 20, 2009.

ADDRESSES: Comments and materials received, as well as supporting documentation used in the preparation of this final rule, are available for public inspection by appointment, during normal business hours, at the National Marine Fisheries Service, NMFS, Protected Resources Division, 55 Great Republic Drive, Gloucester, MA 01930–2276. The final rule, maps, and other materials relating to these designations can be found on our Web site at: *http://www.nero.noaa.gov/prot_res/altsalmon/*.

FOR FURTHER INFORMATION CONTACT: Dan Kircheis, National Marine Fisheries Service, Maine Field Station, 17 Godfrey Drive, Orono, ME 04473 at (207) 866–7320, or Marta Nammack at (301) 713–1401 ext. 180.

SUPPLEMENTARY INFORMATION:

Organization of the Final Rule:

This final rule describes the critical habitat designation for the GOM DPS of Atlantic salmon under the ESA. The pages that follow summarize the comments and information received in response to the proposed designation published on September 5, 2008 (73 FR 51747), describe any changes from the proposed designation, and detail the final designation for the GOM DPS of Atlantic salmon. To assist the reader, the content of the document is organized as follows:

I. Background and Previous Federal Action
II. Summary of Comments and Responses
Biological Valuation
Economic Analysis
4(b)(2) Exclusion Analysis
Miscellaneous Comments
Comments Not Relevant to This Rule
Remarks
III. Summary of Revisions
IV. Methods and Criteria Used to Identify Critical Habitat
Atlantic Salmon Life History
Identify the Geographic Area Occupied by the Species and Specific Areas Within the Geographic Area
Physical and Biological Features in Freshwater and Estuary Specific Areas Essential to the Conservation of the Species
Special Management Considerations or Protections
*Specific Areas Outside the Geographic Area Occupied by the Species * * * Essential to the Conservation of the Species*
Criteria
V. Application of ESA Section 4(a)(3)(B)(i) (Military Lands)
VI. Application of ESA Section 4(b)(2)
Assigning Biological Value
Consideration of Economic Impacts, Impacts to National Security, and Other Relevant Impacts
Economic Impacts
National Security and Other Relevant Impacts in Relation to Military Interests
Other Relevant Impacts: Tribal Lands
Determine Whether Exclusions Will Result in the Extinction of the Species
VII. Effects of Critical Habitat
ESA Section 7 Consultation
Activities That May Be Affected (Section 4(b)(8))
VIII. Classification
Regulatory Planning and Review
Regulatory Flexibility Act (U.S.C. 601 et seq.)
Information Quality Act (IQA) (Section 515 of Pub. L. 106.554)
Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)
National Environmental Policy Act
Federalism
Takings
IX. References Cited

I. Background and Previous Federal Action

We are responsible for determining whether a species, subspecies, or distinct population segment (DPS) of Atlantic salmon (*Salmo salar*) is threatened or endangered, and for designating critical habitat for the species, subspecies, or DPS under the ESA (16 U.S.C. 1531 *et seq.*). To qualify as a DPS, an Atlantic salmon population must be substantially reproductively isolated from other conspecific populations and represent an important component in the evolutionary legacy of the biological species.

We are also responsible for designating critical habitat for species listed under our jurisdiction. Section 3 of the ESA defines critical habitat as (1) specific areas within the geographical area occupied by the species at the time of listing, on which are found those physical or biological features that are essential to the conservation of the listed species and that may require special management considerations or protection, and (2) specific areas outside the geographical area occupied by the species at the time of listing that are essential for the conservation of a listed species. Our regulations direct us to focus on the ''primary constituent elements,'' or PCEs, in identifying these physical or biological features. Section 7(a)(2) of the ESA requires that each Federal agency, in consultation with and with the assistance of NMFS, ensure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of an endangered or threatened Atlantic salmon or result in the destruction or adverse modification of critical habitat. Section 4 of the ESA requires us to consider the economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat.

NMFS and the U.S. Fish and Wildlife Service (USFWS; collectively ''the Services'') issued a final rule listing the GOM DPS of Atlantic salmon as endangered on November 17, 2000 (65 FR 69459). The GOM DPS was defined in the 2000 rule as all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon, having historical river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border and the Penobscot

River above the site of the former Bangor Dam.

In September 2006, a new Status Review for Atlantic salmon in the United States (Fay *et al.*, 2006) was made available to the public (*http://www.nmfs.noaa.gov/pr/pdfs/statusreviews/atlanticsalmon.pdf*). The 2006 Status Review identified the GOM DPS of Atlantic salmon as being comprised of all anadromous Atlantic salmon whose freshwater range occurs in the watersheds of the Androscoggin River northward along the Maine coast to the Dennys River, including all associated conservation hatchery populations used to supplement natural populations; currently, such populations are maintained at Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH). In September 2008 a proposed rule was published proposing to list the GOM DPS of Atlantic salmon as defined in the 2006 Status Review as endangered (73 FR 51415; September 3, 2008). In response to public comments received on the proposed listing rule, and in review of the critical habitat proposed rule, also published in September 2008 (73 FR 51747; September 5, 2008), the Gulf of Maine DPS was re-defined to exclude those areas that were outside the historic range of the species. The final rule published by NMFS and the USFWS in today's **Federal Register** (see Endangered and Threatened Species; Determination of Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon) defines the GOM DPS as all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, and wherever these fish occur in the estuarine and marine environment. The following impassable falls delimit the upstream extent of the freshwater range: Rumford Falls in the town of Rumford on the Androscoggin River; Snow Falls in the town of West Paris on the Little Androscoggin River; Grand Falls in Township 3 Range 4 BKP WKR, on the Dead River in the Kennebec Basin; the un-named falls (impounded by Indian Pond Dam) immediately above the Kennebec River Gorge in the town of Indian Stream Township on the Kennebec River; Big Niagara Falls on Nesowadnehunk Stream in Township 3 Range 10 WELS in the Penobscot Basin; Grand Pitch on Webster Brook in Trout Brook Township in the Penobscot Basin; and Grand Falls on the Passadumkeag River in Grand Falls Township in the Penobscot Basin. The marine range of the GOM DPS extends from the Gulf of Maine, throughout the Northwest Atlantic Ocean, to the coast of Greenland. Included are all associated conservation hatchery populations used to supplement these natural populations; currently, such conservation hatchery populations are maintained at GLNFH and CBNFH. Excluded are landlocked salmon and those salmon raised in commercial hatcheries for aquaculture. The GOM DPS as defined in the final rule has been listed as endangered under the ESA.

The most substantial difference between the 2000 GOM DPS and the GOM DPS described in the final rule published by NMFS and the USFWS in today's **Federal Register** (see Endangered and Threatened Species; Determination of Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon) is the inclusion of the Androscoggin, Kennebec, and Penobscot River basins.

The timeline for completing the critical habitat designation described in this final rule was established pursuant to litigation between NMFS and the Center for Biological Diversity and the Conservation Law Foundation. Upon reaching a settlement agreement, NMFS has agreed to publish a final rule designating critical habitat for Atlantic salmon no later than June 1, 2009.

II. Summary of Comments and Responses

As described in agency regulations at 50 CFR 424.16(c)(1), we requested that all interested parties submit written comments on the proposed critical habitat designation. We also contacted the appropriate Federal and State agencies, scientific organizations, and other interested parties and invited them to comment on the proposed rule. To facilitate public participation, we made the proposed rule available via the Internet as soon as the rule was published and accepted comments by standard mail, fax, e-mail or through *http://www.regulations.gov*. In addition we held two public hearings: One in Augusta, ME, on November 5, 2008; and one in Brewer, ME, on November 6, 2008. During this time 37 parties or individuals submitted written comments on the critical habitat proposed rule. These comments were grouped into three categories as they related to the 3 primary sections of the Critical habitat designation: Biological Valuation; Economic Analysis; and 4(b)(2) exclusion analysis. A fourth category is included to address general comments and an overview of how comments were handled that were not directly related to the critical habitat designation. In section III we review comments and additional information that resulted in changes to the critical habitat rule and supporting documents.

Biological Valuation

Comment 1: One commenter stated that assuming the standard habitat needs of salmon (240 eggs per unit, 7,200 eggs per female, 1:1 sex ratio) and using the calculations described in the document, the historic run size of 150,000 fish would have required 2,250,000 units of habitat (75,000 females (assuming 1:1 sex ratio) × 7,200 eggs per female/240 eggs per unit of habitat); seven times the amount of habitat in the entire Penobscot Salmon Habitat Recovery Unit (SHRU).

Response: Conservation Spawning Escapement or CSE is often used as a tool to describe the minimum number of spawners needed to provide sufficient quantities of eggs needed to fully seed the available habitat. The estimation of CSE is not meant to predict run sizes. The minimum number of eggs to fully seed the habitat is 240 eggs per unit of habitat where one unit of habitat is equivalent to 100 meters squared. The equation described by the commenter: (# of females × 7,200 eggs per female/240 eggs per unit of habitat = units of habitat) incorporates the same values used to estimate the minimum spawner requirement or CSE for a river in both national and international forums. CSE estimates do not take into account that, in healthy robust populations, animals are often produced in numbers greater than what is needed to fully seed the habitat, and, therefore, only those animals that are most fit for the given environment successfully contribute to the next generation. This is why historic estimates of over 100,000 adults in the Penobscot River far exceed the minimum spawning requirement or CSE for the Penobscot of 6,838 adult spawners. Despite the estimations that the Penobscot River had run sizes in the 10's of thousands or even 100's of thousands, only a fraction of the entire run would be expected to actually contribute to the next generation due to natural selection factors (*i.e.*, not all adults will successfully spawn, and, of those that do, not all of the juveniles will successfully reach maturity). We refer to this historic estimate provided by Atkins and Foster (1868) as a reference point to what the run potential for the Penobscot SHRU could be; not the minimum number of spawners that would be needed to fully seed the habitat. Furthermore, the historic estimates of 150,000 adult returns (males and females) was not a factor in determining the run size of 2,000 adult

spawners (1,000 males and 1,000 females assuming a 1:1 sex ratio) used as a recovery goal to project critical habitat for each SHRU.

Comment 2: One commenter stated that the 240 eggs per unit was derived as a way to estimate the number of spawners needed to populate salmon habitat with juveniles to produce 2, 3, and 4 year old smolts, and was never intended to be used to calculate the amount of habitat required by a given number of spawners. The commenter stated that it was their belief that using the 240 eggs per unit of habitat to predict habitat is an incorrect application of the work of Elson (1975) and Symons and Heland (1978), and is very likely to greatly overestimate the amount of habitat required to achieve recovery.

Response: As described in the response to comment 1, the 240 eggs per unit is a target egg deposition needed to fully seed a river (Elson, 1975) and is the same number that is used to predict CSE of a river. The CSE is most often used to establish a conservation goal for a river based on the amount of habitat that is available to the species and widely used to describe the status of individual Atlantic salmon populations. Absent better information we believe that the equation used to estimate CSE can be applied inversely (# of females × 7,200 eggs per female/240 eggs per unit = units of habitat) to estimate habitat needed to support the offspring from a pre-determined number of females. We do not believe that the estimates we provide are an over estimation, as the 240 eggs per unit were intended to take into account natural selection factors that would limit survival of the species. In some site specific cases, there are likely to be river reaches that could support far more than 240 eggs per unit and conversely, there are likely some reaches that can support fewer than 240 eggs per unit.

Comment 3: Some commenters supported the designation of critical areas for the protection of Atlantic salmon in the Gulf of Maine, but felt that this designation did not extend far enough. The commenters stated that a critical habitat designation must include all habitat within the historical range of the GOM DPS of Atlantic salmon. Some commenters believed that the proposed critical habitat designation arbitrarily excluded most of the historic, suitable Atlantic salmon habitat and should include more specific areas in the Kennebec River, the Androscoggin River main stem and its tributaries all the way to Rumford, the entire West Branch of the Penobscot and its tributaries, and the Passadumkeag River. Some commenters also stated that critical habitat designation should include the Presumpscot River and the Sebago Lake watershed. Alternatively, some commenters were opposed to the proposed critical habitat designation on the Androscoggin River.

Response: Sections 3(5)(A)(i) and (ii) of the ESA define critical habitat for a threatened or endangered species as the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the provisions of Section 4 of the ESA, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and specific areas outside of the geographical area occupied by the species at the time it is listed in accordance with the provisions of section 4 of the ESA, upon a determination by the Secretary that such areas are essential for the conservation of the species. We determined in the Biological Valuation process that no additional areas outside of the geographical area occupied by the species at the time it is listed were essential for the conservation of the species because sufficient quantities of habitat are available to achieve conservation in the currently occupied range (NMFS, 2009a). Therefore, we concluded that unoccupied areas, including those specific areas within the Kennebec River above the Sandy River, the Androscoggin River above Lewiston Falls, and the entire West Branch of the Penobscot, did not qualify for critical habitat designation.

The Presumpcot River and Sebago Lake watershed are not included in the geographic range of the GOM DPS, and therefore are not eligible for designation as critical under section 3(5)(A) of the ESA.

Comment 4: Several commenters felt that our review of habitat requirements focused on activities or conditions that may affect salmon habitat but did not focus on activities that have impacted habitat. Additionally, commenters stated concerns with our identification of activities that may affect primary constituent elements and therefore may require special management consideration. Commenters specifically stated concerns with the following three statements: (1) The most direct effect of logging on stream temperature is the reduction in shade provided by riparian vegetation; (2) agricultural practices influence all specific areas proposed for designation and negatively impact PCE sites for spawning and rearing and migration; and (3) timber harvesting and preparation of soil for forestry practices can decrease large woody debris as well as increase soil erosion.

Response: We do not state explicitly that any activities are negatively impacting Atlantic salmon habitat, but rather we list activities that may negatively impact Atlantic salmon habitat. Section 4(b)(8) of the ESA states that in general we * * * ''are to include a brief description and evaluation of those activities (whether public or private) which, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation.'' The word ''may'' gives us the discretion to identify activities that are currently affecting critical habitat as well as activities that have the potential to affect critical habitat. In our description of activities and the types of effects that the activities have on critical habitat, we state that the activities may affect critical habitat recognizing that, at times, the activity can occur and have no affect on critical habitat, while in other circumstances the activity may have an affect on critical habitat. Activities that may affect critical habitat and are carried out, funded, or authorized by a Federal agency, will require an ESA section 7 consultation. In this rule, we identify activities and how they may affect critical habitat; a more detailed description of activities that may affect salmon habitat is available in our supporting document: Habitat requirements and management considerations for Atlantic salmon (*Salmo salar*) in the Gulf of Maine Distinct Population Segment (GOM DPS).

Comment 5: One commenter stated that based on the 500 fish criterion, the Penobscot SHRU is certainly not in any danger of extinction.

Response: In the recovery criteria we state that in order for the DPS to be considered recovered, all three SHRUs must meet or exceed the criteria that we have established: (1) The adult spawner population of each SHRU must be 500 or greater in an effort to maintain sufficient genetic variability within the population for long-term persistence. This is to be determined or estimated through adults observed at trapping facilities or redd counts; (2) The GOM DPS must demonstrate self-sustaining persistence where each SHRU has less than a 50 percent probability of falling below 500 adult spawners in the next 15 years based on population viability analysis (PVA) projections (NMFS, 2009, appendix A). The 50 percent assurance threshold satisfies the criterion that the population is ''not likely'' to become an endangered

species, while 15 years represents the ''foreseeable future'' for which we have determined that we can make reasonable projections based on past demographic data available to us; (3) The entire GOM DPS must demonstrate consistent positive population growth for at least 2 generations (10 years) before the decision to delist is made. Ten years of pre-decision data that reflect positive population trends provide some assurance that recent population increases are not happenstance but more likely a reflection of sustainable positive population growth; (4) A recovered GOM DPS must represent the natural population (*i.e.*, adult returns must originate from natural reproduction that has occurred in the wild); hatchery product cannot be counted towards recovery because a population reliant upon hatchery product for sustainability is indicative of a population that continues to be at risk; (5) In order to delist the GOM DPS, the threats identified at the time of listing must be addressed through regulatory or any other means. These threats are identified in the five factors specified in section 4(a)(1) of the ESA as described in the 2006 Status Review (Fay *et al.*, 2006). Though the Penobscot River has consistently retained a census population of over 500 adult spawners, for the period between 1997 to 2006 approximately 9.6 percent of the Penobscot run resulted from wild spawning or fry stocked fish with the greatest wild origin adult return recorded in 1997 estimated at 160 adults (USASAC, 2007). Due to the low numbers of wild origin adult returns, the entire GOM DPS, including the Penobscot, fails to meet the objectives of recovery on the one principle point that none of the SHRUs have a wild spawning population greater than 500 adult spawners.

Comment 6: One commenter agreed with the analysis of choosing 500 adult spawners (both male and female) for an effective population size, and 2,000 spawners as a number that can weather downturns in survival as reasonable estimates for the large rivers such as those in the Merrymeeting Bay and Penobscot SHRUs (73 FR 51747; September 5, 2008, 51760–51761), but did not agree that these are appropriate numbers for the Downeast Coastal SHRU. The commenter urged us to consider reducing the numbers required for an effective population size for the Downeast Coastal SHRU to be more representative of these smaller rivers, smaller habitat, and historically far smaller salmon numbers than the larger rivers that make up the two other SHRUs.

Response: We believe that each of the three SHRUs, including the Downeast Coastal SHRU, is easily capable of supporting an effective population of 500 adult spawners. Furthermore, we believe using the criterion that each SHRU must have enough habitat to support the offspring of 2,000 adult spawners (See ''*Specific areas outside the geographical area occupied by the species . . . essential to the conservation of the species''* section of this document) as a means of buffering against downturns in survival is also very attainable and not unreasonable for any of the three SHRUs. In the biological valuation we estimate that there are approximately 61,400 units of historical spawning and rearing habitat in the Downeast Coastal SHRU. Using the methods described by Elson (1975) to establish a minimum spawning requirement, otherwise known as the CSE, for 61,400 units of habitat, an estimated 4,094 adult spawners is needed to fully seed the Downeast Coastal SHRU (61,400 units / 7,200 eggs per female × 240 eggs per unit needed to fully seed the habitat = 2,047 females or 4,094 adult spawners assuming 1:1 sex ratio). We chose 500 adult spawners as the minimum effective population size not in respect to the size of the area, but rather in respect to the number of fish that we believe is the minimum number needed to retain sufficient genetic diversity within a SHRU. This is the case for all three SHRUs.

Comment 7: One commenter stated that recovery criteria should not be set that cannot be met. Based on the Services' calculations, the Downeast SHRU does not have enough functional habitat to meet recovery criteria.

Response: There are approximately 61,400 units of habitat in the Downeast Coastal SHRU which are considered to be equivalent to approximately 29,111 functional units. The reduced functional value of habitat in the Downeast SHRU is based on a reduction of habitat quality or the presence of dams or a combination of both as described in the biological valuation (NMFS, 2009). This means that the occupied areas in the Downeast Coastal SHRU are functioning at approximately 47 percent of their potential. We do recognize that not all Atlantic salmon habitat may have functioned historically at its fullest potential due to natural factors. In Downeast Maine, habitat degradation from roads and road crossings, dams, historic log drives, and introduction of non-indigenous species are all factors that have been identified as factors that reduce the functional value of habitat (NRC, 2004; Fay *et al.*, 2006). Improvements in habitat quality can increase the functional value of habitat for the Downeast SHRU (*e.g.*, Project SHARE's ongoing efforts that enhance fish passage and habitat quality by improving or removing bridges, culverts, and roads adjacent to or crossing streams). Given improvements to degraded habitat in the occupied areas, functional habitat quantities in the Downeast SHRU would be sufficient to meet recovery goals.

Comment 8: One commenter expressed difficulty in understanding how we determined fractions of dams for HUC 10s.

Response: Dams were discounted based on their location within a HUC 10 watershed and the degree to which it was estimated they would impede downstream migration of smolts. Dams with turbines were estimated to reduce the functional capacity habitat by 15 percent based on the findings of several studies (GNP, 1995; GNP, 1997; Holbrook, 2007; Shepard, 1991; Spicer *et al.*, 1995). Mainstem dams without turbines are not expected to affect smolts in the same way as dams with turbines, but can result in direct or indirect mortality from delays in migration and by increased predation from predators that congregate around dams. Therefore, dams without turbines were estimated to reduce the functional capacity of habitat units by 7.5 percent (one half of 15 percent). Dams located at roughly the midpoint of habitat within a HUC 10 watershed were estimated to affect passage of roughly half the fish in the HUC 10 watershed (*e.g.*, located half way up the HUC 10 watershed) and therefore were discounted accordingly (*e.g.*, 7.5 percent for dams with turbines).

Comment 9: A commenter stated that we were unclear as to why dams were treated differently than other factors that influence survival of salmon. The commenter stated that dam mortality is applied using a quantitative approach while all other factors are applied using an index number. It would therefore take approximately seven dams to have an equal effect as a quality rating of 1 (*e.g.*, approximately 33 percent). This seems to greatly underestimate the relative effects of dams compared to other factors (or vice-versa).

Response: Habitat quality scores address localized impacts and, therefore, only influence the functional habitat units within a HUC 10 for which the habitat quality score is assigned. Dams were figured into our calculations differently than habitat quality scores because they affect not only the HUC 10 in which they are present, but also every

HUC 10 upstream of their location. Depending on the geographic location of the dam in regards to habitat, a dam may influence a much larger quantity of habitat than an individual habitat quality score.

Comment 10: A commenter stated that some habitat scores within the Penobscot SHRU were underestimated because the Penobscot River Restoration Project was not included in the critical habitat designation.

Response: We did not formulate habitat estimates that included the Penobscot River Restoration Project because it has not been completed at this point and there is not certainty that the project will be completed because neither the permitting nor funding has been fully secured.

Comment 11: One commenter stated that the HUC 10 scale is too coarse. The HUC 12 scale would be better suited to identifying critical habitat.

Response: We considered analyzing at the HUC 12 scale in an attempt to gain higher resolution for critical habitat designation, but we determined that we had insufficient information to evaluate the PCEs at the HUC 12 scale for the entire GOM DPS. In order to provide fair representation across the GOM DPS, we determined that it would not be appropriate to evaluate some areas at the HUC 10 scale and some areas at the HUC 12 scale.

Comment 12: One commenter stated that the habitat amounts in some rivers were suspect. For example, the Dennys has 1,717 units compared to the Pleasant that is shown to have 3,025 units of habitat. Field habitat surveys indicate that the Dennys has approximately twice the number of habitat units as the Pleasant River. Some differences are valid due to un-surveyed small streams; however, the gross differences are surprising and need to be assessed.

Response: In our evaluation, we relied on a GIS based habitat prediction model to estimate habitat for the entire GOM DPS described in Appendix C of the Biological Valuation. Even though in some areas we have fairly comprehensive field surveys of habitat, most of the DPS range does not have this level of information. In constructing the model, the outputs were cross referenced to existing habitat surveys and were determined to be roughly 75 percent accurate at the reach level. As the commenter stated, the field surveys often only take into account mainstem habitat and major tributaries and do not take into account minor tributaries, while the GIS based model does. In the Pleasant River, Western Little River, Taylor Brook and a significant portion of Eastern Little River contain fairly significant amounts of habitat, but are not included in the field survey, and, therefore, may account for some of the discrepancy between the two survey methods. Over time as more information becomes available, we will be able to increase the accuracy of this model, but for now this is the best available information.

Comment 13: One commenter stated that the Nezinscot River HUC 10 watershed was assigned a final biological value of ''3'' even though the Nezinscot is a destination and not a migratory corridor, and another commenter stated that we designated the Little Androscoggin River which is not occupied but arbitrarily did not include any other unoccupied, but historically occupied, watersheds in either the Androscoggin Basin or the Kennebec Basin.

Response: The Nezinscot River HUC 10 watershed includes the mainstem Androscoggin River between the Little Androscoggin River HUC 10 and the Androscoggin River at Riley Dam and therefore is an important migratory corridor.

The Little Androscoggin River HUC 10 watershed does not actually include the Little Androscoggin River. This particular HUC 10 watershed includes only the Androscoggin River and its tributaries from the confluence with the Kennebec up to, but not including, the Little Androscoggin River. These comments reflect confusion expressed by many commenters about the names of HUC 10s as they relate to the location of the HUC 10. In section III of this rule, we describe how we have attempted to alleviate this confusion.

Comment 14: A commenter stated that historically inaccessible habitat should be removed from critical habitat.

Response: No specific areas in the range of the GOM DPS where the entire specific area was historically inaccessible were proposed as critical habitat. However, in some cases there may be small stream segments within a specific area identified as occupied that historically were, and still may be, inaccessible. We are unable to specifically identify the stream segments where critical habitat is proposed that may have been historically inaccessible because of insufficient information on where these barriers exist and whether they are full barriers to migration or partial barriers to migration. As activities occur in these areas, the section 7 consultation process will allow us to further evaluate stream segments that may have been historically inaccessible, and a determination of ''effect'' on the habitat will be made accordingly. If the activity is determined to be outside the historic range of the species, and the activity is not believed to affect critical habitat downstream of the migration barrier, then a determination of ''no effect'' or ''not likely to affect'' critical habitat may be made.

Comment 15: A commenter stated that the biological value score of the lower river migration corridors should not be based on the biological value scores of watersheds outside the currently occupied range.

Response: We discussed assigning biological values using two approaches: assigning scores based on the value of habitat only within the currently occupied range or assigning biological value based on the historic range of the species within the GOM DPS. We concluded that biological value scores should be assigned to HUC 10 watersheds based on the historic range of the species regardless of the presence of dams because areas with dams should not be under valued in terms of their relative importance to Atlantic salmon recovery. Hence, when evaluating the biological value of habitat, we asked biologists not to consider dams as part of their evaluation, but they were to score areas as ''0'' if they believed the area to be historically inaccessible due to natural barriers.

Comment 16: A commenter stated that the SHRU does not function as a true population but rather as a collection of independent populations, stating that this is evident by the genetic information presented in studies by King *et al.* (2000, 2001) and Spidle *et al.* (2001, 2003).

Response: The studies by King and Spidle were referred to extensively in our analysis of DPS structure within the Gulf of Maine as well as the review provided by the NRC (2003). In each of these studies, the authors do not imply that there is more than one independent population within the Gulf of Maine DPS. Spidle *et al.* (2003) and King *et al.* (2001) do describe Maine populations as independent from other North American populations and may reflect a limited number of metapopulations (a spatially separated group of populations of the same species that interact at some level). The National Research Council (NRC; 2004) does state that Maine rivers appear to reflect a metapopulation structure whereby the GOM DPS represents ''a set of local breeding populations connected by exchange of some individuals''. The NRC, however, avoids referring to these populations as independent populations. We discussed this issue with Tim King (personal communication, December 9, 2008), and

he concurred that he was not aware of substantive information that would suggest that there is a collection of independent populations within the GOM DPS, and he agreed with NRC's interpretation that these populations reflect meta-population structure. McElhany *et al.* (2000) describes independent populations quite clearly as ''any collection of one or more local breeding units whose population dynamics or extinction risk over a 100-year time period is not substantially altered by exchanges of individuals with other populations.'' He goes on to state that independent populations are often smaller than the Evolutionarily Significant Unit (ESU; similar to the scale to a DPS) and more likely to inhabit a geographic range on the scale of an entire river basin or major sub-basin. In the Gulf of Maine DPS there are four HUC 6 river basins which are the Penobscot, Kennebec, Androscoggin, and the Downeast Coastal Basin. Though we recognize that the genetic evidence presented by King and Spidle clearly indicates populations with strong river specificity, we do not believe that there is compelling evidence to determine the presence of an independent population structure in the GOM DPS whereby an independent population is a population whose extinction risk over a 100-year time period is not substantially altered by exchanges of individuals with other populations.

Comment 17: A commenter stated that assigning a single population criterion of an effective population size (Ne) of 500 adult spawners (male and female) for each SHRU is not appropriate because each SHRU does not function as a true population but rather a collection of independent populations.

Response: The SHRUs are established as a geographic framework for recovery. We did not use effective population size as a criterion for recovery. Rather, we use the breeding population size in conjunction with other criteria because of the inherent difficulties of calculating effective population size for natural populations, and the further complication of having a group of local breeding populations in which there is limited straying among them.

We believe that assigning a single population criterion for an entire SHRU is more appropriate than trying to allocate population sizes on a per river basis. Assigning population values at the SHRU level allows flexibility in recovery such that recovery can take place anywhere within the SHRU as long as all of the criteria that we have established are met. Therefore, a recovered population could be spread out among multiple rivers within the SHRU or all in one river. Either scenario would allow for a recovery determination as long as all the criteria are met for delisting the DPS. If we assigned specific values or goals for specific rivers, low populations in one river could conceivably delay removing the DPS from the list.

In contrast, we do not believe that assigning population criteria to the entire DPS is sufficient enough to allow for recovery to occur. Assigning a population criterion without reference to geographic distribution could allow for recovery to occur in one river for the entire DPS. Recovery in one river could increase the population's vulnerability to losses in genetic diversity as the population would be exposed to less habitat diversity. Recovery in one river could also increase the population's vulnerability to geographic stochasticity (*e.g.*, a catastrophic event such as a drought or flood that could severely impact the population) and demographic stochasticity (*e.g.*, a significant decline in a population where recovery may require some straying from nearby populations to increase the population size or to increase genetic diversity to prevent inbreeding depression) (see NMFS, 2009, appendix A).

Recovery criteria were developed to aid in designating critical habitat (NMFS, 2009, appendix A), though final recovery criteria will be more fully developed as part of the recovery planning process following the final listing.

Comment 18: A commenter stated that many extant populations in Maine have not regularly achieved Ne > 500 nor Nb (breeding population) > than 500 over the last 100 years or more, and clearly many extant populations would have been unlikely to ever exceed the 1,000–2,000 fish level that may be needed to achieve delisting under the proposed criteria.

Response: We agree that many extant breeding populations may not have exceeded 1,000–2,000 spawners historically, but we do believe that 1,000–2,000 spawners within a SHRU is a realistic goal given the number of breeding populations within a SHRU. Even though we have little population data that pre-dates dam construction on any of the rivers in Maine, Atkins' assessments of populations in both the Kennebec and Penobscot (estimates range between 100,000 and 200,000 adult spawners annually for the Penobscot and Kennebec) (Foster and Atkins, 1869) are reasonable estimates given that these were based on harvest estimates. We also avoid stating that only extant populations within the SHRUs can be used to recover the SHRUs, understanding that, given current low abundances, especially in the Merrymeeting Bay SHRU, common garden experiments that use a mixed stock of fish from populations outside the SHRU may be the most appropriate means to re-establish populations. This concept fits well with the metapopulation paradigm, where limited straying does occur between populations, and in fact is necessary in supporting genetic diversity as well as re-colonization of populations that have been extirpated or face near extirpation. We do state however, that in most circumstances it would be appropriate, given metapopulation dynamics, to use nearby or proximate populations as a source of fish for re-establishing depleted stocks, as these fish are most likely to retain the genetic and physical characteristics most suitable for re-establishing the targeted river.

Comment 19: A commenter felt that the PVA simulation used to project habitat needed to support a recovered population seems overly pessimistic since it uses return rates from 1991–2006 to model a 50-year time horizon. The commenter suggested that it would be more realistic to use a longer time series of return rates to better reflect the types of variability likely to be seen over 50 years.

Response: In Appendix B of the Biological Valuation, an example is given of the PVA model and how it is used to project extinction risks using a time horizon of 50 years. For the actual calculations, the PVA was used in conjunction with the DRAFT Recovery Criteria to estimate how many spawners would be needed in each SHRU to withstand a period of low marine survival as experienced between the years of 1991 to 2006. The output of the model was then used in the critical habitat analysis to determine how much habitat in each SHRU would be needed to support a population capable of withstanding the period of low marine survival as experienced between the years of 1991 and 2006. This period of reference was used to reflect what we have seen as a worst case scenario. The outcome of the model revealed that 2,000 adult spawners would be needed in each SHRU in order to ensure that the population of each SHRU is ''not likely'' (<50 percent) to fall below 500 adult spawners in the ''foreseeable future'' (15 years or 3 generations). This particular time frame was used because our goal was to determine how much habitat we would need to support a population that could withstand another period of low marine survival such as experienced

during the time period between 1991 and 2006.

Comment 20: One commenter stated that while the concept of effective population size (Ne) of 500 adult spawners is established in the literature, the decision to use a census size of 500 adult spawners as a minimum does not seem defensible.

Response: We recognize the difference between effective population size (the number of individuals in a population who contribute offspring to the next generation) and census population size (the actual population, in this case the actual number of adult spawners) and acknowledge the difficulties in calculating the effective population size for Atlantic salmon throughout the range of the Gulf of Maine DPS. In most circumstances though, the effective population size of a species is much smaller than the actual census population size, given that not all breeders are likely to contribute to the next generation of breeders (*e.g.*, a census population of 1,000 individuals may only have 800 individuals that are effective breeders) (Allendorf and Luikart, 2007). However, for Atlantic salmon where the breeding population consists of multiple generations, including parr, 1 sea winter, 2 sea winter, and multi-sea winter spawners, calculating the effective population size relative to the census population size is far more difficult than if all individuals were to reach maturity at the same age. Furthermore, the ratio of effective population size to census population size of adult spawner may be much closer to one for populations with multiple generations (including parr) participating in spawning activities than for populations that all mature at the same age.

Genetic data is one means of calculating the effective population size of natural populations, though extensive genetic data from all the breeding populations across the DPS would need to be gathered to accurately make these calculations. In this case, we make an assumption that the census population size is equal to the effective population size, and assume that all returning adults will be effective spawners. The census population size of adult returns determined through redd counts or adult trap catch is what the State of Maine and the Federal agencies have principally relied upon as a gauge to describe population health of Atlantic salmon in Maine and elsewhere throughout the United States (USASAC 2007), and, therefore, we believe that using this same metric to calculate recovery is reasonable. For lack of better information, we believe that a census population size of 500 fish with the added criterion identified in the recovery criteria is a very reasonable goal and adequate enough to maintain within population spatial structure and sufficient genetic diversity within each of the three SHRUs.

Comment 21: One commenter stated that the GIS-based Atlantic salmon model promises to be a powerful tool for making fisheries management decisions and directing habitat restoration or protections. The commenter went on to state though that several improvements to this model and data set could be made, including: use a digital elevation model to estimate drainage areas in the smaller basins; investigate the discrepancies and identify variables that appear to underestimate stream widths and, therefore, appear to underestimate salmon habitat in some reaches; validate the GIS model with existing field habitat surveys; check the GIS model for missing line segments; and check the model to exclude areas above known, impassible natural barriers.

Response: The GIS based habitat prediction model development was expedited for the purpose of designating critical habitat. We do recognize that there are many attributes that could improve the output of the model. These improvements could not be completed in the time available for critical habitat designation given the schedule for publishing the final critical habitat designation outlined in the settlement agreement negotiated in the Conservation Law Foundation and Center for Biological Diversity lawsuit. Regardless, the model output conservatively predicts the presence of habitat to near 75 percent accuracy and, as the commenter indicates, the model slightly underestimates habitat because of some underestimation of stream widths. We feel that the 75 percent accuracy provides us with the best available information at this time and is sufficient to designate critical habitat for Atlantic salmon at the HUC 10 level (NMFS, 2009, Appendix C).

Comment 22: One commenter stated that factors outside of forestry and land management appear to be the major limiting factors to northern Atlantic salmon populations and stated that climate change may be having an even larger effect on the species by changing runoff timing, raising stream temperatures, and changing the timing of salmon runs. Critical habitat designation does not address these issues and instead places greater emphasis on secondary or historic practices that are having at most a minor impact on the species.

Response: The statutory language of the ESA states that we shall identify and evaluate those activities (whether private or public) which, in the opinion of the Secretary, if undertaken, may adversely modify such habitat, or may be affected by such designation.

Climate change in itself is not an activity, but rather a term that describes the cumulative effects of many activities on the environment. Even though Atlantic salmon managers and scientists are concerned about the potential impacts of climate change on Atlantic salmon, at this point we have very little evidence on the effects that climate change has had or may have on Atlantic salmon in the GOM DPS. Furthermore, we are unable to support the inclusion of the activities that contribute to climate change due to a lack of scientific evidence that links the impact of a specific activity that contributes to climate change to an adverse modification of the physical and biological features essential to the conservation of the GOM DPS.

We also do not believe that we placed greater emphasis on secondary or historic practices that are having only minor impacts on the species. In our assessment, we focused on those activities that may affect critical habitat. Most notably, dams represent one activity that we have identified as having an effect on critical habitat. The NRC report (2004) concluded that ''the greatest impediment to the increase of salmon populations in Maine is the obstruction of their passage up and down streams and degradation of their habitat caused by dams.'' The importance of dams in limiting Atlantic salmon recovery is further elaborated in Fay *et al.* (2006). In conclusion, we believe that we are focusing our efforts on activities that have the potential to impact salmon habitat, as supported by observation and scientific data.

Economic Analysis

Comment 23: Several commenters stated that the economic analysis fails to address the potential cost of lost generation due to the diversion of flows for fishway operation. While it may be difficult to predict the costs associated with the potential for changes in minimum flows and similar operation changes, one commenter argued that the loss in generation value due to fishway flows can and should be quantified in the economic analysis. For example, a number of commenters assert that the Services' own ''rule of thumb'' is that they may recommend licensees divert approximately three to four percent of the turbine hydraulic capacity for use as fish passage flows. The commenters

further assert that this equates directly to a loss of electric generation at these facilities, thereby increasing costs born to hydro-electric operators.

Response: Section 3.4.2 of the draft economic analysis describes qualitatively and quantitatively potential impacts associated with operational changes. This section explains that, absent information regarding how NMFS may regulate flows at specific dam sites following a critical habitat designation, impacts associated with potential operational changes are not included in the total estimated impacts presented in the report. To provide context on the potential magnitude of operational impacts, the analysis considers a hypothetical scenario in which all hydropower operations within the study area are precluded from generating power during the month of May (peak season for downstream smolt migration). According to this scenario, energy costs could be expected to increase by up to $11.3 million.

The final economic analysis includes in its impact estimates a scenario incorporating a three to four percent loss of electric generation at the projects for which fish passage costs are estimated. The analysis also incorporates a discussion on the uncertainties associated with these impacts.

Comment 24: One commenter stated that the economic analysis needs to consider additional costs associated with fish passage facilities including: operational and maintenance costs, costs of effectiveness studies, stocking and managing for the species, and incremental costs of consultation.

Response: As described in Exhibit 3–6, the draft economic analysis quantifies the following costs associated with fish passage facilities: installation, species survival studies, installation and maintenance of fish screens, and water quality and temperature controls. The analysis also includes administrative costs of consultation. The final economic analysis incorporates new information on the potential operation and maintenance costs for fish passage facilities. Stocking and management of the species is not considered to be related to critical habitat and is, therefore, appropriately not quantified in the economic analysis.

Comment 25: Verso Paper Corporation comments that it operates four hydropower dams to power its mill on the Androscoggin. The draft economic analysis estimated that the cost of constructing fish lifts for fish passage at each dam would be approximately $2.5 million each. While $2.5 million constitutes only a moderate impact according to the NMFS 4(b)(2) report, the combined effect of $10 million for all four dams is a significant economic impact. Further, these estimates do not include costs of conducting species survival or water quality studies, or installing fish screens. These costs, along with increases in energy costs and impacts of programmatic changes, make it clear that the economic impacts to the Androscoggin mill are very high.

Response: The 4(b)(2) analysis was not conducted on a project-by-project basis, but on the sub-watershed (ten digit hydrologic unit code, or HUC) scale. That is, the total economic impacts of salmon conservation to all economic activities were summed by HUC. Of the four dams discussed here that support the Androscoggin mill, three (Riley, Jay, and Livermore) occur within the same HUC; the remaining dam (Otis) occurs in a separate HUC. Economic impacts by HUC therefore include the costs of fish lift construction for all dams within the HUC, as well as the impacts of conducting species survival and water quality studies, and installing fish screens (see exhibit 3–8 of IEc, 2009). As described in the economic analysis, to the extent that programmatic changes may also be requested as a result of critical habitat, the quantified impacts are an underestimate of the total impacts.

We believe that the HUC 10 watershed scale is an appropriate scale in which to conduct the ESA section 4(b)(2) analysis as there is insufficient information to accurately describe the economic impact for all individual projects within the DPS, nor is there sufficient information to accurate describe the physical and biological features directly associated with each project. Even though there may be sufficient information for some projects to conduct this scale of analysis, by not having sufficient records for all projects in the DPS we can not fairly conduct a cost benefit analysis by conducting a project based analysis for some, and a watershed based analysis for others.

Comment 26: A commenter stated that the hydropower analysis incorrectly assumes a 50-year license term for the re-licensing of hydroelectric projects over which impacts are discounted at an annual rate of seven percent. While the license for a new project may be for terms up to 50 years, a typical term for the re-licensing of an existing project is 30 years.

Response: The draft economic analysis uses information from the FERC re-licensing schedule on the re-licensing dates for each dam and calculates present value impacts according to the expected year of re-licensing. The analysis does not assume that all licenses have a 50-year term. The present value impacts are then annualized over the full 50-year time frame of the analysis.

Comment 27: One commenter stated that the draft economic analysis assumes that a fishway for fish passage would be needed at the Milford Project's Gilman Falls Dam. This dam, however, contains a free-flowing ''breach'' section of river that negates the need for any type of fish passage.

Response: As described in Section 3.4.1, the draft economic analysis applies a ''rule of thumb'' to determine whether and what type of fish passage may be requested at each dam. For main stem dams, we anticipate that fish lifts would serve as the preferred method of fish passage. The Gilman Falls Dam occurs on the main stem Penobscot River; the draft economic analysis therefore assumed a fish lift may be required. We believe that salmon should be able to pass this dam at most, but not all, times of the year, as it is a low head dam. While another type of fish passage may therefore be appropriate at this site (*e.g.*, a fish ladder), the economic analysis conservatively assumes it is possible that fish passage will need to be incorporated at this site.

Comment 28: One commenter stated that the draft economic analysis relies heavily on overly generalized assumptions and provides an example of the main stem Milford Dam. For this project, the draft economic analysis estimated present value impacts of $232 (IEc, 2008), compared with the company's estimate of $7.6 million to implement the agreed upon fish passage measures that include installation of a fish lift as part of the Penobscot River Restoration Plan.

Response: Section 3.4.1 of the draft economic analysis notes that it does not include economic impacts associated with providing fish passage at Milford and a bypass at Howland Dam where plans to improve fish passage have already been developed. The $7.6 million dollar cost will be incurred independent of any critical habitat decision and is therefore not an impact of the rule. At these facilities, the impact of the rule is limited to the administrative costs of conducting a section 7 consultation at the time of dam relicensing.

Comment 29: One commenter asks whether the analysis of the impact on electricity production would change if the Penobscot River Restoration Project (PRRP) were taken into account.

Response: The economic analysis attempts to isolate and quantify the

costs of potential project modifications that result specifically from the designation of critical habitat. With regard to the PRRP, a plan has already been established independent of the designation of critical habitat for four projects on the Penobscot River. This plan incorporates project modifications that meet or exceed the measures that might otherwise be requested to avoid or minimize adverse modification of critical habitat. As a result, we do not anticipate that critical habitat designation would affect the design or implementation of the PRRP, nor do we anticipate that the designation of critical habitat would affect the project's costs. Accordingly, the economic analysis assumes that the designation of critical habitat will have no impact on the PRRP.

Comment 30: One commenter requested that NMFS fully assess and quantify the economic impact that the listing of the Atlantic salmon will have on manufacturers and their employees. Specifically, the commenter suggested that it is unclear how facilities that are compliant with State standards for discharge may be affected by the listing. It further expressed concern that the listing may add uncertainty to the issuance of Maine Pollutant Discharge Elimination System (MPDES) permits, thereby affecting the ability of permitted facilities to secure financing.

Response: The ESA does not allow for consideration of economic impacts in making decisions regarding whether to list species as endangered or threatened. Economic impacts are considered in designating critical habitat for listed species.

Comment 31: One commenter stated that the ''baseline approach'' of the draft economic analysis considers only the economic impacts attributable solely to critical habitat designation and not those impacts that may be attributed co-extensively to the proposed DPS listing. The comment asserts that this approach was invalidated by the Tenth Circuit Court in *New Mexico Cattle Growers Association* v. *USFWS,* 248 F 3d 1277, 1285 (10th Cir 2001), which held that the Services must consider all impacts of a proposed designation, even those attributed coextensively to the listing. The commenter stated that the Tenth Circuit is the only Federal Circuit Court of Appeals that has considered the issue. In addition, the commenter stated that because the status of the listing is uncertain, attempts to measure incremental impacts as distinct from listing are tentative and misleading.

Response: As noted in the response to Comment 30, above, the ESA precludes consideration of economic impacts in making listing determinations but allows consideration of such impacts in conjunction with designating critical habitat. To the extent possible, the economic analysis attempts to quantify the impacts associated specifically with the designation of critical habitat, as these are the economic impacts that stand to be affected by a critical habitat designation decision. In some cases, the analysis acknowledges that it is difficult to determine what may be the causative factor for a conservation measure—the listing or the critical habitat designation. In these cases, the draft economic analysis conservatively includes such impacts and notes the uncertainty. The economic analysis does not include, however, impacts of conservation measures determined by NMFS to be solely due to the listing, and not associated with the critical habitat designation, as these impacts are expected to occur regardless of the critical habitat designation decision.

Since the Tenth Circuit Court decision, courts in other cases have held that an incremental analysis of impacts stemming solely from the critical habitat rulemaking is proper (*Cape Hatteras Access Preservation Alliance* v. *Department of Interior,* 344 F. Supp. 2d 108 (D.D.C. 2004); *Center for Biological Diversity* v. *United States Bureau of Land Management* 422 F. Supp. 2d 1115 (N.D. Cal. 2006). For example, in the March 2006 ruling that the August 2004 critical habitat rule for the Peirson's milk-vetch was arbitrary and capricious, the United States District Court for the Northern District of California stated,

> ''The Court is not persuaded by the reasoning of *New Mexico Cattle Growers,* and instead agrees with the reasoning and holding of *Cape Hatteras Access Preservation Alliance* v. *U.S. Dep't of the Interior,* 344 F. Supp 2d 108 (D.D.C. 2004). That case also involved a challenge to the Service's baseline approach and the court held that the baseline approach was both consistent with the language and purpose of the ESA and that it was a reasonable method for assessing the actual costs of a particular critical habitat designation (Id at 130). 'To find the true cost of a designation, the world with the designation must be compared to the world without it.' ''

In this final rule we use an approach consistent with the *Cape Hatteras* line of cases.

Comment 32: One commenter argued that additional time should be taken to fully assess and quantify the economic impact the listing will likely have on manufacturers and their employees located along Maine's working rivers. Specifically, the commenter suggested that it is unclear how facilities that are compliant with State standards for discharge may be affected by the listing. The commenter further expressed concern that the listing may add uncertainty to the issuance of MPDES permits, thereby affecting the ability of permitting facilities to secure financing.

Response: As mentioned in the response to Comment 30, economic impacts are not allowed to be considered in relation to listing decisions, but the ESA allows consideration of such impacts in conjunction with designating critical habitat. Section 5.3.1 of the economic analysis considers the potential effect of critical habitat designation on licensed discharge facilities. Specifically, this section notes that NMFS records indicate that there have been no section 7 consultations regarding discharge permits since the Atlantic salmon was listed. Further, EPA has not objected to and federalized any MPDES permits due to concerns for salmon. The economic analysis, therefore, does not anticipate that the issuance of these permits is likely to result in consultation regarding salmon and its habitat.

ESA Section 4(b)(2) Report

Comment 33: Several commenters expressed concern that we only chose to exclude areas if the specific area had low biological value and a correspondingly higher economic cost, but if the area had no dams, then those areas were also ineligible for exclusion.

Response: The Secretary of Commerce (Secretary) has discretion in balancing the statutory factors, including what weight to give those factors. The ESA provides the Secretary with the discretion to consider areas for exclusion based on the economic impact, or any other relevant impact, so long as a determination is made that the benefits of exclusion outweigh the benefits of designation, and so long as the exclusion will not result in extinction of the species concerned. The benefits of designation are to ensure that there is sufficient habitat with essential features needed to support recovery objectives. Given that Atlantic salmon are in danger of extinction in the foreseeable future, we used our discretion to only consider those areas for exclusion that have relatively low biological value and correspondingly higher economic cost.

In our analysis, we set criteria to weigh the economic cost of designating critical habitat against the biological benefit of designating critical habitat in order to assure that sufficient habitat would remain available to achieve conservation of the species. Given that the species is in danger of extinction, we believe that all habitat of medium or high biological value, and all habitat not

impeded by dams is essential to achieve conservation of the species. In this rule, in the section entitled *''Consideration of Economic Impacts, Impacts to National Security, and Other Relevant Impacts,''* subsection *''Economic Impacts''*, we expounded upon our decision to consider for exclusion only those areas with a biological value of ''1''.

We did consider a more straight forward approach for exclusion such that any areas for which the costs of designation were greater than the biological value of the area to the species would qualify for exclusion. We chose, however, to consider for exclusion only those areas that have a biological value score of ''1'' (unless the area is without dams) because excluding all specific areas for which the costs of designation were greater than the biological value of the area to the species would reduce the quantity of habitat below what is needed to achieve conservation of the species.

Comment 34: One commenter stated that the ESA 4(b)(2) analysis is flawed because NMFS's determination of whether an economic impact was low, moderate, or high was done on a comparative basis as opposed to an absolute basis. NMFS did not actually determine the economic impact to an area of a proposed critical habitat designation.

Response: The framework used to inform the section 4(b)(2) analysis was a modified cost-effectiveness analysis. The cost-effectiveness analysis allows us to compare a monetized estimate of the ''benefits of exclusion'' against the biological ''benefits of inclusion'' for any particular area. The commenter is suggesting that the only accepted way to conduct an ESA 4(b)(2) exclusion analysis is with a cost benefit analysis. However, the approach we used, a cost-effectiveness analysis, is acceptable for 4(b)(2) exclusion analysis (U.S. OMB, 2003).

The Office of Management and Budget has acknowledged the cost-effectiveness analysis (CEA) as an appropriate alternative to benefit-cost-analysis (U.S. OMB, 2003). The CEA provides a rigorous way to identify options that achieve the most effective use of the resources available without requiring monetization of all of the relevant benefits or costs. The CEA was used in designating critical habitat for the Gulf of Maine DPS of Atlantic salmon, whereby we differentiated among habitat areas based on their relative contribution to conservation based on habitat characteristics and best professional judgment. These qualitative ordinal valuations were then combined with estimates of the monetized economic costs of critical habitat designation. In essence, individual habitat areas are assessed using both their biological valuation and economic cost, so that areas with high conservation value and lower economic cost have a higher priority for designation, and areas with low conservation value and higher economic cost have a higher priority for exclusion. Using the Secretary's discretion in balancing the statutory factors, only those areas with low biological value were considered for economic exclusion, given that excluding areas of higher biological value would remove protections to habitat needed to achieve conservation of the species.

Comment 35: One commenter stated that, ''[p]roposed designated critical habitat on Plum Creek lands does not require special management or protection * * * [we] implement practices that provide on-the-ground conservation outcomes that benefit Atlantic salmon and address the primary constituent elements (PCEs) of salmon habitat in Maine.''

Response: As stated in section 4(b)(2) of the ESA, the Services may exclude any area from critical habitat if it is determined that the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. Based on the best scientific and commercial data available, including Federal and State natural resource protection regulations, we determined that designation of critical habitat in Maine, including Plum Creek lands, is necessary to protect Atlantic salmon from extinction. Furthermore, the fact that on-the-ground conservation measures are being implemented for Atlantic salmon habitat is evidence of the need to manage the essential features of the habitat.

We recognize that many organizations implement practices that provide on-the-ground outcomes that benefit Atlantic salmon, but these practices have not been provided to the Services for thorough review to determine their conservation benefit to Atlantic salmon. Plum Creek states that it fully complies with Maine's Best Management Practices (BMPs) and believes these practices to be protective of salmon habitat. While many of the BMPs do provide protections to Atlantic salmon, there are many aspects that we feel may affect Atlantic salmon habitat and, therefore, require further review. For example, we state that a 30-meter buffer is generally required to provide protections to critical habitat. The 30-meter buffer has been identified as what is generally required to maintain or restore optimal habitat in fish-bearing streams (Murphy, 1995) and necessary to protect invertebrate communities (Erman and Mahoney, 1983) that salmon require for forage. Murphy (1995) further states that narrower buffers or selective harvest within the buffers may not provide for maintenance of large woody debris contributions into the stream over the long term. Plum Creek's review of Maine's BMPs prescribe a tiered approach where some streams have no buffer protection, others have a 75-foot (22.9-m) buffer, and others have up to a 250-foot (76.2-m) buffer but still allow for removal of up to 40 percent of the canopy. Based on the best scientific and commercial data available, including Federal and State natural resource protection regulations, we determined that designation of critical habitat in Maine, including Plum Creek lands, is necessary to protect Atlantic salmon from extinction.

Miscellaneous Comments

Comment 36: Two commenters stated that appropriate documentation under the National Environmental Policy Act (NEPA) must be prepared by the Services and published for the public review process prior to any final rules on critical habitat designation that impact the physical environment.

Response: NEPA does not apply to designations of critical habitat under the ESA. The reasons underlying this determination, mainly that designation of critical habitat is a non-discretionary statutory obligation in relation to the listing of a species under the ESA, reflects an opinion from the Ninth Circuit Court of Appeals (see *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996)). In accordance with the decisions of the Ninth Circuit Court, we believe that NEPA documentation is not required for the designation of critical habitat within the range of the GOM DPS.

Comment 37: A commenter requested that we revise the critical habitat designation proposal for the Penobscot and Kennebec watersheds. The revised proposal should, at a minimum, exclude potential critical habitat designation for Atlantic salmon in the Androscoggin River and other areas, as appropriate, based upon the updated analyses.

The commenter felt that critical habitat for the expanded DPS should be published separate from the Downeast River final rule, but not before the end of the 1-year window permitted in the ESA following the initial September 5, 2009, proposal. The Notice should request, and give adequate time for, public comments on the revised

proposal prior to issuance of any final rule or designation in the Penobscot or Kennebec Rivers.

Response: The ESA states that a final regulation designating critical habitat of an endangered species or threatened species shall be published concurrently with the final regulation implementing the determination that such species is endangered or threatened. Exceptions to this are if critical habitat of such species is not determinable, in which we would be allowed 1 year from the time of listing to make such a determination. For Atlantic salmon, we have an abundance of information on which a determination of critical habitat can be based, and, therefore, a ''not determinable'' decision is not supportable in this case.

Comment 38: Two commenters requested that both the critical habitat rule and DPS listing rule be delayed until additional information relating to the adequacies of regulations pertaining to waste water discharge and water withdrawal programs can be further reviewed.

Response: The June 1, 2009, publication due date for the final rule designating critical habitat for Atlantic salmon was determined by a judicially approved settlement agreement between the Center for Biological Diversity, Conservation Law Foundation, and NMFS. We feel that asking the plaintiffs and the court to agree to an extension of that date to conduct further evaluation of existing regulations is unwarranted. The adequacy of existing regulatory mechanisms is evaluated in the listing determination, though it is not something that is considered in designating critical habitat. Designating critical habitat is designed to protect habitat features essential to the conservation of the endangered or threatened species. In doing so, we are required to identify the habitat features that may require special management or protections. As such, several activities were identified as affecting habitat features or as activities that we believe may have an effect on habitat features either now or in the near future. By identifying these activities, we are stating that if a Federal action agency were to fund, carry out, or authorize one or more of these activities, then the Federal action agency should consult with the Services on that action. At that point, the Services, in conjunction with the action agency, will make a determination, specific to that project, on whether or not existing regulatory mechanisms are sufficiently protective of the habitat features that we identified, or whether the action may affect the habitat features and, therefore, may require formal or informal consultation. During this consultation process, modifications to the project may be required to minimize or eliminate the effect on the habitat feature.

Comment 39: One commenter stated that the **Federal Register** notice for critical habitat correctly identifies dams as the primary threat to Atlantic salmon, but falls short of recognizing or recommending that the cumulative impacts of dams be addressed if Atlantic salmon are going to be restored in the Androscoggin, Kennebec, and Penobscot Rivers. The commenter urges us to directly address the need for dam removal rather than focus on fishways that we know cannot ameliorate the cumulative impact of dams.

Response: The biological valuation portion of the critical habitat designation does account for cumulative impacts of dams in the determination of the ''functional habitat units'' score of habitat units within the range of the GOM DPS. Through our scoring system, the functional habitat units score accounts for dams not only within a particular HUC 10, but also downstream of that HUC 10, thereby addressing the issue of cumulative impacts associated with each dam encountered by a fish making its way to or from a particular HUC 10.

We do not address the needs of dam removal directly in the critical habitat designation as this would not add information necessary in making a determination of critical habitat. When conducting the economic analysis, we had to determine a course of action that may be required of the hydropower companies in order to estimate the economic impact. Given that we do not have the resources or the time to fully assess the most appropriate course of action for each and every dam within the Gulf of Maine DPS, we developed a general list of the types of modifications that may be required by the dam owner if their dam is within critical habitat. In some circumstances, these modifications may be the most appropriate course of action. In other circumstances, more or less stringent modifications may be required of the dam owner depending on the amount the project affects critical habitat and what is required to prevent jeopardy or adverse modification and achieve recovery of the species. The need for dam removal or improved fish passage for specific projects will be addressed in a recovery plan for the expanded GOM DPS and in individual section 7 consultations on projects during re-licensing or licensing.

Comment 40: A commenter stated that the Services need to be more aggressive in dealing with numerous and well-documented problems associated with elevated levels of acidity, low buffering capacity, and lack of important nutrients in our rivers and strongly recommend pursuing a pilot terrestrial liming/calcium enhancement project on a meaningful scale in order to address these known problems.

Response: Acidification of surface waters has been identified in numerous planning documents, including the NRC report on Atlantic salmon in Maine (2004), the Final Recovery Plan for Atlantic Salmon (NMFS and FWS, 2005) and the Status Review for Atlantic Salmon (Fay *et al.*, 2006). Acidification of surface waters has been well documented to have detrimental effects on Atlantic salmon, particularly smolts. Whether anthropogenic acidification of surface waters is affecting the GOM DPS, and to what extent, is still widely debated. A combination of low pH and high labile aluminum can reduce the physiological function of the gill membrane and in turn, cause direct or indirect mortality to a smolt as it attempts to enter sea water. Since the 1980s, researchers have been working hard to understand acidification of surface waters in Maine, particularly in the region east of the Penobscot River. Haines *et al.* (1990) reported that, when Atlantic salmon smolts were subjected to elevated acidity and elevated aluminum concentrations, a combination of pH less than 5.5 and exchangeable aluminum concentration greater than 200 mg/l caused osmoregulatory stress. Since this time, numerous and extensive efforts have been undertaken to understand the role of acidification on Atlantic salmon survival, particularly in the Downeast Region of Maine. Furthermore, even though it has been widely acknowledged that emissions of sulfates and nitrates contribute significantly to acidification of surface waters, in Maine there are differing views as to how much of the acidity is directly associated with these emissions. In Downeast Maine, there is uncertainty among researchers and biologists on how much of the acidity in Downeast rivers is naturally occurring from the high levels of dissolved organic matter and what portion of the acidity originates from exogenous sources such as sulfate and nitrate emissions, marine aerosols, or land-use activities (*e.g.*, forestry and agricultural practices). At this point, we recognize that some rivers and streams are impaired by low pH and high aluminum concentrations, but we do not believe that there is substantive information to suggest that the GOM

DPS is significantly impaired at the population level as a result of anthropogenic acidification. Whether the Services should undertake liming or calcium enhancement to offset the effects of low pH is an issue that will need to be pursued in the development of a recovery plan and is not related to the designation of critical habitat.

Comment 41: One commenter stated that the critical habitat designation fails to consider the essential migratory nature of Atlantic salmon * * * Atlantic salmon will not stay in just those areas of a watershed that are designated as critical habitat.

Response: During our designation process we identified all areas currently occupied by the listed GOM DPS of Atlantic salmon. All areas currently occupied by the species have been designated as critical habitat, with exceptions of areas excluded as part of the 4(b)(2) process and marine areas as described in this final rule, section titled: Identifying the Geographical Area Occupied by the Species and Specific Areas within the Geographical Area. Areas not designated as critical habitat within the GOM DPS are areas that are currently inaccessible to Atlantic salmon due to either natural or man-made barriers or areas that do not have the physical and biological features essential to the conservation of the species. In order to designate critical habitat outside the current GOM DPS we would need to make the determination that those areas are essential to the conservation of the species. At present, we have determined that enough habitat is available within the occupied portions of the GOM DPS to conserve the species regardless of whether salmon migrate outside this habitat area. Therefore, habitat in unoccupied areas within or outside of the GOM DPS is not essential to the conservation of salmon and not appropriate for designation as critical habitat.

Comment 42: A commenter felt we should provide more region specific review of habitat variability and threats in our source document (Habitat Requirements and Management Considerations for Atlantic salmon in the GOM DPS).

Response: The biological valuation (NMFS, 2009a) does provide SHRU specific biological reports that describe the variability of physical and biological features essential to the conservation of the species within and among the individual SHRUs. Additionally, these SHRU specific biological reports provide general descriptions of activities that may affect the physical and biological features essential to the conservation of the GOM DPS within each SHRU.

Comment 43: One commenter stated that the effects of dams are overstated. The commenter felt that even though dams do impact migration and survival, marine survival is the biggest factor limiting recovery. The commenter further states that dams are not the driving force in the decline as evidenced by rivers with no barriers to migration but with the same declines as rivers with barriers.

Response: In the 4(b)(2) report (NMFS, 2009b), we fully acknowledge the importance of marine survival and the fact that it is a very significant limiting factor in the recovery of the GOM DPS. However, critical habitat may not be designated within foreign countries or in other areas outside of the jurisdiction of the United States (50 CFR 424.12(h)). Furthermore, we are not able, at this time, to identify the specific features characteristic of marine migration and feeding habitat within waters under U.S. jurisdiction essential to the conservation of Atlantic salmon and are, therefore, unable to identify the specific areas in the marine environment where such features exist. Therefore, specific areas of marine habitat are not designated as critical habitat. We also do not feel that the effect of dams is overstated. The National Research Council stated in 2004 that the greatest impediment to self-sustaining Atlantic salmon populations in Maine is obstructed fish passage and degraded habitat caused by dams. As the commenter acknowledged, we relied heavily on Fay *et al.* (2006), which provides a comprehensive review of the studies that support this conclusion. Dams have been found to result in direct loss of production habitat, alteration of hydrology and geomorphology, interruption of natural sediment and debris transport, and changes in temperature regimes (Wheaton *et al.*, 2004). Riverine areas above impoundments are typically replaced by lacustrine (lake or pond) habitat following construction. Dramatic changes to both upstream and downstream habitat caused by dams directly result in changes in the composition of aquatic communities, predator/ prey assemblages, and species composition (NRC, 2004; Fay *et al.*, 2006; Holbrook, 2007). Upstream changes in habitat are known to create conditions that are ideal for Atlantic salmon predators such as chain pickerel, smallmouth bass, and double crested cormorants (Fay *et al.*, 2006). Furthermore, dams not only change predator/prey assemblages, dam passage is known to negatively affect predator detection and avoidance in salmonids (Raymond, 1979; Mesa, 1994; Blackwell and Krohn, 1997; Holbrook 2007). Adults may also be susceptible to predation when they are attempting to locate and pass an upstream passage facility at a dam in conjunction with higher summer temperatures (Fay *et al.*, 2006; Power and McCleave, 1980).

Providing highly effective fish passage both upstream and downstream at impoundments is very important. However, that does not negate the fact that even passage facilities contribute to Atlantic salmon mortality. Passage inefficiency and delays occur at biologically significant levels, resulting in incremental losses of pre-spawn adults, smolts, and kelts. Dams are known to typically injure or kill between 10 and 30 percent of all fish entrained at turbines (EPRI, 1992). With rivers containing multiple hydropower dams, these cumulative losses could compromise entire year classes of Atlantic salmon. Studies in the Columbia River system have shown that fish generally take longer to pass a dam on a second attempt after fallback compared to the first (Bjornn *et al.*, 1999). Thus, cumulative losses at passage facilities can be significant and are an important consideration.

Comments on Issues Outside of the Scope of this Rule

There were a number of comments and suggestions that are not directly related to the designation of critical habitat. These included suggestions on collaboration versus regulation, comments on the inadequacy of existing State regulations, comments on the National Pollution Discharge Elimination System (NPDES), comments on river classification, comments related to the listing of Atlantic salmon in particular rivers under the ESA (inclusion or exclusion of certain rivers), and remarks on the timing of the critical habitat designation given the U.S. economic slow down. Given that these comments do not affect the critical habitat designation process, we will not be providing detailed responses in this rule. Comments that were submitted in response to the proposed critical habitat designation, but appear to be more related to the listing rule, will be addressed in that listing action.

Remarks

(1) After the close of the comment period, we were informed that the watershed delineations represented as HUCs had recently undergone some revisions that would alter the boundaries of some of the HUC 10 watersheds used to represent specific

areas within the GOM DPS. In our determination of specific areas, we identified the HUC 10 watershed scale as appropriate given that the HUC 10 watershed is the approximate scale in which Atlantic salmon are currently managed. The HUC 10 scale was also appropriate because we had sufficient information to analyze each specific area for habitat value and economic cost. When we were made aware of the modifications, we carefully assessed the implications of the modifications and whether it would be necessary to reconfigure our designation based on the modifications. ESA section 3(5)(A) states that we are to identify specific areas within the geographical area on which are found those physical and biological features essential to the conservation of the species and which may require special management or protections. Section 3(5)(C) further states that, except in circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. The Services' regulations further state in 50 CFR 424.12(c) that each critical habitat will be defined by specific limits using reference points and lines as found on standard topographic maps of the area. Each area will be referenced to the State(s), county(ies), or other local governmental units within which all or part of the critical habitat is located. Unless otherwise indicated within the critical habitat descriptions, the names of the State(s) and county(ies) are provided for information only and do not constitute the boundaries of the area. Ephemeral reference points (*e.g.*, trees, sand bars) shall not be used in defining critical habitat. Based on the ESA and agency regulations, we concluded that reconfiguration of the HUC 10 watersheds based on this update was unnecessary for the following reasons: (1) Considering the guidance, we have a fair amount of discretion in defining the scale, size, and shape of the area used to represent the specific area in which critical habitat is analyzed; (2) the HUC 10 watershed scale, regardless of size or shape, does not influence salmon biology or salmon behavior; (3) we can make available to the public maps that clearly identify the specific areas and the critical habitat within those areas; and (4) we clearly identify the specific State(s), county(ies), and town(s) in which all or part of the critical habitat is located.

(2) In the proposed rule (50 CFR 51747; September 5, 2008) summary paragraph, we stated that there were 203,781 km of perennial river, stream, and estuary habitat proposed for designation as critical habitat. This number was in error, and the actual kilometers proposed for designation was 20,378 km. The habitat kilometers in the summary tables in Part 226 of the proposed rule were correct.

III. Summary of Revisions

We evaluated the comments and the new information received in response to the proposed rule to ensure that our final rule contained the best scientific data available. Some of the comments and new information has resulted in a number of general changes to the critical habitat designations. A review of the comments that triggered those changes and a summary of the changes that were made are included in this section:

(1) One commenter noted that on Page 9, Criterion (a) of the biological valuation (NMFS, 2008a) we do not specify the time frame in which salmon have been documented in a specific area for the area to be considered occupied. Another commenter expressed concern over our perceived use of the ''Fish Friends'' program overseen by the Atlantic Salmon Federation as a criterion for occupation. On page 9 of the biological valuation we identify two criteria, that if either are met, would warrant the area to be considered occupied by the species.

The text in criterion (a) has been modified to include the timeframe of 6 years, which is consistent with the timeframe expressed in criteria (b), and we did remove reference to the Fish Friends program on the basis that under no circumstance were specific areas determined to be occupied solely based on the stocking of fry from this program. These modifications were made in the final rule section titled *Identifying the Geographical Area Occupied by the Species and Specific Areas within the Geographical Area.*

(2) Several commenters asked that we clarify the approach used to bin economic costs as well as how cost thresholds were assigned and how specific areas were considered for economic exclusions.

In order to compare economic cost to biological value in the exclusion process we needed to assign a value with which we could compare unlike values (*e.g.*, dollar amounts vs. biological value). In order to create like values for both the economic costs and final biological values we chose to bin the biological and economic data into three categories (high, medium, low) in order to consider exclusions. In the proposed rule we state that we binned the economic costs into three categories to represent low, medium and high economic costs, but did not explain why or how we did this binning. We modified the text in the final rule section—*Consideration of Economic Impacts, Impacts to National Security, and Any Other Relevant Impacts* to explain why and how we did the binning of the economic cost.

(3) A commenter stated that the algorithm used to arrive at functional habitat units is difficult to follow, in part because it is described in two separate sections. A unified section describing this process would be helpful, as would a formulaic representation of the process.

The section of the final rule ''*Specific areas outside the geographical area occupied by the species * * * essential to the conservation of the species*'' has been modified by consolidating the explanation of how functional habitat units were derived and developing a formulaic expression for the process used to calculate functional habitat units.

(4) A commenter noted that Belfast Bay is missing from the economic exclusion in the table on pg 51780 of the proposed rule.

In 50 CFR 226.217(b)(6), Table (ii) of the proposed rule we outline all the specific areas that contain critical habitat, the quantity of critical habitat within the specific areas as well as the quantity of critical habitat that we proposed for exclusion, and the type of exclusion. In the Penobscot Bay sub-basin, we identified Belfast Bay (HUC code 0105000218) as having 177 km of river, stream, and estuary, and 9 square km of lake critical habitat. The area was identified in the preamble and in the maps of 50 CFR Part 226.217(b)(6) of the proposed rule as being proposed for exclusion based on economics. We have modified the table to show that the habitat in Belfast Bay is excluded from critical habitat on the basis of economic cost in comparison with biological value.

(5) A commenter questioned our use of the language ''not likely to become threatened'' that was used in the development of recovery criteria described in the section entitled *Specific areas outside the geographical area occupied by the species * * * essential to the conservation of the species* of the final rule, and suggested that our targets should be referred to as benchmarks for recovery. We modified this section of the final rule as well as the biological valuation by removing the language ''not likely to become threatened''. A recovered population is one that is neither threatened nor

endangered, or otherwise a population that is not likely to become an endangered species in the foreseeable future. The specific criteria that we have proposed for recovery for the sake of estimating the quantity of habitat needed to support a recovered population has not changed. The recovery criteria will remain as draft until they are more thoroughly examined through the recovery planning process.

(6) According to multiple comments, the draft economic analysis underestimates the impacts of providing fish passage at hydropower facilities. Specifically, one comment notes that the draft economic analysis estimates the average cost of installing a fish lift to be $2.7 million whereas the installation of three known fish lifts over the past 15 years ranged in cost from $3.3 million to $7.8 million. Specific information on the fish lift and ladder costs were provided for FPL Energy hydro projects by the commenter. Likewise, Topsham Hydro Partners stated that its fish passage facilities cost in excess of $4 million.

To address this, the final economic analysis incorporates the available project-specific cost estimates for fish ladders and lifts provided by the commenters to estimate the average costs of these project modifications.

(7) Exhibit 3–10 in the draft economic analysis presents a range of impacts associated with decreased power production in May in the case that changes in operations are requested for the purposes of salmon conservation. A commenter stated that the range presented is misleading as the low end cost represents the lost power generation being replaced by the next cheapest source of energy. By virtue of being a lower cost, however, this next cheapest source would already be on line. Therefore, only the highest cost replacement power would occur and only the high end costs should be considered.

The final economic analysis was modified to address this comment by removing the low end cost of the range presented in the draft economic analysis, assuming the replacement generation will most likely come from natural gas.

(8) A commenter stated that the draft economic analysis fails to show how the present value costs for each dam were calculated from the averages provided in the report.

To address this comment exhibit 3–7 from the draft economic analysis has been revised in the final economic analysis to make transparent the derivation of the per dam present value costs.

(9) A commenter stated that NMFS should consider that hydropower is a clean and renewable energy source, and reducing its production and replacing it with increased burning of fossil fuels would have environmental costs.

In the final economic analysis and energy impact analysis we incorporated a qualitative discussion recognizing that environmental costs would occur in the case that lost hydropower generation were replaced with increased burning of fossil fuels.

(10) Brookfield Renewable Power Inc. commented that the draft economic analysis fails to include all of its dams within the study area, missing five dams on the West Branch of the Penobscot River which are part of Federal Energy Regulatory Commission (FERC) No. 2634. Further, in the case of the Caucomgomoc Dam, the draft economic analysis does not accurately portray existing fish passages.

The draft economic analysis considers four Brookfield Power dams on the Penobscot River as part of FERC No. 2634. Due to information provided by Brookfield in follow up to this comment, the final economic analysis considers an additional four previously unlicensed dams that are now licensed and will be in operation this year along the West Branch of the Penobscot. Brookfield additionally provided information on the fish passage status of these dams.

(11) The FERC stated that the draft economic analysis underestimates the number of tidal/wave energy projects that may be licensed over the 20-year time period of the analysis. The FERC anticipates that there may be as many as 134 permit applications leading to about 13 projects over the next 20 years.

Chapter 3 of the final economic analysis has been revised to incorporate more information on the potential for future projects and their locations. To provide additional context, the analysis also describes modifications to hydrokinetic projects on the west coast that have been requested for projects affecting Pacific salmon.

(12) The Regulatory Flexibility Analysis (RFA) describes the potential impact to small farms in terms of the percentage of estimated annual revenues. A commenter stated that a true impact on a small farm would be the impact on net income because the farm may benefit from economies of scale. For small farms, any reduction in income may put them out of business.

In the RFA, the impacts to small farmers are presented as a percentage of annual revenue to provide perspective on the level of impact. We agree that presenting impacts as a percentage of net income would be appropriate and would do so if sufficient data were available. A qualitative discussion addressing this issue is incorporated in the final economic analysis.

(13) A commenter stated that we were unclear on whether both upstream and downstream passage efficiency estimates were figured into the 85 percent passage efficiency when calculating the functional habitat units.

To determine whether any unoccupied habitat in the GOM DPS should be designated as critical habitat, we assessed the quantity of habitat for each HUC 10 watershed. The total quantity of habitat was then discounted to provide a functional habitat value based on the habitat's quality and the number of dams within and below the HUC 10 watershed. Therefore, the functional value of areas with low quality habitat or dams would be less than the total measured habitat quantity. In the proposed rule we did not state whether the dams were figured into the equation to account for upstream, downstream, or both upstream and downstream migration. We modified the section of the final rule entitled ''*Specific areas outside the geographical area occupied by the species * * * essential to the conservation of the species*'' to clarify that only downstream passage efficiency was figured into the equation to calculate functional habitat units.

This was done because we designated habitat based on what was sufficient to support the offspring of a recovered population. We identified a recovered population for the purpose of designating critical habitat as 2,000 adult spawners within each SHRU. The next generation of adult returns does not directly influence the quantity of nursery habitat needed to support the offspring of the original 2,000 adult spawners. Assuring that passage is sufficient to sustain the recovered population is part of the recovery strategy and is something that will be addressed in the recovery plan.

(14) Several commenters indicated that the HUC labels are confusing and make interpretation difficult.

The HUC 10 watershed delineations are pre-established watershed delineations made available through USGS. We used the names and HUC codes already established in the dataset for describing critical habitat. We acknowledge that some of the names can be misleading, but these codes and names are standardized by the USGS. In order to address the confusion regarding the names of the HUC 10s and where

the HUC 10 watersheds are specifically, we have provided a more detailed map in the end of the final rule and have also made detailed maps available on our Web site at *http://www.nero.noaa.gov/prot_res/altsalmon/*.

HUC 0104000203 and 0104000204 were identified as being easily confused because both HUCs were assigned the name ''Ellis River.'' HUC 0104000204 is below Rumford Falls and includes the Swift River and is historical Atlantic salmon habitat while HUC 0104000203 is above Rumford Falls and historically was not Atlantic salmon habitat.

(15) One commenter stated that the approach outlined in the proposed critical habitat to assign cost thresholds and how specific areas were considered for economic exclusions needed further clarification.

In the 4(b)(2) analysis, in order to compare economic cost to biological value, we needed to assign a value with which we could compare unlike values (*e.g.*, dollar amounts vs. biological value). In order to create like values for both the economic costs and final biological values, we chose to bin the original data into three categories (high, medium, low) in order to make determinations of exclusions between the two variables. Clarification of the procedures used to bin economic cost is included in the 4(b)(2) report (NMFS, 2009b) and in section III of this final rule.

(16) The Navy commented stating that they are opposed to critical habitat for the Atlantic salmon on properties owned, controlled by, or designated for use by the Department of Defense pursuant to section 4(a)(3)(B)(i) and 4(b)(2) of the ESA. Military sites with military missions excluded from critical habitat include: Brunswick Naval Air Station's Main Station in Brunswick, ME; the Brunswick Naval Air Station's Great Pond Outdoor Adventure Center (OAC) in the town of Great Pond; the Brunswick Naval Air Stations Cold Weather Survival, Evasion, Resistance, and Escape School (SERE) in Redington Township near Rangeley, ME, and the Brunswick Naval Air Station's Naval Computer and Telecommunications Atlantic Detachment Center in Cutler, Maine. The Navy further requests that Bath Iron Works (BIW) in Bath, ME, be excluded from critical habitat. The Navy asserts that BIW conducts activities essential to the operations of the Navy's fleet and the Navy describes these activities as inherent to national security.

In the proposed rule we stated that we had contacted the Department of Defense and requested information on the existence of INRMPs for the Brunswick Naval Air Station's Maine Station in Brunswick, and the Naval Air Station's Cold Weather Survival, Evasion, Resistance, and Escape school and the benefits any INRMPs would provide to Atlantic salmon. If any INRMPs covering these sites were determined, in writing, to provide a benefit to Atlantic salmon, we would be precluded from designating the habitat within these sites (section 4(a)(3)(B)(i) of the ESA). INRMPs that provide a benefit to Atlantic salmon are in place for these two areas, and, therefore, these areas do not meet the definition of critical habitat and are not be included in this final rule. In this final rule we also exclude the Great Pond Outdoor Adventure Center in Great Pond, ME, the Brunswick Naval Air Station's Naval Computer and Telecommunications Atlantic Detachment Center in Cutler, Maine, and Bath Iron Works in Bath, ME, based on the required benefits analysis of section 4(b)(2) of the ESA. A full description of military lands that do not meet the definition of critical habitat (section 4(a)(3)(B)(i) of the ESA or that are excluded under section 4(b)(2) of the ESA is included in this final rule under section V (Application of ESA Section 4(a)(3)(B)(i)) and section VI (Application of ESA Section 4(b)(2)).

(17) A commenter stated that though it may not be the intent of the NMFS, the commenter believes the current wording that implies that the presence of an Atlantic Salmon Federation (ASF) Fish Friends school program qualifies a watershed for designation as critical habitat. ASF wants to make sure that no areas within the DPS were considered occupied solely and exclusively because of the presence of juvenile salmon from the Fish Friends program.

In the final rule section Identifying the *Geographical Area Occupied by the Species and Specific Areas within the Geographical Area*, we have taken out the reference to the Fish Friends school program as being an impetus for designating critical habitat in a specific area as there are no circumstances where a HUC 10 watershed was considered for designation as critical habitat solely based on the stocking of fish through the Fish Friends program.

(18) In the final listing rule, the GOM DPS was redefined to exclude those areas outside the historic range of the species. In the re-defined DPS, the following impassable falls delimit the upstream extent of the freshwater range: Rumford Falls in the town of Rumford on the Androscoggin River; Snow Falls in the town of West Paris on the Little Androscoggin River; Grand Falls in Township 3 Range 4 BKP WKR, on the Dead River in the Kennebec Basin; the un-named falls (impounded by Indian Pond Dam) immediately above the Kennebec River Gorge in the town of Indian Stream Township on the Kennebec River; Big Niagara Falls on Nesowadnehunk Stream in Township 3 Range 10 WELS in the Penobscot Basin; Grand Pitch on Webster Brook in Trout Brook Township in the Penobscot Basin; and Grand Falls on the Passadumkeag River in Grand Falls Township in the Penobscot Basin.

In the critical habitat analysis, we analyzed the entire Penobscot, Androscoggin, Kennebec, and Downeast Coastal Basins. All of the HUC 10 watersheds outside the historic range were determined to have no biological value to Atlantic salmon and were subsequently not evaluated for critical habitat with the exception of the Passadumkeag watershed (HUC code 0102000503) in the Penobscot River watershed. The Passadumkeag watershed was determined to be occupied up to Grand Falls in Grand Falls Township, though it was assigned a biological value of ''1'' because of biological quality and habitat quantity. In the ESA section 4(b)(2) exclusion analysis, the Passadumkeag was excluded from designation because it was assigned an economic score of ''2'', subsequently qualifying this watershed for exclusion. Upon the redelineation of the GOM DPS, the Passadumkeag HUC 10 watershed was cut in half so that the portion of the watershed below Grand Falls is within the GOM DPS, and the portion of the watershed above Grand Falls is outside the DPS. Given the new delineation, we needed to re-assess the biological value and economic cost scores, given that these evaluations were conducted for the entire HUC 10 watershed. In doing so, the biological value of the Passadumkeag retained its score of ''1,'' given that during the biological valuation, these falls were taken into account. The economic analysis did not take into account Grand Falls in the assessment and therefore the economic impact for the Passadumkeag needed to be re-examined. In doing so, the economic impact to the Passadumkeag watershed was reduced to an estimated high impact of $550,000, though this is not below the threshold of $338,000 which would subsequently reduce the economic score from a 2 to a 1. Thus, the Passadumkeag Watershed is eligible for exclusion under the criteria that we established.

(19) In the proposed rule (73 FR 51747; September 5, 2008) summary paragraph, we stated that there were 203,781 km of perennial river, stream, and estuary habitat proposed for designation as critical habitat. This

number was in error, and the actual kilometers proposed for designation was 20,378 km. The habitat kilometers in the summary tables in part 226 of the proposed rule were correct.

IV. Methods and Criteria Used To Identify Critical Habitat

The following sections describe the relevant definitions and guidance found in the ESA and our implementing regulations, and the key methods and criteria we used to make these final critical habitat designations after incorporating, as appropriate, comments and information received on the proposed rule. Section 4 of the ESA (16 U.S.C. 1533(b)(2)) and our regulations at 50 CFR 424.12(a) require that we designate critical habitat, and make revisions thereto, ''on the basis of the best scientific data available.''

Critical habitat is defined by section 3 of the ESA (and 50 CFR 424.02(d)) as ''(i) the specific areas within the geographic area occupied by the species, at the time it is listed in accordance with the provisions of [section 4 of this Act], on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of [section 4 of this Act], upon a determination by the Secretary that such areas are essential for the conservation of the species.'' Section 3 of the ESA (16 U.S.C. 1532(3)) also defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean ''to use, and the use of, all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this chapter are no longer necessary.''

Pursuant to our regulations, when identifying physical or biological features essential to conservation, we consider the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitat that is protected from disturbance or representative of the historical geographical and ecological distribution of the species (see 50 CFR 424.12(b)). In addition to these factors, we also focus on the known physical and biological features (primary constituent elements or PCEs) within the occupied areas that are essential to the conservation of the species. The regulations identify PCEs as including, but not limited to, the following: roost sites, nesting grounds, spawning sites, feeding sites, seasonal wetland or dry land, water quality or quantity, host species or plant pollinator[s], geological formation, vegetation type, tide, and specific soil types. For an area containing PCEs to meet the definition of critical habitat, we must conclude that the PCEs in that area ''may require special management considerations for protection.'' Our regulations define special management considerations or protection as ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' Both the ESA and our regulations, in recognition of the divergent biological needs of species, establish criteria that are fact specific rather than ones that represent a ''one size fits all'' approach.

Our regulations state that, ''[t]he Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species'' (50 CFR 424.12(e)). Accordingly, when the best available scientific data do not demonstrate that the conservation needs of the species so require, we will not designate critical habitat in areas outside the geographic area occupied by the species.

Section 4 of the ESA (16 U.S.C. 1533(b)(2)) requires that, before designating critical habitat we must consider the economic impacts, impacts on national security, and other relevant impacts of specifying any particular area as critical habitat, and the Secretary may exclude any area from critical habitat if the benefits of exclusion outweigh the benefits of designation, unless excluding an area from critical habitat will result in the extinction of the species. This exercise of discretion must be based upon the best scientific and commercial data (16 U.S.C. 1536(a)(2)). Once critical habitat is designated, section 7(a)(2) of the ESA requires that Federal agencies, in consultation with and with the assistance of NMFS, ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat.

Atlantic Salmon Life History

Atlantic salmon have a complex life history that ranges from territorial rearing in rivers to extensive feeding migrations on the high seas. During their life cycle, Atlantic salmon go through several distinct phases that are identified by specific changes in behavior, physiology, morphology, and habitat requirements.

Adult Atlantic salmon return to rivers from the sea and migrate to their natal stream to spawn. Adults ascend the rivers of New England beginning in the spring. The ascent of adult salmon continues into the fall. Although spawning does not occur until late fall, the majority of Atlantic salmon in Maine enter freshwater between May and mid-July (Meister, 1958; Baum, 1997). Early migration is an adaptive trait that ensures adults have sufficient time to effectively reach spawning areas despite the occurrence of temporarily unfavorable conditions that occur naturally (Bjornn and Reiser, 1991). Salmon that return in early spring spend nearly 5 months in the river before spawning; often seeking cool water refuge (*e.g.*, deep pools, springs, and mouths of smaller tributaries) during the summer months.

In the fall, female Atlantic salmon select sites for spawning. Spawning sites are positioned within flowing water, particularly where upwelling of groundwater occurs to allow for percolation of water through the gravel (Danie *et al.*, 1984). These sites are most often positioned at the head of a riffle (Beland *et al.*, 1982), the tail of a pool, or the upstream edge of a gravel bar where water depth is decreasing, water velocity is increasing (McLaughlin and Knight, 1987; White, 1942), and hydraulic head allows for permeation of water through the redd (a gravel depression where eggs are deposited). Female salmon use their caudal fin to scour or dig redds. The digging behavior also serves to clean the substrate of fine sediments that can embed the cobble/gravel substrate needed for spawning and reduce egg survival (Gibson, 1993). As the female deposits eggs in the redd, one or more males fertilize the eggs (Jordan and Beland, 1981). The female then continues digging upstream of the last deposition site, burying the fertilized eggs with clean gravel. A single female may create several redds before depositing all of her eggs. Female anadromous Atlantic salmon produce a total of 1,500 to 1,800 eggs per kilogram of body weight, yielding an average of 7,500 eggs per 2 sea-winter (SW) female (an adult female that has spent 2 winters at sea before returning to spawn) (Baum and Meister, 1971). After spawning, Atlantic salmon may either return to sea immediately or remain in freshwater until the following spring before returning to the sea (Fay *et al.*, 2006). From 1967 to 2003, approximately three

percent of the wild and naturally reared adults that returned to rivers where adult returns are monitored—mainly the Penobscot River—were repeat spawners (USASAC, 2004).

Embryos develop in the redd for a period of 175 to 195 days, hatching in late March or April (Danie *et al.*, 1984). Newly hatched salmon, referred to as larval fry, alevin, or sac fry, remain in the redd for approximately 6 weeks after hatching and are nourished by their yolk sac (Gustafson-Greenwood and Moring, 1991). Survival from the egg to fry stage in Maine is estimated to range from 15 to 35 percent (Jordan and Beland, 1981). Survival rates of eggs and larvae are a function of stream gradient, overwinter temperatures, interstitial flow, predation, disease, and competition (Bley and Moring, 1988). Once larval fry emerge from the gravel and begin active feeding, they are referred to as fry. The majority of fry (>95 percent) emerge from redds at night (Gustafson-Marjanen and Dowse, 1983).

When fry reach approximately 4 cm in length, the young salmon are termed parr (Danie *et al.*, 1984). Parr have eight to eleven pigmented vertical bands on their sides that are believed to serve as camouflage (Baum, 1997). A territorial behavior, first apparent during the fry stage, grows more pronounced during the parr stage as the parr actively defend territories (Allen, 1940; Kalleberg, 1958; Danie *et al.*, 1984). Most parr remain in the river for 2 to 3 years before undergoing smoltification, the process in which parr go through physiological changes in order to transition from a freshwater environment to a saltwater marine environment. Some male parr may not go through smoltification and will become sexually mature and participate in spawning with sea-run adult females. These males are referred to as ''precocious parr.''

First year parr are often characterized as being small parr or 0+ parr (4 to 7 cm long), whereas second and third year parr are characterized as large parr (greater than 7 cm long) (Haines, 1992). Parr growth is a function of water temperature (Elliott, 1991), parr density (Randall, 1982), photoperiod (Lundqvist, 1980), interaction with other fish, birds, and mammals (Bjornn and Reiser, 1991), and food supply (Swansburg *et al.*, 2002). Parr movement may be quite limited in the winter (Cunjak, 1988; Heggenes, 1990); however, movement in the winter does occur (Hiscock *et al.*, 2002) and is often necessary, as ice formation reduces total habitat availability (Whalen *et al.*, 1999a). Parr have been documented using riverine, lake, and estuarine habitats; incorporating opportunistic and active feeding strategies; defending territories from competitors including other parr; and working together in small schools to actively pursue prey (Gibson, 1993; Marschall *et al.*, 1998; Pepper, 1976; Pepper *et al.*, 1984; Hutchings, 1986; Erkinaro *et al.*, 1998; Halvorsen and Svenning, 2000; O'Connell and Ash, 1993; Dempson *et al.*, 1996; Klemetsen *et al.*, 2003).

In a parr's second or third spring (age 1 or age 2 respectively), when it has grown to 12.5 to 15 cm in length, a series of physiological, morphological, and behavioral changes occurs (Schaffer and Elson, 1975). This process, called ''smoltification,'' prepares the parr for migration to the ocean and life in salt water. In Maine, the vast majority of naturally reared parr remain in freshwater for 2 years (90 percent or more), with the balance remaining for either 1 or 3 years (USASAC, 2005). In order for parr to undergo smoltification, they must reach a critical size of 10 cm total length at the end of the previous growing season (Hoar, 1988). During the smoltification process, parr markings fade and the body becomes streamlined and silvery with a pronounced fork in the tail. Naturally reared smolts in Maine range in size from 13 to 17 cm, and most smolts enter the sea during May to begin their first ocean migration (USASAC, 2004). During this migration, smolts must contend with changes in salinity, water temperature, pH, dissolved oxygen, pollution levels, and predator assemblages. The physiological changes that occur during smoltification prepare the fish for the dramatic change in osmoregulatory needs that come with the transition from a fresh to a salt water habitat (Ruggles, 1980; Bley, 1987; McCormick and Saunders, 1987; McCormick *et al.*, 1998). Smolts' transition into seawater is usually gradual as they pass through a zone of fresh and saltwater mixing that typically occurs in a river's estuary. Given that smolts undergo smoltification while they are still in the river, they are pre-adapted to make a direct entry into seawater with minimal acclimation (McCormick *et al.*, 1998). This pre-adaptation to seawater is necessary under some circumstances where there is very little transition zone between freshwater and the marine environment.

The spring migration of post-smolts out of the coastal environment is generally rapid, within several tidal cycles, and follows a direct route (Hyvarinen *et al.*, 2006; Lacroix and McCurdy, 1996; Lacroix *et al.*, 2004, 2005). Post-smolts generally travel out of coastal systems on the ebb tide, and may be delayed by flood tides (Hyvarinen *et al.*, 2006; Lacroix and McCurdy, 1996; Lacroix *et al.*, 2004, 2005), though Lacroix and McCurdy (1996) found that post-smolts exhibit active, directed swimming in areas with strong tidal currents. Studies in the Bay of Fundy and Passamaquoddy Bay suggest that post-smolts aggregate together and move near the coast in ''common corridors'' and that post-smolt movement is closely related to surface currents in the bay (Hyvarinen *et al.*, 2006; Lacroix and McCurdy, 1996; Lacroix *et al.*, 2004). European post-smolts tend to use the open ocean for a nursery zone, while North American post-smolts appear to have a more near-shore distribution (Friedland *et al.*, 2003). Post-smolt distribution may reflect water temperatures (Reddin and Shearer, 1987) and/or the major surface-current vectors (Lacroix and Knox, 2005). Post-smolts live mainly on the surface of the water column and form shoals, possibly of fish from the same river (Shelton *et al.*, 1997).

During the late summer/autumn of the first year, North American post-smolts are concentrated in the Labrador Sea and off of the west coast of Greenland, with the highest concentrations between 56° N. and 58° N. (Reddin, 1985; Reddin and Short, 1991; Reddin and Friedland, 1993). The salmon located off Greenland are composed of 1 sea winter (1SW) fish; fish that have spent multiple years at sea (multi-sea winter fish, or MSW); and immature salmon from both North American and European stocks (Reddin, 1988; Reddin *et al.*, 1988). The first winter at sea regulates annual recruitment, and the distribution of winter habitat in the Labrador Sea and Denmark Strait may be critical for North American populations (Friedland *et al.*, 1993). In the spring, North American post-smolts are generally located in the Gulf of St. Lawrence, off the coast of Newfoundland, and on the east coast of the Grand Banks (Reddin, 1985; Dutil and Coutu, 1988; Ritter, 1989; Reddin and Friedland, 1993; Friedland *et al.*, 1999).

Some salmon may remain at sea for another year or more before maturing. After their second winter at sea, the salmon over-winter in the area of the Grand Banks before returning to their natal rivers to spawn (Reddin and Shearer, 1987). Reddin and Friedland (1993) found non-maturing adults located along the coasts of Newfoundland, Labrador, and Greenland, and in the Labrador and Irminger Sea in the later summer/autumn.

Identifying the Geographical Area Occupied by the Species and Specific Areas Within the Geographical Area

To designate critical habitat for Atlantic salmon, as defined under Section 3(5)(A) of the ESA, we must identify specific areas within the geographical area occupied by the species at the time it is listed. The geographic range occupied by the GOM DPS of Atlantic salmon includes historically accessible freshwater habitat ranging from the Androscoggin River watershed in the south to the Dennys River watershed in the north (Fay *et al.*, 2006), as well as the adjacent estuaries and bays through which smolts and adults migrate.

The geographic range occupied by the species extends out to the waters off Canada and Greenland, where post smolts complete their marine migration. However, critical habitat may not be designated within foreign countries or in other areas outside of the jurisdiction of the United States (50 CFR 424.12(h)). Therefore, for the purposes of critical habitat designation, the geographic area occupied by the species will be restricted to areas within the jurisdiction of the United States. This does not diminish the importance of habitat outside of the jurisdiction of the United States for the GOM DPS. In fact, a very significant factor limiting recovery for the species is marine survival, and increasing marine survival is a conservation priority in the recovery of the species. Though marine migration routes and feeding habitat off Canada and Greenland are critical to the survival and recovery of Atlantic salmon, the regulations prohibit designation of these areas as critical habitat. In designating critical habitat for Atlantic salmon, the emphasis is two fold: (1) Assuring that critical habitat essential for a recovered population is protected so that when marine conditions improve, sufficient habitat is available to support recovery; and (2) enacting appropriate management measures to enhance and improve critical habitat areas that are not fully functional because the features have been degraded from anthropogenic causes.

Atlantic salmon are anadromous and spend a portion of life in freshwater and the remaining portion in the marine environment. Therefore, it is conceivable that some freshwater habitat may be vacant for up to 3 years under circumstances where populations are extremely low. While there may be no documented spawning in these areas for that period of time, they would still be considered occupied because salmon at sea would return to these areas to spawn.

Current stock management and assessment efforts also need to be considered in deciding which areas are occupied, including the stocking program managed by USFWS and the Maine Department of Marine Resources (MDMR). Furthermore, in addition to stocking programs, straying from natural populations can result in the occupation of habitat.

Hydrologic Unit Code (HUC) 10 (Level 5 watersheds) described by Seaber *et al.* (1994) are considered the appropriate ''specific areas'' within the geographic area occupied by Atlantic salmon to be examined for the presence of physical or biological features and for the potential need for special management considerations or protections for these features.

The HUC system was developed by the USGS Office of Water Data Coordination in conjunction with the Water Resources Council (Seaber *et al.*, 1994) and provides (1) a nationally accessible, coherent system of water-use data exchange; (2) a means of grouping hydrographical data; and (3) a standardized, scientifically grounded reference system (Laitta *et al.*, 2004). The HUC system currently includes six nationally consistent, hierarchical levels of divisions, with HUC 2 (Level 1) ''Regions'' being the largest (avg. 459,878 sq. km.), and HUC 12 (Level 6) ''sub-watersheds'' being the smallest (avg. 41–163 sq. km.).

The HUC 10 (level 5) watersheds were used to identify ''specific areas'' because this scale accommodates the local adaptation and homing tendencies of Atlantic salmon, and provides a framework in which we can reasonably aggregate occupied river, stream, lake, and estuary habitats that contain the physical and biological features essential to the conservation of the species. Furthermore, many Atlantic salmon populations in the GOM DPS are currently managed at the HUC 10 watershed scale. Therefore, we have a better understanding of the population status and the biology of salmon at the HUC 10 level, whereas less is known at the smaller HUC 12 sub-watershed scale.

Specific areas delineated at the HUC 10 watershed level correspond well to the biology and life history characteristics of Atlantic salmon. Atlantic salmon, like many other anadromous salmonids, exhibit strong homing tendencies (Stabell, 1984). Strong homing tendencies enhance a given individual's chance of spawning with individuals having similar life history characteristics (Dittman and Quinn, 1996) that lead to the evolution and maintenance of local adaptations, and may also enhance their progeny's ability to exploit a given set of resources (Gharrett and Smoker, 1993). Local adaptations allow local populations to survive and reproduce at higher rates than exogenous populations (Reisenbichler, 1988; Tallman and Healey, 1994). Strong homing tendencies have been observed in many Atlantic salmon populations. Stabell (1984) reported that fewer than 3 of every 100 salmon in North America and Europe stray from their natal river. In Maine, Baum and Spencer (1990) reported that 98 percent of hatchery-reared smolts returned to the watershed where they were stocked. Given the strong homing tendencies and life history characteristics of Atlantic salmon (Riddell and Leggett, 1981), we believe that the HUC 10 watershed level accommodates these local adaptations and the biological needs of the species and, therefore, is the most appropriate unit of habitat to delineate ''specific areas'' for consideration as part of the critical habitat designation process.

Within the United States, the freshwater geographic range that the GOM DPS of Atlantic salmon occupies includes perennial river, lake, stream, and estuary habitat connected to the marine environment, ranging from the Androscoggin River watershed to the Dennys River watershed. Within this range, HUC 10 watersheds were considered ''occupied'' if they contained either of the PCEs (*e.g.*, sites for spawning and rearing or sites for migration, described in more detail below) along with the features necessary to support spawning, rearing and/or migration. Additionally, the HUC 10 watershed must meet either of the following criteria. The area is occupied if:

(a) Redds or any life-stage of salmon have been documented in the HUC 10 in the last 6 years, or the HUC 10 is believed to be occupied and contain the PCEs based on the best scientific information available and the best professional judgment of State and Federal biologists; or

(b) The HUC is currently managed by the MDMR and the USFWS through an active stocking program in an effort to enhance or restore Atlantic salmon populations, or the area has been stocked within the last 6 years by MDMR or the USFWS, and juvenile salmon could reasonably be expected to migrate to the marine environment and return to that area as adults and spawn.

One hundred and five HUC 10 watersheds within the Penobscot, Kennebec, Androscoggin, and Downeast

Coastal basins were examined for occupancy based on the above criteria. Eighteen HUCs were determined to be outside the historic range of the species, and subsequently, populations in these HUCs were not included in the GOM DPS in the final listing rule. Though the HUC 10 watersheds outside the historic range of the species were included in the critical habitat biological valuation and economic analysis, since they are not occupied, they were not considered for designation and, therefore, not included in the critical habitat 4(b)(2) exclusion analysis. Of the remaining 86 HUCs in the range of the GOM DPS as defined in the final rule, we concluded that 48 HUC 10 watersheds within the geographic range are occupied by the species at the time of listing. Estuaries and bays within the occupied HUC 10 watersheds within the range of the GOM DPS are also included in the geographic range occupied by the species.

Occupied areas also extend outside the estuary and bays of the GOM DPS as adults return from the marine environment to spawn and smolts migrate towards Greenland for feeding. We are not able at this time to identify the specific features characteristic of marine migration and feeding habitat within waters under U.S. jurisdiction essential to the conservation of Atlantic salmon and are, therefore, unable to identify the specific areas where such features exist. Therefore, specific areas of marine habitat are not designated as critical habitat.

Physical and Biological Features in Freshwater and Estuary Specific Areas Essential to the Conservation of the Species

We identify the physical and biological features essential for the conservation of Atlantic salmon that are found within the specific occupied areas identified in the previous section. To determine which features are essential to the conservation of the GOM DPS of Atlantic salmon, we first define what conservation means for this species. Conservation is defined in the ESA as using all methods and procedures which are necessary to bring any endangered or threatened species to the point at which the measures provided by the ESA are no longer necessary. Conservation, therefore, describes those activities and efforts undertaken to achieve recovery. For the GOM DPS, we have determined that the successful return of adult salmon to spawning habitat, spawning, egg incubation and hatching, juvenile survival during the rearing time in freshwater, and smolt migration out of the rivers to the ocean are all essential to the conservation of Atlantic salmon. Therefore, we identify features essential to successful completion of these life cycle activities. Although successful marine migration is also essential to the conservation of the species, we are not able to identify the essential features of marine migration and feeding habitat at this time. Therefore, as noted above, marine habitat areas are not designated as critical habitat.

Within the occupied range of the Gulf of Maine DPS, Atlantic salmon PCEs include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The physical and biological features of the PCEs that allow these sites to be used successfully for spawning, incubation, rearing, and migration are the features of habitat within the GOM DPS that are essential to the conservation of the species. A detailed review of the physical and biological features required by Atlantic salmon is provided in Kircheis and Liebich (2007). As stated above, Atlantic salmon also use marine sites for growth and migration; however, we did not identify critical habitat within the marine environment because the specific physical and biological features of marine habitat that are essential for the conservation of the GOM DPS (and the specific areas on which these features might be found) cannot be identified. Unlike Pacific salmonids, some of which use near-shore marine environments for juvenile feeding and growth, Atlantic salmon migrate through the near-shore marine areas quickly during the month of May and early June. We have limited knowledge of the physical and biological features that the species uses in the marine environment. However, we have very little information on the specifics of these physical and biological features and how they may require special management considerations or protection. Therefore, we cannot accurately identify the specific areas where these features exist or what types of management considerations or protections may be necessary to protect these physical and biological features during the migration period.

Detailed habitat surveys have been conducted in some areas within the range of the GOM DPS of Atlantic salmon, providing clear estimates of and distinctions between those sites most suited for spawning and incubation and those sites most used for juvenile rearing. These surveys are most complete for seven coastal watersheds: Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot watersheds; and portions of the Penobscot Basin, including portions of the East Branch Penobscot, portions of the Piscataquis and Mattawamkeag, Kenduskeag Stream, Marsh Stream, and Cove Brook; and portions of the Kennebec Basin, including a portion of the lower mainstem around the site of the old Edwards Dam and portions of the Sandy River. Throughout most of the range of the GOM DPS, however, this level of survey has not been conducted, and, therefore, this level of detail is not available.

In order to determine habitat quantity for each HUC 10 we relied on a GIS based habitat prediction model (See appendix C of NMFS, 2009a). The model was developed using data from existing habitat surveys conducted in the Machias, Sheepscot, Dennys, Sandy, Piscataquis, Mattawamkeag, and Souadabscook Rivers. A combination of reach slope (change in elevation of a stream segment) derived from contour and digital elevation model (DEM) datasets, cumulative drainage area, and physiographic province were used to predict the total amount of rearing habitat within a reach. These features help to reveal stream segments with gradients that would likely represent areas of riffles or fast moving water, habitat most frequently used for spawning and rearing of Atlantic salmon. The variables included in the model accurately predict the presence of rearing habitat approximately 75 percent of the time. We relied on the model to generate the habitat quantity present within each HUC 10 to provide consistent data across the range of the entire DPS and on existing habitat surveys to validate the output of the model.

Although we have found the model to be nearly 75 percent accurate in predicting the presence of sites for spawning and rearing within specific areas, and we have an abundance of institutional knowledge on the physical and biological features that distinguish sites for spawning and sites for rearing, the model cannot be used to distinguish between sites for spawning and sites for rearing across the entire geographic range. This is because: (1) Sites used for spawning are also used for rearing; and (2) the model is unable to identify substrate features most frequently used for spawning activity, but rather uses landscape features to identify where stream gradient conducive to both spawning and rearing activity exists. As such, we have chosen to group sites for spawning and sites for rearing into one PCE. Therefore, sites for spawning and sites for rearing are discussed together throughout this analysis as sites for spawning and rearing.

In the section below, we identify the essential physical and biological features of spawning and rearing sites and migration sites found in the occupied areas described in the previous section.

(A) Physical and Biological Features of the Spawning and Rearing PCE

1. *Deep, oxygenated pools and cover (e.g., boulders, woody debris, vegetation, etc.), near freshwater spawning sites, necessary to support adult migrants during the summer while they await spawning in the fall.* Adult salmon can arrive at spawning grounds several months in advance of spawning activity. Adults that arrive early require holding areas in freshwater and estuarine areas that provide shade, protection from predators, and protection from other environmental variables such as high flows, high temperatures, and sedimentation. Early migration is an adaptive trait that ensures adults sufficient time to reach spawning areas despite the occurrence of temporarily unfavorable conditions that occur naturally (Bjornn and Reiser, 1991). Salmon that return in early spring spend nearly 5 months in the river before spawning; often seeking cool water refuge (*e.g.*, deep pools, springs, and mouths of smaller tributaries) during the summer months. Large boulders or rocks, over-hanging trees, logs, woody debris, submerged vegetation, and undercut banks provide shade, reduce velocities needed for resting, and offer protection from predators (Giger, 1973). These features are essential to the conservation of the species to help ensure the survival and successful spawning of adult salmon.

2. *Freshwater spawning sites that contain clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to support spawning activity, egg incubation, and larval development.* Spawning activity in the Gulf of Maine DPS of Atlantic salmon typically occurs between mid-October and mid-November (Baum, 1997) and is believed to be triggered by a combination of water temperature and photoperiod (Bjornn and Reiser, 1991). Water quantity and quality, as well as substrate type, are important for successful Atlantic salmon spawning. Water quantity can determine habitat availability, and water quality may influence spawning success. Substrate often determines where spawning occurs, and cover can influence survival rates of both adults and newly hatched salmon.

Preferred spawning habitat contains gravel substrate with adequate water circulation to keep buried eggs well oxygenated (Peterson, 1978). Eggs in a redd are entirely dependent upon sub-surface movement of water to provide adequate oxygen for survival and growth (Decola, 1970). Water velocity and permeability of substrate allow for adequate transport of well-oxygenated water for egg respiration (Wickett, 1954) and removal of metabolic waste that may accumulate in the redd during egg development (Decola, 1970; Jordan and Beland, 1981). Substrate permeability as deep as the egg pit throughout the incubation period is important because eggs are typically deposited at the bottom of the egg pit.

Dissolved oxygen (DO) content is important for proper embryonic development and hatching. Embryos can survive when DO concentrations are below saturation levels, but their development is often subnormal due to delayed growth and maturation, performance, or delayed hatching (Doudoroff and Warren, 1965). In addition, embryos consume more oxygen (*i.e.*, the metabolism of the embryo increases) when temperature increases (Decola, 1970). An increase in water temperature, however, decreases the amount of oxygen that the water can hold. During the embryonic stage when tissue and organs are developing and the demand for oxygen is quite high, embryos can only tolerate a narrow range of temperatures. These sites are essential for the conservation of the species because, without them, embryo development would not be successful.

3. *Freshwater spawning and rearing sites with clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to support emergence, territorial development, and feeding activities of Atlantic salmon fry.* The period of emergence and the establishment of feeding territories is a critical period in the salmon life cycle since at this time mortality can be very high. When fry leave the redd, they emerge through the interstitial spaces in the gravel to reach the surface. When the interstitial spaces become embedded with fine organic material or fine sand, emergence can be significantly impeded or prevented. Newly emerged fry prefer shallow, low velocity, riffle habitat with a clean gravel substrate. Territories are quickly established by seeking out areas of low velocities that occur in eddies in front of or behind larger particles that are embedded in areas of higher velocities to maximize drift of prey sources (Armstrong *et al.*, 2002). Once a territory has been established, fry use a sit-and-wait strategy, feeding opportunistically on invertebrate drift. This strategy enables the fish to minimize energy expenditure while maximizing energy intake (Bachman, 1984). These sites are essential for the conservation of the species because, without them, fry emergence would not be successful.

4. *Freshwater rearing sites with space to accommodate growth and survival of Atlantic salmon parr.* When fry reach approximately 4 cm in length, the young salmon are termed parr (Danie *et al.*, 1984). The habitat in Maine rivers currently supports on average between five and ten large parr (age 1 or older) per 100 square meters of habitat, or one habitat unit (Elson, 1975; Baum, 1997). The amount of space available for juvenile salmon occupancy is a function of biotic and abiotic habitat features, including stream morphology, substrate, gradient, and cover; the availability and abundance of food; and the makeup of predators and competitors (Bjornn and Reiser, 1991). Further limiting the amount of space available to parr is their strong territorial instinct. Parr actively defend territories against other fish, including other parr, to maximize their opportunity to capture prey items. The size of the territory that a parr will defend is a function of the size and density of parr, food availability, the size and roughness of the substrate, and current velocity (Kalleberg, 1958; Grant *et al.*, 1998). The amount of space needed by an individual increases with age and size (Bjornn and Reiser, 1991). Cover, including undercut banks, overhanging trees and vegetation, diverse substrates and depths, and some types of aquatic vegetation, can make habitat suitable for occupancy (Bjornn and Reiser, 1991). Cover can provide a buffer against extreme temperatures; protection from predators; increased food abundance; and protection from environmental variables such as high flow events and sedimentation. These features are essential to the conservation of the species because, without them, juvenile salmon would have limited areas for foraging and protection from predators.

5. *Freshwater rearing sites with a combination of river, stream, and lake habitats that accommodate parr's ability to occupy many niches and maximize parr production.* Parr prefer, but are not limited to, riffle habitat associated with diverse rough gravel substrate. The preference for these habitats by parr that use river and stream habitats supports a sit-and-wait feeding strategy intended to minimize energy expenditure while maximizing growth. Overall, large Atlantic salmon parr using river and stream habitats select for diverse substrates that predominately consist of boulder and cobble (Symons and

Heland, 1978; Heggenes, 1990; Heggenes *et al.*, 1999).

Parr can also move great distances into or out of tributaries and mainstems to seek out habitat that is more conducive to growth and survival (McCormick *et al.*, 1998). This occurs most frequently as parr grow and they move from their natal spawning grounds to areas that have much rougher substrate, providing more suitable over-wintering habitat and more food organisms (McCormick *et al.*, 1998). In the fall, large parr that are likely to become smolts the following spring have been documented leaving summer rearing areas in some head-water tributaries and migrating downstream, though not necessarily entering the estuary or marine environment (McCormick *et al.*, 1998).

Though parr are typically stream dwellers, they also use pools within rivers and streams, dead-waters (sections of river or stream with very little to no gradient), and lakes within a river system as a secondary nursery area after emergence (Cunjak, 1996; Morantz *et al.*, 1987; Erkinaro *et al.*, 1998). It is known that parr will use pool habitats during periods of low water, most likely as refuge from high temperatures (McCormick *et al.*, 1998) and during the winter months to minimize energy expenditure and avoid areas that are prone to freezing or de-watering (Rimmer *et al.*, 1984). Salmon parr may also spend weeks or months in the estuary during the summer (Cunjak *et al.*, 1989, 1990; Power and Shooner, 1966). These areas are essential to the conservation of the species to ensure survival and species persistence when particular habitats become less suitable or unsuitable for survival during periods of extreme conditions such as extreme high temperatures, extreme low temperatures, and droughts.

6. *Freshwater rearing sites with cool, oxygenated water to support growth and survival of Atlantic salmon parr.* Atlantic salmon are cold water fish and have a thermal tolerance zone where activity and growth is optimal (Decola, 1970). Small parr and large parr have similar temperature tolerances (Elliott, 1991). Water temperature influences growth, survival, and behavior of juvenile Atlantic salmon. Juvenile salmon can be exposed to very warm temperatures (> 20 °C) in the summer and near freezing temperatures in the winter, and have evolved with a series of physiological and behavioral strategies that enables them to adapt to the wide range of thermal conditions that they may encounter. Parr's optimal temperature for feeding and growth ranges from 15 ° to 19 °C (Decola, 1970). When water temperatures surpass 19 °C, feeding and behavioral activities are directed towards maintenance and survival. During the winter when temperatures approach freezing, parr reduce energy expenditures by spending less time defending territories, feeding less, and moving into slower velocity microhabitats (Cunjak, 1996).

Oxygen consumption by parr is a function of temperature. As temperature increases, the demand for oxygen increases (Decola, 1970). Parr require highly oxygenated waters to support their active feeding strategy. Though salmon parr can tolerate oxygen levels below 6mg/l, both swimming activity and growth rates are restricted. These features are essential to the conservation of the species because high and low water temperatures and low oxygen concentrations can result in the cessation of feeding activities necessary for juvenile growth and survival and can result in direct mortality.

7. *Freshwater rearing sites with diverse food resources to support growth and survival of Atlantic salmon parr.* Atlantic salmon require sufficient energy to meet their basic metabolic needs for growth and reproduction (Spence *et al.*, 1996). Parr largely depend on invertebrate drift for foraging, and actively defend territories to assure adequate food resources needed for growth. Parr feed on larvae of mayflies, stoneflies, chironomids, caddisflies, blackflies, aquatic annelids, and mollusks, as well as numerous terrestrial invertebrates that fall into the river (Scott and Crossman, 1973; Nislow *et al.*, 1999). As parr grow, they will occasionally eat small fishes, such as alewives, dace, or minnows (Baum, 1997).

Atlantic salmon attain energy from food sources that originate from both allochthonous (outside the stream) and autochthonous (within the stream) sources. What food is available to parr and how food is obtained is a function of a river's hydrology, geomorphology, biology, water quality, and connectivity (Annear *et al.*, 2004). The riparian zone is a fundamental component to both watershed and ecosystem function, as it provides critical physical and biological linkages between terrestrial and aquatic environments (Gregory *et al.*, 1991). Flooding of the riparian zone is an important mechanism needed to support the lateral transport of nutrients from the floodplain back to the river (Annear *et al.*, 2004). Lateral transport of nutrients and organic matter from the riparian zone to the river supports the growth of plant, plankton, and invertebrate communities. Stream invertebrates are the principle linkage between the primary producers and higher trophic levels, including salmon parr. These features are essential to the conservation of the species, as parr require these food items for growth and survival.

(B) Physical and Biological Features of the Migration PCE

1. *Freshwater and estuary migratory sites free from physical and biological barriers that delay or prevent access of adult salmon seeking spawning grounds needed to support recovered populations.* Adult Atlantic salmon returning to their natal rivers or streams require migration sites free from barriers that obstruct or delay passage to reach their spawning grounds at the proper time for effective spawning (Bjornn and Reiser, 1991). Physical and biological barriers within migration sites can prevent adult salmon from effectively spawning either by preventing access to spawning habitat or impairing a fish's ability to spawn effectively by delaying migration or impairing the health of the fish. Migration sites free from physical and biological barriers are essential to the conservation of the species because, without them, adult Atlantic salmon would not be able to access spawning grounds needed for egg deposition and embryo development.

2. *Freshwater and estuary migration sites with pool, lake, and instream habitat that provide cool, oxygenated water and cover items (e.g., boulders, woody debris, and vegetation) to serve as temporary holding and resting areas during upstream migration of adult salmon.* Atlantic salmon may travel as far as 965 km upstream to spawn (NEFMC, 1998). During migration, adult salmon require holding and resting areas that provide the necessary cover, temperature, flow, and water quality conditions needed to survive. Holding areas can include areas in rivers and streams, lakes, ponds, and even the ocean (Bjornn and Reiser, 1991). Holding areas are necessary below temporary seasonal migration barriers such as those created by flow, temperature, turbidity, and temporary obstructions such as debris jams and beaver dams, and adjacent to spawning areas. Adult salmon can become fatigued when ascending high velocity riffles or falls and require resting areas within and around high velocity waters where they can recover until they are able to continue their migration. Holding areas near spawning areas are necessary when upstream migration is not delayed and adults reach spawning areas before they are ready to spawn. These features are essential to the conservation of the species because,

without them, adult Atlantic salmon would be subject to fatigue, predation, and mortality from exposure to unfavorable conditions, significantly reducing spawning success.

3. *Freshwater and estuary migration sites with abundant, diverse native fish communities to serve as a protective buffer against predation.* Adult Atlantic salmon and Atlantic salmon smolts interact with other diadromous species indirectly. Adult and smolt migration through the estuary often coincides with the presence of alewives (*Alosa* spp.), American shad (*Alosa sapidissima*), blueback herring (*Alosa aestivalis*), and striped bass (*Morone saxatilis*). The abundance of diadromous species present during adult migration may serve as an alternative prey source for seals, porpoises and otters (Saunders *et al.*, 2006). As an example, pre-spawned adult shad enter rivers and begin their upstream spawning migration at approximately the same time as early migrating adult salmon (Fay *et al.*, 2006). Historically, shad runs were considerably larger than salmon runs (Atkins and Foster, 1867; Stevenson, 1898). Thus, native predators of medium to large size fish in the estuarine and lower river zones could have preyed on these 1.5 to 2.5 kg size fish readily (Fay *et al.*, 2006; Saunders *et al.*, 2006). In the absence or reduced abundance of these diadromous fish communities, it would be expected that Atlantic salmon will likely become increasingly targeted as forage by large predators (Saunders *et al.*, 2006).

As Atlantic salmon smolts pass through the estuary during migration from their freshwater rearing sites to the marine environment, they experience high levels of predation. Predation rates through the estuary often result in up to 50 percent mortality during this transition period between freshwater to the marine environment (Larsson, 1985). There is, however, large annual variation in estuarine mortality, which is believed to be dependent upon the abundance and availability of other prey items including alewives, blueback herring, and American shad, as well as the spatial and temporal distribution and abundance of predators (Anthony, 1994).

The presence and absence of co-evolutionary diadromous species such as alewives, blueback herring, and American shad likely play an important role in mitigating the magnitude of predation on smolts from predators such as striped bass, double-crested cormorants (*Phalacrocorax auritus*), and ospreys (*Pandion haliaetus*). The migration time of pre-spawned adult alewives overlaps in time and space with the migration of Atlantic salmon smolts (Saunders *et al.*, 2006). Given that when alewife populations are robust, alewife numbers not only likely greatly exceed densities of Atlantic salmon smolts, making them more available to predators, but the caloric content per individual alewife is greater than that of an Atlantic salmon smolt (Schulze, 1996), likely making the alewife a more desirable prey species (Saunders *et al.*, 2006). These features are essential to the conservation of the species because, without highly prolific abundant alternate prey species such as alewives and shad, the less prolific Atlantic salmon will likely become a preferred prey species.

4. *Freshwater and estuary migration sites free from physical and biological barriers that delay or prevent emigration of smolts to the marine environment.* Atlantic salmon smolts require an open migration corridor from their juvenile rearing habitat to the marine environment. Seaward migration of smolts is initiated by increases in river flow and temperature in the early spring (McCleave, 1978; Thorpe and Morgan, 1978). Migration through the estuary is believed to be the most challenging period for smolts (Lacroix and McCurdy, 1996). Although it is difficult to generalize migration trends because of the variety of estuaries, Atlantic salmon post-smolts tend to move quickly through the estuary and enter the ocean within a few days or less (Lacroix *et al.,* 2004; Hyvarinen *et al.,* 2006; McCleave, 1978). In the upper estuary, where river flow is strong, Atlantic salmon smolts use passive drift to travel (Moore *et al.,* 1995; Fried *et al.,* 1978; LaBar *et al.,* 1978). In the lower estuary smolts display active swimming, although their movement is influenced by currents and tides (Lacroix and McCurdy, 1996; Moore *et al.,* 1995; Holm *et al.,* 1982; Fried *et al.,* 1978). In addition, although some individuals seem to utilize a period of saltwater acclimation, some fish have no apparent period of acclimation (Lacroix *et al.,* 2004). Stefansson *et al.* (2003) found that post-smolts adapt to seawater without any long-term physiological impairment. Several studies also suggest that there is a ''survival window'' which is open for several weeks in the spring, and gradually closes through the summer, during which time salmon can migrate more successfully (Larsson, 1977; Hansen and Jonsson, 1989; Hansen and Quinn, 1998). These features are essential to the conservation of the species because a delay in migration of smolts can result in the loss of the smolts' ability to osmoregulate in the marine environment, a necessary adaptation for smolt survival.

5. *Freshwater and estuary migration sites with sufficiently cool water temperatures and water flows that coincide with diurnal cues to stimulate smolt migration.* The process of smoltification is triggered in response to environmental cues. Photoperiod and temperature have the greatest influence on regulating the smolting process. Increase in day length is necessary for smolting to occur (Duston and Saunders, 1990). McCormick *et al.,* (1999) noted that in spite of wide temperature variations among rivers throughout New England, almost all smolt migrations begin around the first of May and are nearly complete by the first week in June. However, the time that it takes for the smoltification process to be completed appears to be closely related to water temperature. When water temperatures increase, the smolting process is advanced, evident by increases in Na+, K+-ATPase activity—the rate of exchange of sodium (Na+) and potassium (K+) ions across the gill membrane or the regulation of salts that allow smolts to survive in the marine environment (Johnston and Saunders, 1981; McCormick *et al.*, 1998; McCormick *et al.*, 2002). In addition to playing a role in regulating the smoltification process, high temperatures also are responsible for the cessation of Na+, K+-ATPase activity of smolts, limiting their ability to excrete excess salts when they enter the marine environment. McCormick *et al.* (1999) found significant decreases in Na+, K+-ATPase activity in smolts at the end of the migration period, but also found that smolts in warmer rivers had reductions in Na+, K+-ATPase activity earlier than smolts found in colder rivers. Hence any delay of migration has the potential to reduce survival of out-migrating smolts because as water temperatures rise over the spring migration period, smolts experience a reduction in Na+, K+-ATPase, reducing their ability to regulate salts as they enter the marine environment. Though flow does not appear to play a role in the smoltification process, flow does appear to play an important role in stimulating a migration response (Whalen *et al.*,, 1999b). Whalen *et al.* (1999b) recorded that there was no apparent downstream migration following a high flow event in mid-to late April in a Vermont river when water temperatures were between 3 and 6 °C; however, when water temperatures reached 8 to 12 °C, small peaks in discharge resulted in corresponding increases in smolt migration. These features are essential

to the conservation of the species because elevated water temperatures that occur in advance of a smolt's diurnal cues to migrate can result in a decreased migration window in which smolts are capable of transitioning into the marine environment. A decrease in the migration window has the potential to reduce survival of smolts especially for fish with greater migration distances.

6. *Freshwater migration sites with water chemistry needed to support sea water adaptation of smolts.* The effects of acidity on Atlantic salmon have been well documented. The effects of acidity cause ionoregulatory failure in Atlantic salmon smolts while in freshwater (Rosseland and Skogheim, 1984; Farmer *et al.*, 1989; Staurnes *et al.*, 1993, 1996). This inhibition of gill Na+, K+-ATPase activity can cause the loss of plasma ions and may result in reduced seawater tolerance (Rosseland and Skogheim, 1984; Farmer *et al.*, 1989; Staurnes *et al.*, 1993, 1996) and increased cardiovascular disturbances (Milligan and Wood, 1982; Brodeur *et al.*, 1999). Parr undergoing parr/smolt transformation become more sensitive to acidic water, hence, water chemistry that is not normally regarded as toxic to other salmonids may be toxic to smolts (Staurnes *et al.*, 1993, 1995). This is true even in rivers that are not chronically acidic and not normally considered as being in danger of acidification (Staurnes *et al.*, 1993, 1995). Atlantic salmon smolts are most vulnerable to low pH in combination with elevated levels of monomeric labile species of aluminum (aluminum capable of being absorbed across the gill membrane) and low calcium (Rosseland and Skogheim, 1984; Rosseland *et al.*, 1990; Kroglund and Staurnes, 1999). These features are essential to the conservation of the species because Atlantic salmon smolts exposed to acidic waters can lose sea water tolerance, which can result in direct mortality or indirect mortality from altered behavior and fitness.

Special Management Considerations or Protections

Specific areas within the geographic area occupied by a species may be designated as critical habitat only if they contain physical or biological features essential to the conservation of the species that ''may require special management considerations or protection.'' It is the features and not the specific areas that are the focus of the ''may require'' provision. Use of the disjunctive ''or'' also suggests the need to give distinct meaning to the terms ''special management considerations'' and ''protection.'' ''Protection'' suggests actions to address a negative impact. ''Management'' seems broader than protection, and could include active manipulation of the feature or aspects of the environment. The ESA regulations at 50 CFR 424.02(j) further define special management considerations as ''any methods or procedures useful in protecting physical and biological features of the environment for the conservation of listed species.'' The term ''may'' was the focus of two Federal district courts that ruled that features can meet this provision because of either a present requirement for special management considerations or protection or possible future requirements (see *Center for Biol. Diversity* v. *Norton*, 240 F. Supp. 2d 1090 (D. Ariz. 2003); *Cape Hatteras Access Preservation Alliance* v. *DOI*, 344 F. Supp. 2d 108 (D.D.C. 2004)). The Arizona district court ruled that the provision cannot be interpreted to mean that features already covered by an existing management plan must be determined to require additional special management, because the term additional is not in the statute. Rather, the court ruled that the existence of management plans may be evidence that the features in fact require special management (*Center for Biol. Diversity* v. *Norton*, 240 F. Supp. 2d at 1096–1100). The need for special management considerations or protection need not be immediate, but it is required that the specific area designated have features which, in the future, may require special consideration or protection (*Cape Hatteras,* 344 F. Supp. 2d at 123–124).

The primary impacts of critical habitat designation result from the consultation requirements of ESA section 7(a)(2). Federal agencies must consult with NMFS to ensure that their actions are not likely to result in the destruction or adverse modification of critical habitat (or jeopardize the species' continued existence). These impacts are attributed only to the designation (*i.e.*, are incremental impacts of the designation) if Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications they would make because of listing and the requirement to avoid jeopardy. Incremental impacts of designation include State and local protections that may be triggered as a result of designation and education of the public about the importance of an area for species conservation. When a modification is required due to impacts both to the species and critical habitat, the impact of the designation is considered to be co-extensive with ESA listing of the species. The ESA 4(b)(2) Report (NMFS, 2009b) and Economic Analysis (IEc, 2009a) describe the impacts in detail. These reports identify and describe potential future Federal activities that would trigger section 7 consultation requirements because they may affect the essential physical and biological features.

We identified a number of activities and associated threats that may affect the PCEs and associated physical and biological features essential to the conservation of Atlantic salmon within the occupied range of the GOM DPS. These activities, which include agriculture, forestry, changing land-use and development, hatcheries and stocking, roads and road crossings, mining, dams, dredging, and aquaculture have the potential to reduce the quality and quantity of the PCEs and their associated physical and biological features. There are other threats to Atlantic salmon habitat, including acidification of surface waters. However, we are not able to clearly separate out the specific activities responsible for acidification, and therefore, are unable to specifically identify a Federal nexus.

TABLE 1—SPECIFIC AREAS WITHIN THE GEOGRAPHIC AREA OCCUPIED BY A SPECIES AND THE ASSOCIATED SPECIAL MANAGEMENT CONSIDERATIONS OR PROTECTIONS THAT MAY BE REQUIRED

HUC code	Watershed name	Special management considerations*
105000205	Machias River	A F C/L H/S R Da Dr
105000204	East Machias River	A F C/L H/S R M Da Dr
105000208	Pleasant River	A F C/L H/S R M Da Dr
105000201	Dennys River	A F C/L H/S R M Da Dr
105000207	Chandler River	A F C/L H/S R M Da Dr
105000209	Narraguagus River	A F C/L H/S R M Da Dr
105000213	Union River Bay	A F C/L H/S R M Da Dr Q

TABLE 1—SPECIFIC AREAS WITHIN THE GEOGRAPHIC AREA OCCUPIED BY A SPECIES AND THE ASSOCIATED SPECIAL MANAGEMENT CONSIDERATIONS OR PROTECTIONS THAT MAY BE REQUIRED—Continued

HUC code	Watershed name	Special management considerations*
105000203	Grand Manan Channel	A F C/L H/S R M Da Dr Q
105000206	Roque Bluffs Coastal	A F C/L H/S R M Da Dr
105000210	Tunk Stream	A F C/L H/S R Da Dr
105000212	Graham Lake	A F C/L H/S R M Da
102000202	Grand Lake Matagamon	A F C/L H/S R Da
102000203	East Branch Penobscot River	A F C/L H/S R
102000204	Seboeis River	A F C/L H/S R Da
102000205	East Branch Penobscot River	A F C/L H/S R Da
102000301	West Branch Mattawamkeag River	A F C/L H/S R M Da
102000302	East Branch Mattawamkeag River	A F C/L H/S R M
102000303	Mattawamkeag River	A F C/L H/S R M
102000305	Mattawamkeag River	A F C/L H/S R M
102000306	Molunkus Stream	A F C/L H/S R
102000307	Mattawamkeag River	A F C/L H/S R M Da
102000401	Piscataquis River	A F C/L H/S R Da
102000402	Piscataquis River	A F C/L H/S R M Da
102000404	Pleasant River	A F C/L H/S R Da
102000405	Seboeis Stream	A F C/L H/S R Da
102000406	Piscataquis River	A F C/L H/S R M Da
102000501	Penobscot River at Mattawamkeag	A F C/L H/S M Da
102000502	Penobscot River at West Enfield	A F C/L H/S R M Da
102000503	Passadumkeag River	A F C/L H/S R M Da
102000505	Sunkhaze Stream	A F C/L H/S R
102000506	Penobscot River at Orson Island	A F C/L H/S R M
102000507	Birch Stream	A F C/L H/S R M
102000509	Penobscot River at Veazie Dam	A F C/L H/S R M Da
102000510	Kenduskeag Stream	A F C/L H/S R M Da Dr
102000511	Souadabscook Stream	A F C/L H/S R M Da Dr
102000512	Marsh River	A F C/L H/S M Da Dr
102000513	Penobscot River	A F C/L H/S R M Da Dr
105000218	Belfast Bay	A F C/L H/S R M Da Dr
105000219	Ducktrap River	A F C/L H/S R Da Dr Q
105000301	St. George River	A F C/L H/S R M Da Dr
105000302	Medomak River	A F C/L H/S R M Da Dr
105000305	Sheepscot River	A F C/L H/S R M Da Dr
103000306	Kennebec River at Waterville Dam	A F C/L H/S R M Da Dr
103000305	Sandy River	A F C/L H/S R M Da Dr
103000312	Kennebec at Merrymeeting Bay	A F C/L H/S R M Da Dr
105000306	Sheepscot Bay	A F C/L H/S R M Da Dr
105000307	Kennebec River Estuary	A F C/L H/S R M Da Dr
104000210	Little Androscoggin River	A F C/L H/S R M Da Dr

* A = Agriculture; F = Forestry; C/L = Changing Land Use; H/S = Hatcheries and Stocking; R = Roads and Road Crossings; M = Mining; Da = Dams; Dr = Dredging; Q = Aquaculture.

*''Specific Areas Outside the Geographical Area Occupied by the Species * * * Essential to the Conservation of the Species''*

Section 3(5)(A)(ii) of the ESA further defines ''critical habitat'' as ''specific areas outside the geographical area occupied by the species at the time it is listed in accordance with the provisions of [section 4 of this Act], upon a determination by the Secretary that such areas are essential for the conservation of the species.'' For the reasons stated above in the discussion of specific occupied areas, we delineated the specific areas outside the geographic area occupied by the species using HUC 10 (level 5) watersheds. To determine whether these unoccupied areas are essential for the conservation of the species, we: (1) established recovery criteria to determine when the species no longer warrants the protections of the ESA (See NMFS, 2009a (Appendix A)) and the amount of habitat needed to support the recovered population; and (2) determined the amount of habitat currently occupied by the species relative to the amount of habitat necessary to achieve recovery.

In developing recovery criteria, we employed a strategy of identifying both geographic and population level criteria, that, if met would protect the DPS from demographic and environmental variation to the extent in which the population would no longer require protection under the ESA. Geographic criteria were established to assure that Atlantic salmon are well distributed across the range of the DPS to accommodate the metapopulation characteristics of Atlantic salmon. Atlantic salmon have strong homing characteristics that allow local breeding populations to become well adapted to a particular environment. At the same time, limited straying does occur among salmon populations assuring population diversity through exchange of some genes between populations, and allowing for population expansion and recolonization of extirpated populations. To accommodate these life history characteristics, we established a geographic framework represented by three Salmon Habitat Recovery Units, or SHRUs, within the DPS (see NMFS, 2009a (appendix A)) that would, we believe, be reasonably protective of these life history characteristics and to ensure that Atlantic salmon are widely distributed across the range of the DPS to provide protection from demographic and environmental variation. As explained in more detail in the

Recovery Criteria (NMFS, 2009a (Appendix A)), we determined that all three SHRUs must fulfill the criteria described below for the overall species, the GOM DPS, to be considered recovered.

Criteria

Population level criteria were established to assure that a recovered population is likely to be sufficiently robust to withstand natural demographic variability (*e.g.*, periods of low marine survival) and not likely to become an endangered species in the foreseeable future. We concluded that a census population of 500 adult returns (assuming a 1:1 sex ratio) in each SHRU is to be used as a benchmark to evaluate the population as either recovered or one that requires protection under the ESA. Franklin (1980) introduced 500 as the approximate effective population size necessary to retain sufficient genetic variation and long term persistence of a population.

We have chosen to use a census population (N) (the actual count of adult returns) of 500 adult returns in each SHRU to serve as a benchmark to evaluate the population as either recovered or one that requires protection under the ESA. We used the census number rather than an effective population size for four reasons: (1) The adult census through redd counts or trap catches have been used as the principal indicator of population health in the GOM DPS since Charles Atkins first started estimating returns in the mid to late 1800s. At this time, there are not sufficient resources or time to fully assess the effective population size of the entire Gulf of Maine DPS on an annual basis, whereas sufficient resources are already in place to reasonably assess the census population; (2) a census population of 500 adults per SHRU provides a starting point only for establishing criteria for delisting and does not represent the actual number at which the population warrants delisting. Other pre-decision criteria must also be met for delisting as described in the following paragraph: (3) Atlantic salmon have tremendously complex life histories allowing for great opportunity for extensive cross generational breeding. This is because of salmon's iteroparity and because precocious parr, one-sea winter and multi-sea winter fish can all participate in spawning activity. Having multi-generational participation in spawning activity significantly reduces the effective population to census population ratio, but furthermore, makes determining the actual N_e/N ratios extremely difficult and highly debatable for the natural population; (4) Though there has been much debate in the literature regarding the application of assigning a general number to represent when populations are sufficiently large enough to maintain genetic variation (Allendorf and Luikart, 2007; Waples & Yokota, 2007; Reiman & Allendorf, 2001), the 500 rule introduced by Franklin (1980) has not been superseded by any other rule and does serve as useful guidance for indicating when a population may be at risk of losing genetic variability (Allendorf and Luikart, 2007).

To evaluate recovery of the GOM DPS, we have determined that five criteria must be met: (1) The adult spawner population of each SHRU must be 500 or greater in an effort to maintain sufficient genetic variability within the population for long-term persistence. This is to be determined or estimated through adults observed at trapping facilities or redd counts; (2) The GOM DPS must demonstrate self-sustaining persistence where each SHRU has less than a 50 percent probability of falling below 500 adult spawners in the next 15 years based on PVA projections described above. The 50 percent assurance threshold satisfies the criterion that the population is ''not likely'' to become an endangered species; while 15 years represents the ''foreseeable future'' for which we have determined that we can make reasonable projections based on past demographic data available to us; (3) The entire GOM DPS must demonstrate consistent positive population growth for at least two generations (10 years) before the decision to delist is made. Ten years of pre-decision data that reflects positive population trends provides some assurance that recent population increases are not happenstance but more likely a reflection of sustainable positive population growth; (4) A recovered GOM DPS must represent the natural population (*i.e.*, adult returns must originate from natural reproduction that has occurred in the wild); hatchery product cannot be counted towards recovery because a population reliant upon hatchery product for sustainability is indicative of a population that continues to be at risk; (5) In order to delist the GOM DPS, the threats identified at the time of listing must be addressed through regulatory or any other means. These threats are identified in the factors specified under section 4(a)(1) of the ESA as described in the 2006 Status Review (Fay *et al.*, 2006). Methods to address these threats will be addressed in a final recovery plan for the expanded GOM DPS.

After determining criteria for delisting, we applied these criteria to assess the number of adult spawners that would be needed to weather a downturn in survival as experienced between the years of 1991 and 2006, a period of exceptionally low survival. Using demographic data for this time period we applied the criteria described above in conjunction with a PVA to determine how many adults would be required in each SHRU to weather a similar downturn in survival while having a greater than 50 percent chance of remaining above 500 adults (see NMFS, 2009a (Appendix B)). This analysis projected that a census population of 2,000 spawners (1000 male and 1000 female) would be needed in each of the three SHRUs for the GOM DPS to weather a downturn in survival such as experienced over the time period from 1991–2006. Based on this analysis, we conclude that enough habitat is needed in each of the three SHRUs to support the offspring of these 2,000 adult spawners. Using an average fecundity per female of 7,200 eggs (Legault, 2004), and male to female ratio of 1:1, or 1000 females, and a target number of eggs per one unit of habitat ($100m^2$) of 240 (Baum, 1997), we determined that 30,000 units of habitat are needed across each SHRU (7,200 eggs × 1000 females/240 eggs = 30,000) to support the offspring of 2,000 spawners, which represents the quantity of habitat in each SHRU essential to the conservation of the species (NMFS, 2009a, Appendix B).

To calculate the existing quantity of habitat across the range of the DPS both within the currently occupied range and outside the occupied range, we recognized that both habitat quantity and quality should be taken into consideration. As a result, we describe the existing quantity of habitat in terms of functional habitat units. To generate this estimate of functional habitat units, we considered the measured quantity of habitat within each HUC 10 as well as the habitat's quality. The functional habitat units values are a measure of the quantity of habitat (expressed in units where 1 unit of habitat is equivalent to $100m^2$ of habitat) within a HUC 10 based on qualitative factors that limit survivorship of juvenile salmon utilizing the habitat for spawning, rearing, and migration. The functional habitat units also account for dams within or below the HUC 10 that would further reduce survivorship of juvenile salmon within the HUC 10 as the juvenile salmon migrate towards the marine environment. In HUC 10s that

are not believed to be limited by qualitative factors or dams, the functional habitat units would be identical to the measured quantity of habitat units within the HUC 10. In HUC 10s where quality and dams are believed to be limiting, the functional habitat units would be less than the measured habitat units within the HUC 10. The functional habitat units value is used in the critical habitat evaluation process to determine the quantity of functioning habitat units within each HUC 10. It also determines the quantity of functioning habitat within the currently occupied range relative to the amount needed to support the offspring of 2,000 adult spawners.

Functional habitat unit scores were generated by multiplying the quantity of spawning and rearing habitat units within each HUC 10 by the habitat quality score divided by 3 (*e.g.*, 1 = 0.33, 2 = 0.66, and 3 = 1; discussed below under application of ESA section 4(b)(2)) to represent the relative values in terms of percentages. Using this approach, a ''1'' habitat quality score has a qualitative value roughly equivalent to 33 percent of fully functioning habitat; accordingly, a ''2'' habitat quality score is roughly 66 percent of the value of fully functioning habitat; and a ''3'' score equals 100 percent habitat quality. The sum of this value was then multiplied by 0.85 raised to the power of the number of dams both within and downstream of the HUC 10. We consider 0.85 to represent a coarse estimate of passage efficiency of smolts for FERC dams with turbines (smolt mortality associated with turbine entrainment is 0.15) based on the findings of several studies (GNP, 1995; GNP, 1997; Holbrook, 2007; Shepard, 1991c; Spicer *et al.*, 1995) and, therefore, roughly equivalent to a 15 percent reduction in functional habitat unit. Mainstem dams without turbines are not expected to affect smolts the way dams with turbines do, but can result in direct or indirect mortality from delays in migration and by increased predation from predators that congregate around dams. Therefore, dams without turbines were estimated to reduce the functional capacity of habitat units by 7.5 percent (one half of 15 percent). Dams located at roughly the midpoint of habitat within a HUC 10 watershed were estimated to affect passage of roughly half the fish in the HUC 10 watershed (*e.g.*, located half way up the HUC 10 watershed) and, therefore, were discounted accordingly (*e.g.*, 7.5 percent for dams with turbines). A dam without turbine located at the midpoint of habitat within a HUC 10 was estimated to reduce the functional capacity of habitat units by 3.75 percent. The number of dams present both within and downstream of the HUC 10 was used as an exponent to account for cumulative effects of dams. A formulaic representation of our method is written as:

$$Q_{SRH} \times \left(B_{SS}/3\right) \times \left(E_{DE}{}^{\wedge N}\right) = \text{Functional Habitat Units}$$

Q_{SRH} = quantity of spawning and rearing habitat
B_{SS} = biological suitability score
E_{DE} = estimated downstream passage efficiency of a typical FERC licensed dam
N = number of dams within and downstream of HUC

Given that computing the functional habitat units was conducted to estimate the quantity of habitat necessary to support the offspring of 2,000 adult spawners, only downstream passage efficiency was figured into the equation to calculate functional habitat units. We based our projected habitat needs on the amount of habitat needed to support the offspring of 2,000 adult spawners, so our analysis of functional habitat units was based on those factors that would diminish the survival of the offspring of the spawners. This rule is not designed to serve as a recovery plan but rather to ensure that there is sufficient habitat available to meet recovery goals. A full review of how habitat quantities and habitat qualities were computed is provided in the Biological Valuation of Atlantic Salmon Habitat within the GOM DPS (2008).

Table 2 represents the total amount of measured habitat within the occupied areas of each SHRU; the quantity of functional habitat units for each SHRU; amount of habitat excluded; the amount of functional habitat (represented as functional habitat unit) after exclusion; and the amount of habitat still needed to support the offspring of 2,000 adult spawners within each SHRU.

TABLE 2—TOTAL HABITAT AND FUNCTIONAL HABITAT FOR OCCUPIED AREAS AMONG THE THREE SHRUS IN THE GOM DPS

SHRU	Total habitat units	Functional habitat units	Economic exclusion	Functional habitat after exclusions	Additional habitat needed to support the offspring of 2,000 adult spawners (*i.e.*, 30,000 units)
Merrymeeting Bay	372,639	40,001	0	40,001	0
Penobscot Bay	323,740	66,263	3,205	63,058	0
Downeast Coastal	61,395	29,111	0	29,111	889

In both the Penobscot and Merrymeeting Bay SHRUs, there are more than 30,000 units of functional habitat within the currently occupied area to support the offspring of adult spawners. In the Downeast Coastal SHRU, the amount of functional habitat available to the species is estimated to be 889 units short of what is needed to support 2,000 adult spawners. Nonetheless, we determined that no areas outside the occupied geographical area within the Downeast SHRU are essential to the conservation of the species. This is because the 61,395 total habitat units in Downeast Maine are predicted to be functioning at the equivalent of 29,111 units because of the presence of dams or because of degraded habitat features that reduce the habitat's functional value. However, through restoration efforts, including enhanced fish passage and habitat improvement of anthropogenically

degraded features (including stream crossing improvement projects like those currently being carried out by Project SHARE in the Downeast SHRU, for example), a substantial portion of the approximately 32,000 units of non-functioning habitat may be restored to a functioning state. The Union River, for instance, has over 12,000 units of habitat, though its functional habitat value, largely because of dams, is estimated to be equivalent to approximately 4,000 units of habitat. Dam removal or improved fish passage has the potential to significantly increase the function of critical habitat in the Union river and, therefore, the entire Downeast SHRU.

Throughout Maine, there has been substantial effort on behalf of State and Federal agencies and non-profit organizations in partnership with landowners and dam owners to restore habitat through a combination of land and riparian protection efforts, and fish passage enhancement projects. Project SHARE, the Downeast Salmon Federation, watershed councils, Trout Unlimited, and the Atlantic Salmon Federation, for example, have conducted a number of projects designed to protect, restore, and enhance habitat for Atlantic salmon ranging from the Kennebec River in south central Maine to the Dennys River in Eastern Maine. Projects include, but are not limited to: dam removals along the Kennebec, St. George, Penobscot, and East Machias Rivers; land protection of riparian corridors along the Machias, Narraguagus, Dennys, Pleasant, East Machias, Sheescot, Ducktrap rivers and Cove Brook; surveying and repair of culverts that impair fish passage; and outreach and education efforts on the benefits of such projects. In 2008 in the Downeast SHRU, Project SHARE replaced 7 culverts with open bottom arch culverts to improve fish passage, decommissioned 12 road crossings by removing the culvert or bridge and stabilizing the banks, and removed 6 remnant log drive dams. The Penobscot River Restoration Project is another example of cooperative efforts on behalf of Federal and State agencies, nonprofit organizations, and dam owners. The PRRP goal is to enhance runs of diadromous fish, including Atlantic salmon, through the planned removal of two mainstem dams and enhanced fish passage around several other dams along the Penobscot River. These cooperative efforts can increase the functional potential of Atlantic salmon habitat by both increasing habitat availability as well as increasing habitat quality. Therefore, we do not believe that it is essential to designate critical habitat outside of the currently occupied range.

V. Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

The Sikes Act of 1997 (16 U.S.C. 670a–670f, as amended), enacted on November 18, 1997, required that military installations with significant natural resources prepare and implement an integrated natural resource management plan (INRMP) in cooperation with the USFWS and State fish and wildlife agencies, by November 18, 2001. The purpose of the INRMP is to provide the basis for carrying out programs and implementing management strategies to conserve and protect biological resources on military lands. Because military lands are often protected from public access, they can include some of the nation's most significant tracts of natural resources. INRMPs are to provide for the management of natural resources, including fish, wildlife, and plants; allow multipurpose uses of resources; and provide public access where appropriate for those uses, without any net loss in the capability of an installation to support its military mission.

In 2003, the National Defense Authorization Act (Pub. L. 108–136) amended the ESA to limit areas eligible for designation as critical habitat. Specifically, section 4(a)(3)(B)(i) of the ESA (16 U.S.C. 1533(a)(B)(i)) states: ''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. 67a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is proposed for designation.''

Within the specific areas identified as critical habitat for the Gulf of Maine DPS, there are four military sites; two of these currently have INRMPs, and the other two have INRMPs being developed. The Brunswick Naval Air Station has 15,800 acres (63.9 sq km) of real property spread out among the main station in Brunswick and several remote stations across Maine. Military installations that are part of the Brunswick Naval Air Station and that are either partly or entirely within the area where critical habitat is proposed include the 3,091-acre (12.5-sq km) main station in Brunswick; a 12,000-acre (48.5-sq km) Survival, Evasion, Resistance, and Escape (SERE) school near Rangeley, Maine; and the 396-acre (1.6-sq km) Great Pond Outdoor Adventure Center located in the town of Great Pond in Hancock County, Maine.

The two military installations within the occupied range of the DPS with INRMPs are not included in the critical habitat designation in accordance to 4(a)(3)(B)(i) of the ESA. These installations include: (1) The 3,091-acre (12.5-sq km) Brunswick Naval Air Station in Brunswick, Maine, of which 435 acres (1.8 sq km) are within Little Androscoggin HUC 10 watershed in the Merrymeeting Bay SHRU; and (2) the Brunswick Naval Air Station's cold weather survival, evasion, resistance, and escape school, which occupies 12,000 acres (48.5 sq km) near Rangeley, Maine, of which 5,328 acres (21.6 sq km) are within the Sandy River HUC 10 watershed in the Merrymeeting Bay SHRU. The INRMPs at these two locations specifically provide for water quality protection via erosion and sediment control, wetland protection, monitoring of non point source pollution, protection of watersheds from hazardous materials, use of environmentally beneficial landscaping, monitoring for and responding to forestry management units health problems and management of forests as shoreline buffers. We determined that these two INRMPs provide a conservation benefit to the GOM DPS of Atlantic salmon.

The two sites with military missions that currently do not have INRMPs and the one non-military facility identified as being essential to national security are being excluded from critical habitat under section 4(b)(2) described in the final rule section entitled *Application of ESA Section 4(b)(2).*

VI. Application of ESA Section 4(b)(2)

The foregoing discussion described the specific areas within U.S. jurisdiction that meet the ESA definition of critical habitat because they contain the physical and biological features essential to the conservation of Atlantic salmon that may require special management considerations or protection. Before including areas in a designation, section 4(b)(2) of the ESA requires the Secretary to consider the economic impact, impact on national security, and any other relevant impacts of designation of any particular area. The Secretary has the discretion to exclude any area from designation if he determines that the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation based upon the best

scientific and commercial data available. The Secretary may not exclude an area from designation if exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area under any circumstances.

The ESA section 4(b)(2) exclusion process is conducted for a ''particular area,'' not for the critical habitat as a whole. This analysis is, therefore, conducted at a geographic scale that divides the area under consideration into smaller sub-areas. The statute does not specify the exact geographic scale of these ''particular areas.'' For the purposes of the analysis of economic impacts, a ''particular area'' is equivalent to a ''specific area'', defined as a HUC 10 (level 5) standard watershed. There are 48 ''specific areas'' (HUC 10s) occupied by the species on which are found those physical and biological features essential to the conservation of the species and which may require special management considerations or protection.

Where we considered impacts on Indian Tribes, we delineated particular areas based on land ownership. Where we consider impacts on national security, particular areas will be delineated based on lands identified by the military as areas where critical habitat designation will have an impact on national security. These areas may only account for a small fraction of a HUC 10 watershed or, in some circumstances, may span across several HUC 10 watersheds. Factors that were considered in determining whether the benefits of exclusion outweighed the benefits of designating the particular areas as critical habitat include:

(1) The quantity of functional habitat excluded relative to the quantity of habitat needed to support a recovered population;

(2) The relative biological value of a particular area to the conservation of the species, measured by the quantity and quality of the physical and biological features with the particular area;

(3) The anticipated conservation loss that would be accrued through not designating a particular area based upon the conservation value of that particular area; and

(4) Whether exclusion of habitat within the particular area, based upon the best scientific and commercial data, would result in the extinction of the species concerned.

Assigning Biological Value

To determine the benefits of including an area as critical habitat, we assigned a Final Biological Value to each HUC 10 watershed based on the quantity and quality of Atlantic salmon spawning and rearing habitat and the migratory needs of the species (see NMFS, 2009a). The Final Biological Value indicates each area's current value to Atlantic salmon spawning, rearing, and migration activities and is applied in the ESA section 4(b)(2) exclusion analysis, where it is weighed against the economic, national security, and other relevant impacts to consider whether specific areas may be excluded from designation. The final biological value also aided in determining those areas currently occupied by the species described earlier in the final rule under ''Identifying the Geographical Area Occupied by the Species and Specific Areas within the Geographical Area''. The variables used to develop the Final Biological Value include a combination of habitat units, habitat quantity, habitat quality, and the value of the HUC 10 to migration of smolts and adults. The final biological value does not incorporate the use of functional habitat units as described in the previous section entitled *Specific areas outside the geographical area occupied by the species * * * essential to the conservation of the species*. Functional habitat units were only used to determine whether areas that contain PCEs outside the currently occupied range should be designated as critical habitat.

A habitat unit represents 100 m^2 of spawning and rearing habitat. A habitat unit is used in North America and Europe to quantify habitat features most frequently used for spawning and juvenile rearing (*e.g.*, riffles and runs). Habitat units for each HUC 10 were calculated using the GIS based habitat prediction model described earlier in the final rule under *Physical and Biological Features in Freshwater and Estuary Specific Areas Essential to the Conservation of the Species*.

Habitat quantity is the estimate of habitat units generated by the model and was calculated separately for each HUC 10. The units of habitat were then binned into four categories for each of the three SHRUs. A HUC 10 with no habitat was assigned a score of ''0'' and was considered unoccupied. HUC 10s with the lowest 25 percent of total units of habitat across the entire SHRU received a ''1'' score, the middle 50 percent received a ''2'' score, and the upper 25 percent received a ''3'' score. A ''3'' score represents the highest relative habitat quantity score. This method resulted in the majority of the habitat receiving a score of ''2'' representing an average habitat quantity. Habitat scores outside the middle 50 percent were considered to have above average habitat quantity or below average habitat quantity.

Habitat quality scores were assigned to HUC 10s based on information and input from fisheries biologists working with the Maine Department of Inland Fisheries and Wildlife, the MDMR, NMFS, and Kleinschmidt Energy and Water Resource Consultants, who possess specific knowledge and expertise about the geographic region. For each of the three SHRUs, a minimum of three biologists with knowledge of and expertise in the geographic area were asked to independently assign habitat scores, using a set of scoring criteria developed by fisheries biologists from NMFS, to HUC 10s based on the presence and quality of the physical and biological features essential to the conservation of the species (see NMFS, 2009a). The scoring criteria ranked qualitative features, including temperature, biological communities, water quality, and substrate and cover, as being highly suitable (''3''), suitable (''2''), marginally suitable (''1'') or not suitable (''0'') for supporting Atlantic salmon spawning, rearing, and migration activities. A habitat value of ''0'' indicates that one or more factors is limiting to the point that Atlantic salmon could not reasonably be expected to survive in those areas; a score of ''1'', ''2'', or ''3'' indicates the extent to which physical and biological features are limiting, with a ''1'' being most limiting and a ''3'' being not limiting. In HUC 10s that are and have always been inaccessible due to natural barriers, the entire HUC 10 was automatically scored as ''0'' and considered not occupied by the species. Emphasis was placed on identifying whether the physical and biological features needed for Atlantic salmon spawning and rearing are present and of what quality the features are. The overall habitat quality score for each HUC 10 was typically an average determined by the compilation of scores. In some instances, not all the biologists were familiar with the HUC 10, so only one or two scores were provided for some HUCs. In some instances where only two scores were provided for a HUC 10 watershed and each biologist scored the watershed differently we relied on a combination of the comments provided on the score sheets, knowledge from fisheries biologist working for NMFS that were familiar with these HUCs, or phone interviews with the commenters to resolve the ''tie'' score. We resolved ''tie'' scores based on comments when it was clearly apparent, based on the

comments, that one biologist had more knowledge of the HUC 10 than the other biologist who scored the HUC 10.

Final Habitat Values were generated for each HUC 10 by combining habitat quantity and habitat quality scores within each HUC 10. Scores were combined by multiplying the two variables together giving scores of 0, 1, 2, 3, 4, 6, 9. HUC 10s with zero scores received a zero score for Final Habitat Value. Scores of 1 or 2 were valued as low or ''1'' final habitat value. Scores of 3 or 4 were valued as medium or ''2'' final habitat value, and scores of 6 or 9 were valued as high or ''3'' final habitat value.

A final migration value was generated based on the final habitat values and the migratory requirements of adults to reach spawning areas and smolts to reach the marine environment. We determined the final migration value of a HUC 10 to be equal to the highest final habitat value upstream from the HUC 10 because we concluded that access to spawning and rearing habitat was equally as important as the spawning and rearing habitat itself.

The final biological value for each HUC 10, which is the value used in weighing economic cost against the biological value of habitat to salmon, was determined by selecting the higher of the final habitat value and the final migration score of each HUC 10. This approach assures the preservation of spawning and rearing habitat as well as migration habitat (see NMFS, 2009a).

Consideration of Economic Impacts, Impacts to National Security and Other Relevant Impacts

The impact of designating any particular area as critical habitat occurs primarily through section 7 of the ESA. Once critical habitat is designated, section 7(a)(2) requires that Federal agencies ensure any action they authorize, fund, or carry out (this action is called the ''Federal nexus'') is not likely to result in the destruction or adverse modification of critical habitat (16 U.S.C. 1536(a)(2)). Parties involved in section 7 consultations include NMFS or the USFWS, a Federal action agency, and in some cases, a private entity involved in the project or land use activity. The Federal action agency serves as the liaison with NMFS. Under Section 7(a)(2), when a Federal agency proposes an action that may affect a listed species or its critical habitat, it must initiate formal consultation with NMFS (or the USFWS, as applicable) or seek written concurrence from the Service(s) that the action is not likely to adversely affect listed species or its designated critical habitat. Formal consultation is a process between the Services and a Federal agency designed to determine whether a proposed Federal action is likely to jeopardize the continued existence of a species or destroy or adversely modify critical habitat, an action prohibited by the ESA. If the action is likely to destroy or adversely modify critical habitat, then the Federal agency may be required to implement a reasonable and prudent alternative (RPA) to the proposed action to avoid the destruction or adverse modification of critical habitat. In addition, conservation benefits to the listed species would result when the consultation process avoids destruction or adverse modification of its critical habitat through inclusion of RPAs, or avoids lesser adverse effects to critical habitat that may not rise to the level of adverse modification through inclusion of harm avoidance measures.

Outside of the Federal agencies' obligation to consult on actions that ''may affect'' critical habitat and adopt project modifications to avoid destruction or adverse modification, the ESA imposes no requirements or limitations on entities or individuals as a result of a critical habitat designation.

Economic Impacts

As discussed above, economic impacts of the critical habitat designation result from implementation of section 7 of the ESA. Section 7(a)(2) requires Federal agencies to consult with NMFS to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. These economic impacts may include both administrative and project modification costs. Economic impacts may also be associated with the conservation benefits of the designation.

Economic impacts were assessed for each specific HUC 10 area designated as critical habitat, as well as for unoccupied areas within the range of the GOM DPS. While we are not designating unoccupied areas as critical habitat, we evaluated the economic impacts in the event that we determined in the biological valuation process, or determine as a result of public comment or subsequently available information, that some or all of the unoccupied areas were found to be to be essential to the conservation of the species. For the entire range of the GOM DPS, most of the economic impact results from impacts to hydropower projects and development (IEc, 2009a). The estimated economic impact of designation of the occupied areas before economic exclusions ranges from approximately $128 million to $152 million.

For the designation of critical habitat for the GOM DPS, economic exclusions within the 48 occupied HUC 10s throughout the range of the DPS were considered by weighing biological value determined in the biological valuation and the economic cost determined in the economic analysis. As described earlier, the biological values were assigned a score of 1, 2, or 3, with a ''1'' being of lowest biological value and a ''3'' being of highest biological value. Areas could also be assigned a biological value of ''0'' if the physical and biological features in those areas were so degraded that they were not considered essential to the conservation of salmon. Areas assigned a ''0'' score were not included in the economic exclusion analysis. As stated above, we consider these areas to be unoccupied, and we determined that no unoccupied areas were essential to the conservation of the GOM DPS.

To compare economic cost with biological value, we used the range of monetized values provided in the economic analysis binned into three categories, with a score of ''1'' representing low economic cost and a score of ''3'' representing high economic cost. These categories illustrate economic costs over the range of the GOM DPS. The high, medium, and low scores assigned to economic costs were then used to weigh economic cost against the corresponding biological value (also scored as high, medium, or low) of each HUC 10. The binning process was designed to describe a range of monetized values in qualitative terms that could be directly compared with the qualitative assessment of the physical and biological habitat features essential to the conservation of the species. The binning was conducted so that the lowest 25 percent of the total economic costs represent costs that were below average. Low economic costs were assigned a score of ''1,'' representing a cost ranging from $71,000 to $388,000. The middle 50 percent represents the average cost across all HUCs containing critical habitat and received a score of ''2,'' with economic cost ranging from $388,001 to $3,420,000. The upper 25 percent represents those costs that were above average or high and received a score of ''3,'' with economic cost ranging from $3,420,001 to $27,900,000. We binned the economic costs using the same procedures that we used to bin habitat quantity within each HUC 10, with the lower and upper 25 percent of habitat representing those areas as being either above average or below average.

These dollar thresholds do not represent an objective judgment that

low-value areas are worth no more than $388,000, medium-value areas are worth no more than $3,420,000, or high value areas are worth no more than $27,900,000. Under the ESA, we are to weigh dissimilar impacts given limited time and information. The statute emphasizes that the decision to exclude is discretionary. Thus, the economic impact level at which the economic benefits of exclusion outweigh the conservation benefits of designation is a matter of discretion and depends on the policy context. For critical habitat, the ESA directs us to consider exclusions to avoid high economic impacts, but also requires that the areas designated as critical habitat are sufficient to support the conservation of the species and to avoid extinction. In this policy context, we selected dollar thresholds representing the levels at which we believe the economic impact associated with a specific area would outweigh the conservation benefits of designating that area.

Given the low abundance and endangered status of Atlantic salmon, we exercise our discretion to consider exclusion of specific areas based on three decision rules: (1) Specific areas with a biological value of medium (''2'') or high (''3'') score were not eligible for exclusion regardless of the level of economic impact, because of the endangered status of Atlantic salmon; (2) specific areas with a low biological value (''1'') were excluded if the economic costs were greater than $388,000 (economic score of ''2'' or ''3''); and (3) specific areas were not considered for exclusion, including those areas having a low biological value (''1''), if the area had no dams both within it or below it, given that these areas are not subject to the deleterious effects that dams have on migration of adults and smolts (GNP, 1995; GNP, 1997; Holbrook, 2007; Shepard, 1991c; Spicer *et al.*, 1995).

These decision rules: (1) Ensure that enough occupied habitat receives the protections of critical habitat to meet our conservation objectives, in this case, 30,000 units of habitat per SHRU; (2) ensure that all habitat that has average (2 score) or better biological value receives the protections of critical habitat and is available to be used for the conservation and recovery of the species; and (3) given that dams have been identified as one of the greatest impediments to salmon recovery (NRC, 2004; Fay *et al.*, 2006), ensure that occupied areas without dams receive the protections of critical habitat.

If we excluded all areas where economic costs were higher than biological value, then the Downeast Coastal SHRU would be 3,840 units short of the 30,000 units needed to meet our conservation objectives. Habitat that is excluded for economic impact reasons offers no protections to those features that are essential to the conservation of Atlantic salmon. In contrast, tribal lands and military lands excluded from the Downeast Coastal SHRU were excluded because of ongoing conservation efforts being carried out by the Tribe or natural resource plans that are in place or in development by the military that provide protections to Atlantic salmon habitat.

We believe that all habitat with a biological value of ''2'' or greater is essential to the recovery efforts of Atlantic salmon. In the Gulf of Maine, of the 105 HUC 10 watersheds that we analyzed for critical habitat, we determined that 86 HUC 10s were historically accessible to Atlantic salmon. Of those 86 historic watersheds, only 48 of those HUC 10 watersheds are currently occupied by Atlantic salmon and provide the best opportunity for the agencies to implement on the ground recovery efforts through stocking programs and habitat restoration and enhancement efforts. Of the 48 occupied HUC 10 watersheds, 32 of these watersheds are considered to have average (''2'' score) or better biological value. These 32 remaining watersheds provide the best opportunity for managers to carry out restoration efforts, and provide the best potential for recovery of Atlantic salmon across the DPS.

We believe that protection of specific areas without dams is imperative to salmon recovery. The fact that the National Research Council (NRC, 2004) and the Atlantic Salmon Status Review (Fay *et al.*, 2006) both emphasize that dams are one of the greatest impediments to salmon recovery in the State of Maine underscores the importance of specific areas that are free of dams, even if these specific areas have relatively low biological value. Even highly effective passage facilities cause Atlantic salmon mortality. Passage inefficiency and delays associated with dams occur at biologically significant levels, resulting in incremental losses of pre-spawn adults, smolts, and kelts (a life stage after Atlantic salmon spawn) (See the final rule published by NMFS and the USFWS in today's **Federal Register** (see Endangered and Threatened Species; Determination of Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon)). Dams can delay migration of smolts, increasing predation risk (Nettles and Gloss, 1987) or cause Atlantic salmon smolts to miss the migration window in which smolts are physiologically capable of transitioning from the freshwater environment to the marine environment (Whalen *et al.*, 1999; McCormick *et al.*, 1999). Studies in the Columbia River system have shown that fish generally take longer to pass a dam on a second attempt after fallback compared to the first (Bjornn *et al.*, 1999). Dams can also cause direct injury to downstream migrating Atlantic salmon smolts, which can be a result of pressure changes during turbine entrainment or direct contact with the turbines (Cada, 2000). Dams are known to typically injure or kill between 10 and 30 percent of all fish entrained at turbines (EPRI, 1992). With rivers containing multiple hydropower dams, these cumulative losses could compromise entire year classes of Atlantic salmon.

With at least 116 dams in the Penobscot watershed (FERC, 1997), 18 of which currently generate electricity; 73 dams in the Kennebec watershed, 26 of which are licensed hydropower facilities and storage dams (MSPO, 1993); and 85 dams in the Androscoggin watershed, 45 of which are hydroelectric facilities, there are very few areas remaining that are free of dams. In fact, of the six stocks of Atlantic salmon that make up the genetic line of the Atlantic salmon conservation hatchery program, five of those stocks come from rivers that currently do not have hydroelectric dams, and four of those stocks originate from rivers where their mainstems below the headwaters are free of dams. The areas that are currently free of dams provide the best opportunity for maintaining the existing genetic line of Atlantic salmon, and rebuilding the Atlantic salmon population either through recolonization that occurs naturally through straying or through managed stocking programs.

We propose to exclude three particular areas (HUC 10s) in the Penobscot Bay SHRU due to economic impact, out of a total of 48 occupied HUC 10s within the range of the GOM DPS. Areas excluded from critical habitat for reasons of economics include approximately 1,198 km of river, stream, and estuary habitat and 99 sq km of lakes in all of Belfast Bay (HUC 105000218), Passadumkeag River (HUC 102000503), and Molunkus Stream (HUC 102000306). The combined economic impact of the designation in those particular areas was estimated to be $11,600,000 to $12,600,000 before they were considered for exclusion. The estimated economic impact for critical habitat following exclusions ranges from

approximately $117 million to $140 million. The estimated economic impacts of designating critical habitat for each SHRU are in Table 3.

TABLE 3—SUMMARY OF ECONOMIC IMPACT FOLLOWING EXCLUSIONS FOR OCCUPIED HUC 10 BY SHRU IN THE GOM DPS

SHRU	Low estimate	High estimate
Downeast Coastal	$9,710,000	$12,700,000
Penobscot Bay	23,800,000	28,700,000
Merrymeeting Bay	83,400,000	98,100,000
Total	116,910,000.00	139,500,000.00

National Security and Other Relevant Impacts in Relation to Military Interests

Section 4(b)(2) of the ESA states that the Secretary may exclude any 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 and commercial data available, that the failure to designate such areas as critical habitat will result in the extinction of the species concerned (16 U.S.C. 1533(b)(2)). We are excluding the two sites with military missions without INRMPs from critical habitat designation under section 4(b)(2) of the ESA as the Secretary has determined that the benefits of exclusion of these areas outweigh the benefits of inclusion. NAS Brunswick OAC supports the naval aviation activities of NAS Brunswick, and the NCTAMS provides communications to the fleet in the Atlantic Ocean and the Mediterranean Sea. The consultations and project modifications required by designation of these areas as critical habitat would impact the military and national security missions of these facilities. In addition, upon the completion of the INRMPs, any final rule designating these areas as critical habitat would need to be revised to remove these areas from the designation in accordance with section 4(a)(3)(B)(i) of the ESA. The Navy has agreed to work cooperatively with NMFS in the development of these INRMPs to assure that the Navy's activities are reasonably protective of Atlantic salmon habitat (Letter to NMFS from the Office of the Chief of Navy Operations (Ser N4/8u156068), December 2, 2008).

Before including areas in a designation, section 4(b)(2) of the ESA requires the Secretary to consider the impact on national security of designation of any particular area as critical habitat. Bath Iron Works (BIW) located in Bath, Maine has also been excluded from designation for reasons of national security as advised by the Navy. The Secretary has concluded that the benefits of exclusion of these areas outweigh the benefits of inclusion as critical habitat. BIW is a premier ship-building facility that provides the design, building, and support of complex navy warships, including the AEGIS Class Destroyers. BIW has been building and servicing the U.S. warships for over 120 years, and their activities are essential to the military mission for the construction, maintenance, and modernization of Navy surface ships. These activities have been identified by the Navy as inherent to national security, whereby, without BIW's ability to construct and test current and future classes of surface ships, mission readiness and U.S. national security is at risk. The consultations and project modifications required by designation of these areas as critical habitat would impact the military and national security functions of these facilities. The areas excluded from designation include the Kennebec River from the south side of the U.S. Route 1 bridge over the Kennebec River down river to 50 feet below the south side of BIWs dry dock, but does not include any portion of Hanson Bay or the thoroughfare between Hanson Bay and the Kennebec River. The specific area excluded from designation lies within a box between four points with the following coordinates: Point 1: N43 54′39.8″, W069 48′43.5″; Point 2: N43 54′40″, W069 48′17.8″; Point 3: N43 54′0.0″, W069 48′47; Point 4: N43 54′0.0″, W069 48′28″.

Other Relevant Impacts: Tribal Lands

The Penobscot Indian Nation and the Passamaquoddy Tribe own and conduct activities on lands within the range of the GOM DPS. Activities may include agriculture; residential, commercial, or industrial development; in-stream construction projects; silviculture; water quality monitoring; hunting and fishing; and other uses. Some of these activities may be affected by the designation of critical habitat for the GOM DPS of Atlantic salmon.

Secretarial Order 3206 recognizes that Tribes have governmental authority and the desire to protect and manage their resources in the manner that is most beneficial to them. Pursuant to the Secretarial Order, and consistent with the Federal government's trust responsibilities, the Services must consult with the affected Indian Tribes when considering the designation of critical habitat in areas that may impact tribal trust resources, tribally-owned fee lands, or the exercise of tribal rights. Critical habitat in such areas, unless determined to be essential to conserve a species, may not be designated.

The Indian lands specifically excluded are those defined in Secretarial Order 3206 and include: (1) Lands held in trust by the United States for the benefit of any Indian tribe; (2) lands held in trust by the United States for any Indian Tribe or individual subject to restrictions by the United States against alienation; (3) fee lands, either within or outside the reservation boundaries, owned by the tribal government; and, 4) fee lands within the reservation boundaries owned by individual Indians. Not excluded from designation are tribal lands held by the Penobscot Tribe which specifically requested that their land not be excluded from designation emphasizing the importance of their lands as critical habitat for Atlantic salmon.

The Penobscot Indian Nation and the Passamaquoddy Tribe own and conduct activities on approximately 182,000 acres (736.5 sq km) of land throughout the Penobscot, Androscoggin, Kennebec, and Downeast Coastal Basins. Both tribes that own lands within the GOM DPS have actively pursued or participated in activities to further promote the health and continued existence of Atlantic salmon and their habitats. The Penobscot tribe has developed and maintained its own water quality standards that state ''it is the official policy of the Penobscot Nation that all waters of the Tribe shall be of sufficient quality to support the ancient and historical traditional and

customary uses of such tribal waters by members of the Penobscot Nation.'' The Tribe is also currently participating in the Penobscot River Restoration Project that has the intended goal of restoring 11 species of diadromous fish, including Atlantic salmon. The Passamaquoddy Tribe has continued to maintain efforts to balance agricultural practices with natural resources. In a tract of Tribal land in Township 19, which accounts for approximately 12 km of the 27.8 km of rivers and streams on Passamaquoddy land that contain physical and biological features essential to salmon, the Tribe has established an ordinance to govern its water withdrawals for these lands. This ordinance states ''it is important to the Tribe that its water withdrawals at T. 19 do not adversely affect the Atlantic salmon in any of its life stages, or its habitat,'' and restricts water withdrawals to avoid adverse impact on the Atlantic salmon.

Within the occupied range designated as critical habitat, the Tribes own approximately 65,000 acres (263 sq km) of land within 16 HUC 10 watersheds. NMFS has determined that the rivers, streams, lakes, and estuaries of 9,571 acres (38.7 sq km) of tribal land within the areas occupied by the GOM DPS be excluded from critical habitat designation based on the principles of the Secretarial Order discussed above. Per request of the Penobscot Nation, 55,180 acres (223 sq km) of the Penobscot Nation lands are included as critical habitat.

Determine Whether Exclusion Will Result in Extinction of the Species

Section 4(b)(2) states that particular areas shall not be excluded from critical habitat if the exclusion will result in extinction of the species. Our decision to only propose for exclusion particular areas based on economic impacts that had low biological value, unless dams were absent from the particular area, led to exclusions only in the Penobscot SHRU. No economic exclusions are in the Downeast Coastal or Merrymeeting Bay SHRUs. Given that exclusions based on economic impacts within the Penobscot SHRU were only made in areas considered to have little biological value to Atlantic salmon, those exclusions are not considered to jeopardize the species' continued existence because those areas do not diminish the functional habitat unit below what is needed to support a recovered GOM DPS.

Even though 156 units of habitat on tribal and military lands in the Downeast Coastal SHRU are being excluded from critical habitat, we do not believe that exclusions of these lands will reduce the conservation value of Atlantic salmon habitat. We do not believe that exclusion of Passamaquoddy tribal lands, including their lands in the Downeast Coastal SHRU, will reduce the conservation value or functional habitat unit of Atlantic salmon habitat within those particular areas, given the ongoing cooperative efforts between the Tribe and the agencies. We do not believe that excluding the two military installations that contain critical habitat in the Downeast Coastal SHRU from the critical habitat designation is likely to result in the extinction of the species.

VII. Effects of Critical Habitat Designation

ESA Section 7 Consultation

The cost of specifying any particular area as critical habitat occurs primarily through section 7 of the ESA. Once critical habitat is designated, section 7(a)(2) requires that Federal agencies ensure any action they authorize, fund or carry out (this action is called the ''Federal nexus'') is not likely to result in the destruction or adverse modification of critical habitat (16 U.S.C. 1536(a)(2)). Parties involved in section 7 consultations include NMFS or the USFWS, a Federal action agency, and in some cases, a private entity involved in the project or land use activity. The Federal action agency serves as the liaison with NMFS. Under Section 7(a)(2), when a Federal agency proposes an action that may affect a listed species or its critical habitat, then they must initiate formal consultation with NMFS (or the USFWS, as applicable) or seek written concurrence from the Services that the action is not likely to adversely affect listed species or its designated critical habitat. Formal consultation is a process between the Services and a Federal agency designed to determine whether a proposed Federal action is likely to jeopardize the continued existence of a species or destroy or adversely modify critical habitat, an action prohibited by the ESA. If the action is likely to destroy or adversely modify critical habitat, then the Federal agency may be required to implement a reasonable and prudent alternative (RPA) to the proposed action to avoid the destruction or adverse modification of critical habitat. Harm avoidance measures may also be implemented to avoid lesser adverse effects to critical habitat that may not rise to the level of adverse modification. Outside of the Federal agencies' obligation to consult with respect to actions that may affect critical habitat and adopt project modifications to avoid destruction or adverse modification, the ESA imposes no requirements or limitations on entities or individuals as result of a critical habitat designation.

The benefits of designation used for the proposed critical habitat designation for the GOM DPS are the biological values assigned to each HUC 10 that evaluate the quality and quantity of the physical and biological features within each HUC 10 and the current potential of each HUC 10 to support (absent dams) the spawning, rearing, and migration of the GOM DPS (NMFS, 2009a).

Activities That May Be Affected (Section 4(b)(8))

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate in any proposed or final regulation to designate critical habitat, those activities that may destroy or adversely modify such habitat or that may be affected by such designation. A wide variety of activities may affect critical habitat and, when carried out, funded, or authorized by a Federal agency, will require an ESA section 7 consultation. Such activities (detailed in IEc, 2009a) include, but are not limited to agriculture, transportation, development and hydropower.

We believe this critical habitat designation will provide Federal agencies, private entities, and the public with clear notification of critical habitat for Atlantic salmon and the boundaries of such habitat. This designation will allow Federal agencies and others to evaluate the potential effects of their activities on critical habitat to determine if ESA section 7 consultation with NMFS is needed given the specific definition of physical and biological features.

VIII. Classification

Regulatory Planning and Review

This final rule has been determined to be significant for purposes of Executive Order (E.O.) 12866. We have integrated the regulatory principles of the E.O. into the development of this final rule to the extent consistent with the mandatory duty to designate critical habitat, as defined in the ESA.

Coastal Zone Management Act (15 U.S.C. 1451 et seq.) We have determined that this action is consistent to the maximum extent practicable with the enforceable policies of the approved coastal management program of the State of Maine. The determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act (16 U.S.C. 1451 *et seq.*).

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

We prepared a final regulatory flexibility analysis (FRFA) pursuant to section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) (IEc, 2009b). This FRFA only analyzes the impacts to those areas where critical habitat is designated and is available at the location identified in the **ADDRESSES** section. The FRFA is summarized below, as required by section 603 of the RFA. The FRFA describes the economic impact this final rule would have on small entities. A description of the action, why it is being considered, and the objectives of and legal basis for this action are contained in the preamble of this rule and are not repeated here. A summary of the FRFA follows:

After reviewing the land use activities evaluated in the economic analysis conducted for this action, the types of small entities that may be impacted include those entities involved in hydropower, agriculture, and development activities. The total number of affected small entities includes up to 11 dam owners and 62 farms. There are an unknown number of small entities involved in development projects. Because impacts are calculated on a per acre basis and not for specific projects, it is not possible to identify specific landowners.

This action does not contain any new collection-of-information, reporting, recordkeeping, or other compliance requirements beyond the potential economic impacts described below and any reporting requirements associated with reporting on the progress and success of implementing project modifications, which do not require special skills to satisfy. Third party applicants or permittees may also incur costs associated with participating in the administrative process of consultation along with the permitting Federal agency.

No Federal laws or regulations duplicate or conflict with the final rule. Existing Federal laws and regulations overlap with the final rule only to the extent that they provide protection to marine natural resources generally. However, no existing laws or regulations specifically prohibit destruction or adverse modification of critical habitat for, and focus on the recovery of, Atlantic salmon.

In conducting the FRFA, we considered three regulatory alternatives and the impacts of these alternatives. Alternative 1 was designating the bankfull width of rivers and perennial streams throughout the 105–HUC 10 study area as critical habitat for Atlantic salmon. Only 48 of these HUCs, however, are currently occupied by the salmon and contain the physical and biological features essential to the conservation of the species. We determined that the 57 HUCs that are currently unoccupied are not essential to the conservation of the species. Accordingly, we rejected this alternative. Alternative 2 was to designate as critical habitat the bankfull width of rivers and perennial streams within the 48 occupied HUCs. We rejected this alternative because we determined that, in certain cases, the benefits of excluding particular areas outweigh the benefits of including them in the designation, and excluding these areas will not result in extinction of the species. Alternative 3 limits the designation of critical habitat to the bankfull width of rivers and perennial streams within 45 of the 48 occupied HUCs. This is the alternative that we have accepted and the alternative described in the FRFA.

The FRFA estimates for alternative 3, that approximately 62 small farms (average annual receipts of less than $750,000) may be affected by critical habitat designation (IEc, 2009b). The average annual revenue of these farms was estimated at $74,000 (USDA, 2002). The estimated average losses per small farm are estimated at $6,300 (IEc, 2009b).

Impacts to development are based on impacts to landowners associated with constraints on development within a 30-meter buffer of streams within the study area. The present value of impacts to all development projects is estimated at $94.6 million to $127 million. Section 3 of the Small Business Act defines small business as any firm that is independently owned and operated and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has developed size standards to carry out the purposes of the Small Business Act, and those size standards can be found in 13 CFR 121.201. Size standards are expressed either in number of employees or annual receipts in millions of dollars depending on the specific type of business. Because impacts to development projects are determined on a per acre basis and not by the specific type of development project, we were unable to determine who the specific affected landowners are. In some cases, some portion of these landowners are likely individuals and not businesses, and, therefore, not relevant to the small business analysis, while it is also likely that some of these landowners are businesses, including small businesses, that may be impacted by constraints.

Land developers and subdividers are one type of small business that may be affected by constraints stemming from the final critical habitat designation (IEc, 2009b). The available data suggest that 188 small land developers operate in counties that overlap the 45 HUCs containing critical habitat, accounting for 97 percent of the subdividers in the region (IEc, 2009b). The information available, however, is insufficient to estimate the impacts on these entities or to identify other potentially affected landowners (IEc, 2009b).

Impacts to hydropower were estimated for small hydropower producers identified by the Small Business Administration as those producing less than four billion kilowatt-hours annually and are likely to experience impacts associated with the critical habitat designation. The FRFA analysis (IEc, 2009b) estimates 11 hydropower producers within the 45 HUCs that contain critical habitat may be affected. The estimated annualized cost accrued by these dam owners is between $50 to $294,000 (IEc, 2009b).

Critical habitat designation may encourage landowners to develop Habitat Conservation Plans (HCPs). Under section 10 of the ESA, landowners seeking an incidental take permit must develop an HCP to counterbalance the potential harmful effects that an otherwise lawful activity may have on a species. The purpose of the habitat conservation planning process is to ensure that the effects of incidental take are adequately minimized and mitigated. Thus, HCPs are developed to ensure compliance with section 9 of the ESA and to meet the requirements of section 10 of the ESA. Neither the FRFA nor the Economic Analysis forecasts effects associated with the development of HCPs.

Information Quality Act (IQA) (Section 515 of Pub. L. 106–554)

The data and analyses supporting this designation have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (IQA) (Section 515 of Pub. L. 106–554).

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review pursuant to the IQA. The Bulletin established minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation with regard to certain types of information disseminated by

the Federal government. The peer review requirements of the OMB Bulletin apply to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we allowed a 90-day public comment period and held two public hearings (Brewer and Augusta, Maine) where we gave the public the opportunity to participate in the review of the proposed critical habitat rule and supporting documents. An independent peer review of the scientific information that supports the proposal to designate critical habitat for the GOM DPS of Atlantic salmon was conducted, and peer review comments were incorporated prior to dissemination of this rulemaking. Four independent peer reviewers were solicited to review the proposed critical habitat rule, though all declined the opportunity to review the document largely due to time constraints. A 4(b)(2) Report (NMFS, 2009) that supports the designation of critical habitat for the GOM DPS of Atlantic salmon was also peer reviewed pursuant to the requirements of the Bulletin and is available on our Web site (see **ADDRESSES**).

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act. This final 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

An environmental analysis as provided for under the National Environmental Policy Act for critical habitat designations made pursuant to the ESA is not required. See *Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

Federalism

In accordance with Executive Order 13132 ''Federalism,'' agencies are required to ensure meaningful and timely input from State and local officials in the development of regulatory policies that have federalism implications. In accordance with Department of Commerce policies, we requested information from, and coordinated development of, this critical habitat designation with appropriate State resource agencies in the State of Maine.

Takings

In accordance with E.O. 12630, this final rule does not have takings implications. A takings implication assessment is not required. The designation of critical habitat affects only Federal agency actions. This final rule will not increase or decrease the current restrictions on private property concerning take of Atlantic salmon. Critical habitat does not preclude the development of HCPs and issuance of incidental take permits, and, therefore, landowners within areas designated as critical habitat will continue to have the opportunity to use their property in ways consistent with the survival of endangered Atlantic salmon.

IX. References Cited

A complete list of all references cited in this rule making can be found on our Web site at *http://www.nero.noaa.gov/prot_res/altsalmon/*, and is available upon request from the NMFS Northeast Regional Office in Gloucester, Massachusetts (see **ADDRESSES**).

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: June 12, 2009.

James W. Balsiger,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 226 is amended as set forth below:

PART 226—DESIGNATED CRITICAL HABITAT (AMENDED)

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

Authority: 16 U.S.C. 1533.

■ 2. Add § 226.217 to read as follows:

§ 226.217 Critical habitat for the Gulf of Maine Distinct Population Segment of Atlantic Salmon (Salmo salar).

Critical habitat is designated to include all perennial rivers, streams, and estuaries and lakes connected to the marine environment within the range of the Gulf of Maine Distinct Population Segment of Atlantic Salmon (GOM DPS), except for those particular areas within the range which are specifically excluded. Within the GOM DPS, the primary constituent elements (PCEs) for Atlantic salmon include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The essential physical and biological features of habitat are those features that allow Atlantic salmon to successfully use sites for spawning and rearing and sites for migration. These features include substrate of suitable size and quality; rivers and streams of adequate flow, depth, water temperature and water quality; rivers, streams, lakes and ponds with sufficient space and diverse, abundant food resources to support growth and survival; waterways that allow for free migration of both adult and juvenile Atlantic salmon; and diverse habitat and native fish communities in which salmon interact with while feeding, migrating, spawning, and resting.

(a) The GOM DPS is divided into three salmon habitat recovery units (SHRUs) within the range of the GOM DPS: These are the Downeast Coastal SHRU, the Penobscot Bay SHRU, and the Merrymeeting Bay SHRU. Critical habitat is being considered only in specific areas currently occupied by the species. Critical habitat specific areas are identified by hydrological unit codes (HUC) and counties within the States of Maine. Hydrological units are those defined by the Department of Interior (DOI), U.S. Geological Survey (USGS) publication, ''Hydrologic Unit Maps'' Water Supply Paper (Seaber *et al.*, 1994) and the following DOI, USGS 1:500,000 scale hydrologic unit map: State of Maine. These documents are incorporated by reference. The incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and the maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/Federal_register/code_of_Federal_regulations/ibr_locations.html.*

(b) Critical habitat is designated in the Maine counties and towns for the three SHRUs described in paragraphs (b)(1) and (2) of this section. The textual descriptions of critical habitat for each SHRU are included in paragraphs (b)(3) through (6) of this section, and these descriptions are the definitive source for determining the critical habitat boundaries. A general location map (Figure 1) is provided at the end of paragraph (b)(2) and is for general guidance purposes only, and not as a definitive source for determining critical habitat boundaries.

(1) *Maine counties and towns affected*. Critical habitat is designated for the following SHRUs in the following counties and towns.

(i) Counties and towns partially or entirely within areas containing critical habitat in the Downeast Coastal SHRU:

Sub-basin	County	Town
Coastal Washington Hancock.	Penobscot	Clifton, Eddington, Grand Falls Twp, Greenfield Twp, Summit Twp.
	Hancock	Waltham, Bucksport, Dedham, Eastbrook, Ellsworth, Fletchers Landing Twp, Franklin, Great Pond, Hancock, Lamoine, Mariaville, Oqiton Twp, Orland, Osborn, Trenton Otis, Sullivan, Surry, T10 SD, T16 MD, T22 MD, T28 MD, T32 MD, T34 MD, T35 MD, T39 MD, T40 MD, T41 MD, T7 SD, T9 SD.
	Washington	Addison, Alexander, Baileyville, Baring Plt, Beddington, Centerville Twp, Charlotte, Cherryfield, Columbia, Columbia Falls, Cooper, Crawford, Cutler, Deblois, Dennysville, Devereaux Twp, East Machias, Edmunds Twp, Harrington, Jonesboro, Jonesport, Lubec, Machias, Machiasport, Marion Twp, Marshfield, Meddybemps, Milbridge, No 14 Twp, No 21 Twp, Northfield, Princeton, Roque Bluffs, Sakom Twp, Steuben, Trescott Twp, Whiting, Whitneyville, Wesley T18 ED BPP, T18 MD BPP, T19 ED BPP, T19 MD BPP, T24 MD BPP, T25 MD BPP, T26 ED BPP, T27 ED BPP, T30 MD BPP, T31 MD BPP, T36 MD BPP, T37 MD BPP, T42 MD BPP, T43 MD BPP.

(ii) Counties and towns partially or entirely within areas containing critical habitat in the Penobscot Bay SHRU:

Sub-basin	County	Town
Piscataquis	Penobscot	T4 Indian Purchase Twp, Long A Twp, Seboeis Plt, Mattamiscontis Twp, Maxfield, Lagrange, Charleston, Howland, T3 R9 NWP, Edinburg, Hopkins Academy Grant Twp, Garland.
	Piscataquis	Shawtown Twp, TA R11 WELS, TA R10 WELS, TB R10 WELS, Greenville, T7 R9 NWP, Bowdoin College Grant West Twp, T4 R9 NWP, Ebeemee Twp, Moosehead Junction Twp, Lake View Plt, Brownville, Milo, Blanchard Twp, Sebec, Dover-Foxcroft, Abbot, Kingsbury Plt, Parkman, Wellington, Frenchtown Twp, Medford, Sangerville, TB R11 WELS, Katahdin Iron Works Twp, Elliottsville Twp, Shirley, Guilford, Atkinson, Beaver Cove, Williamsburg Twp, Bowdoin College Grant East Twp, Barnard Twp, Monson, Orneville Twp.
	Somerset	Squaretown Twp, Mayfield Twp, Brighton Plt, East Moxie Twp, Bald Mountain Twp T2 R3.
East Branch	Aroostook	Moro Plt, T7 R5 WELS.
	Penobscot	Mount Chase, East Millinocket, Grindstone Twp, Herseytown Twp, Medway, Patten, Soldiertown Twp T2 R7 WELS, Stacyville, T1 R6 WELS, T2 R8 WELS, T3 R7 WELS, T3 R8 WELS, T4 R7 WELS, T4 R8 WELS, T5 R7 WELS, T5 R8 WELS, T6 R6 WELS, T6 R7 WELS, T6 R8 WELS, T7 R6 WELS, T7 R7 WELS, T7 R8 WELS, T8 R6 WELS, T8 R7 WELS, T8 R8 WELS.
	Piscataquis	Mount Katahdin Twp, Nesourdnahunk Twp, Trout Brook Twp, T3 R10 WELS, T4 R10 WELS, T4 R9 WELS, T5 R11 WELS, T5 R9 WELS, T6 R10 WELS, T6 R11 WELS, T7 R10 WELS, T7 R11 WELS, T7 R12 WELS, T7 R9 WELS.
Mattawamkeag	Aroostook	Amity, Bancroft, Benedicta Twp, Crystal, Dudley Twp, Dyer Brook, Forkstown Twp, Moro Plt, North Yarmouth Academy Grant Twp, Oakfield, Orient, Reed Plt, Sherman, Silver Ridge Twp, Smyrna, Upper Molunkus Twp, Webbertown Twp, Weston, T1 R5 WELS, T2 R4 WELS, T3 R3 WELS, T3 R4 WELS, T4 R3 WELS, T7 R5 WELS, TA R2 WELS.
	Penobscot	Carroll Plt, Drew Plt, Herseytown Plt, Kingman Twp, Lee, Lincoln, Mattawamkeag, Mount Chase, Patten, Prentiss Twp T7 R3 NBPP, Springfield, Stacyville, Webster Plt, Winn, T1 R6 WELS, T4 R7 WELS, T6 R6 WELS.
	Washington	T8 R3 NBPP, T8 R4 NBPP.
Penobscot	Aroostook	Benedicta TWP, Molunkus Twp, Sherman, T1 R5 WELS.
	Hancock	Amherst, Blue Hill, Bucksport, Castine, Dedham, Great Pond, Oqiton Twp, Orland, Penobscot, Surry, Verona Island, T3 ND, T32 MD, T34 MD, T35 MD, T39 MD, T40 MD, T41 MD.

Sub-basin	County	Town
	Penobscot	Alton, Argyle Twp, Bangor, Brewer, Burlington, Carmel, Charleston, Chester, Clifton, Corinna, Corinth, Dexter, Dixmont, Eddington, Edinburg, Enfield, Etna, Exeter, Garland, Glenburn, Grand Falls Twp, Hampden, Hermon, Herseytown Twp, Holden, Howland, Hudson, Indian Island, Kenduskeag, Lagrange, Lakeville, Lee, Levant, Lincoln, Lowell, Mattamiscontis Twp, Mattawamkeag, Maxfield, Medway, Milford, Newburgh, Newport, Old Town, Orono, Orrington, Passadumkeag, Plymouth, Seboeis Plt, Springfield, Stacyville, Stetson, Summit Twp, Veazie, Winn, Woodville T1 R6 WELS, T2 R8 NWP, T2 R9 NWP, T3 R1 NBPP, T3 R9 NWP, TA R7 WELS.
	Piscataquis	Medford.
	Waldo	Brooks, Frankfort, Jackson, Knox, Monroe, Montville, Prospect, Searsport, Stockton Springs, Swanville, Thorndike, Waldo, Winterport.
Penobscot Bay	Waldo	Belfast, Belmont, Brooks, Frankfort, Knox, Lincolnville, Monroe, Montville, Morrill, Northport, Searsmont, Searsport, Swanville, Waldo.

(iii) Counties and towns partially or entirely within areas containing critical habitat in the Merrymeeting Bay SHRU:

Sub-basin	County	Town
Lower Androscoggin	Androscoggin	Auburn, Durham, Greene, Leeds, Lewiston, Lisbon, Sabattus, Wales.
	Cumberland	Brunswick, Freeport.
	Kennebec	Litchfield, Monmouth
	Sagadahoc	Bath, Bowdoin, Bowdoinham, Richmond, Topsham.
Merrymeeting Bay	Androscoggin	Livermore Falls.
	Franklin	Avon, Carthage, Chesterville, Farmington, Freeman Twp, Industry, Jay, Madrid Twp, Mount Abram Twp, New Sharon, New Vineyard, Perkins TWP, Phillips, Redington Twp, Salem Twp, Sandy River Plt, Strong, Temple, Township 6 North of Weld, Township E, Washington Twp, Weld, Wilton.
	Kennebec	Augusta, Benton, Chelsea, China, Clinton, Farmingdale, Fayette, Gardiner, Hallowell, Manchester, Oakland, Pittston, Randolph, Rome, Sidney, Vassalboro, Vienna, Waterville, West Gardiner, Windsor, Winslow.
	Lincoln	Alna, Dresden, Whitefield, Wiscasset.
	Sagadahoc	Bowdoinham, Perkins Twp Swan Island, Richmond, Woolwich.
	Somerset	Anson, Athens, Bingham, Brighton Plt, Canaan, Cornville, Fairfield, Hartland, Madison, Mayfield Twp, Mercer, Norridgewock, Pittsfield, Skowhegan, Smithfield, Solon, Starks.
Coastal Drainages East of Small Point.	Cumberland	Brunswick.
	Kennebec	Albion, Pittston, Windsor.
	Knox	Appleton, Camdem, Cushing, Friendship, Hope, Rockland, Rockport, Saint George, South Thomaston, Thomaston, Union, Warren, Washington.
	Lincoln	Alna, Boothbay, Boothbay Harbor, Bremen, Briston, Dresden, Edgecomb, Hibberts Gore, Jefferson, Newcastle, Nobleboro, Somerville, Southport, Waldoboro, Westport Island, Whitefield, Wiscasset.
	Sagadahoc	Arrowsic, Bath, Bowdoinham, Georgetown, Phippsburg, West Bath, Woolwich.
	Waldo	Belmont, Freedom, Liberty, Lincolnville, Montville, Morrill, Palermo, Searsmont.

(2) *Critical habitat boundaries.* Critical habitat includes the stream channels within the designated stream reaches, and includes a lateral extent as defined by the ordinary high-water line (33 CFR 329.11). In areas where the ordinary high-water line has not been defined, the lateral extent will be defined by the bankfull elevation. Bankfull elevation is the level at which water begins to leave the channel and move into the floodplain and is reached at a discharge which generally has a recurrence interval of 1 to 2 years on an annual flood series. Critical habitat in estuaries is defined by the perimeter of the water body as displayed on standard 1:24,000 scale topographic maps or the elevation of extreme high water, whichever is greater.

BILLING CODE 2510–22–P

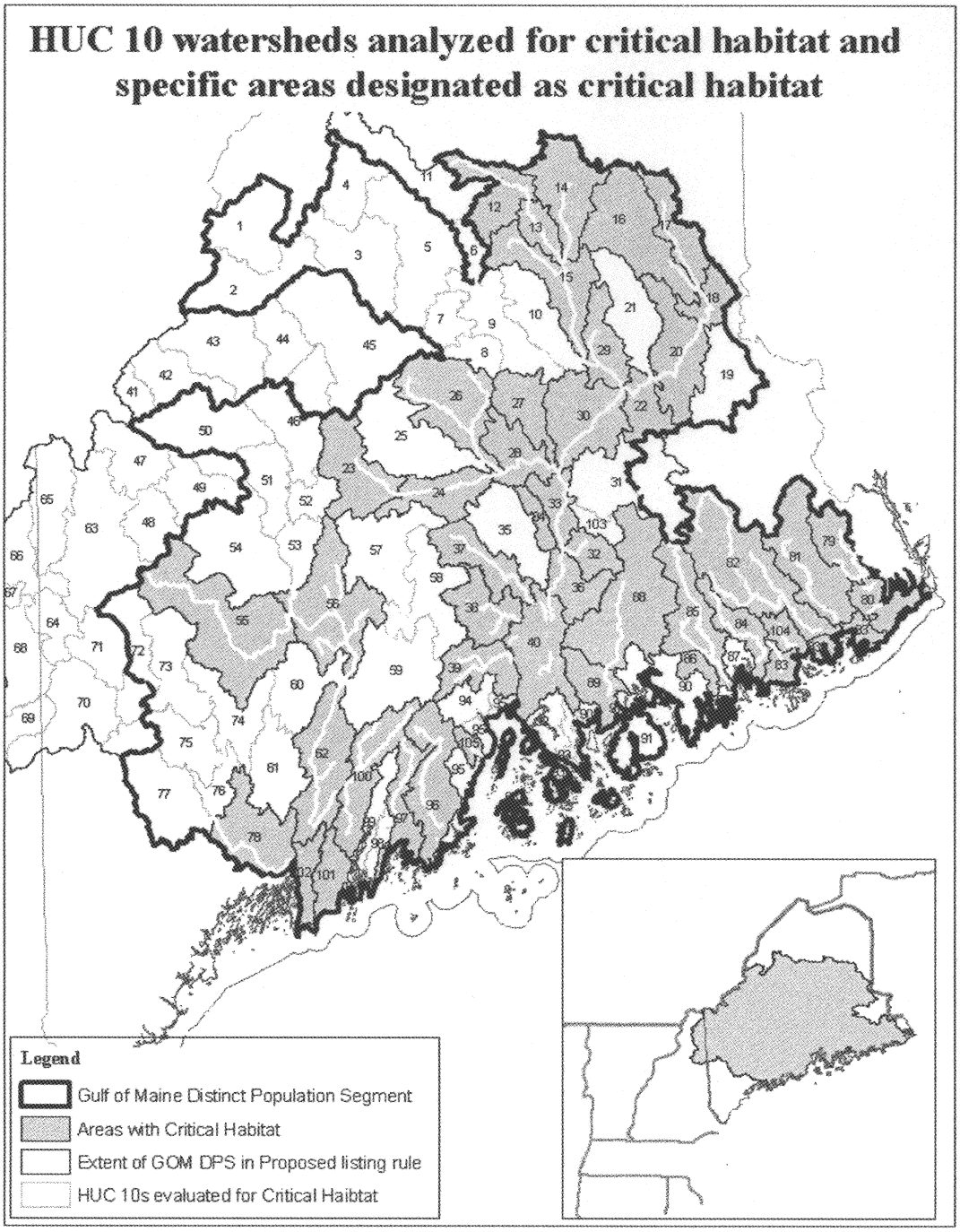

Figure 1

(i) HUC 10 watersheds in the Penobscot Bay SHRU analyzed for critical habitat, those that meet the criteria for critical habitat, and those excluded under ESA section 4(b)(2):

Penobscot Bay SHRU	HUC 10 code	HUC 10 name	Status	Economic (E), Military (M), or Tribal (T) exclusions
1	0102000101	North Branch Penobscot River.		
2	0102000102	Seeboomook Lake.		
3	0102000103	WEST Branch Penobscot River at Chesuncook Lake.		
4	0102000104	Caucomgomok Lake.		
5	0102000105	Chesuncook Lake.		
6	0102000106	Nesowadnehunk Stream.		
7	0102000107	Nahamakanta Stream.		
8	0102000108	Jo-Mary Lake.		
9	0102000109	West Branch Penobscot River (3).		
10	0102000110	West Branch Penobscot River (4).		
11	0102000201	Webster Brook.		
12	0102000202	Grand Lake Matagamon	Critical Habitat.	
13	0102000203	East Branch Penobscot River (2)	Critical Habitat.	
14	0102000204	Seboeis River	Critical Habitat.	
15	0102000205	East Branch Penobscot River (3)	Critical Habitat.	
16	0102000301	West Branch Mattawamkeag River	Critical Habitat.	
17	0102000302	East Branch Mattawamkeag River	Critical Habitat.	
18	0102000303	Mattawamkeag River (1)	Critical Habitat.	
19	0102000304	Baskahegan Stream.		
20	0102000305	Mattawamkeag River (2)	Critical Habitat.	
21	0102000306	Molunkus Stream	Critical Habitat	E
22	0102000307	Mattawamkeag River (3)	Critical Habitat.	
23	0102000401	Piscataquis River (1)	Critical Habitat.	
24	0102000402	Piscataquis River (3)	Critical Habitat.	
25	0102000403	Sebec River.		
26	0102000404	Pleasant River	Critical Habitat.	
27	0102000405	Seboeis Stream	Critical Habitat	T
28	0102000406	Piscataquis River (4)	Critical Habitat.	
29	0102000501	Penobscot River (1) at Mattawamkeag	Critical Habitat.	
30	0102000502	Penobscot River (2) at West Enfield	Critical Habitat	T
31	0102000503	Passadumkeag River	Critical Habitat	E
32	0102000505	Sunkhaze Stream	Critical Habitat.	
33	0102000506	Penobscot River (3) at Orson Island	Critical Habitat.	
34	0102000507	Birch Stream	Critical Habitat.	
35	0102000508	Pushaw Stream.		
36	0102000509	Penobscot River (4) at Veazie Dam	Critical Habitat.	
37	0102000510	Kenduskeag Stream	Critical Habitat.	
38	0102000511	Souadabscook Stream	Critical Habitat.	
39	0102000512	Marsh River	Critical Habitat.	
40	0102000513	Penobscot River (6)	Critical Habitat.	
92	0105000216	Bagaduce River.		
93	0105000217	Stonington Coastal.		
94	0105000218	Belfast Bay	Critical Habitat.	
105	0105000219	Ducktrap River	Critical Habitat.	
103	0102000504	Olamon Stream.		
95	0105000220	West Penobscot Bay Coastal.		

(ii) HUC 10 watersheds in the Merrymeeting Bay SHRU analyzed for critical habitat, those that meet the criteria for critical habitat, and those excluded under ESA section 4(b)(2):

Merrymeeting Bay SHRU	HUC 10 code	HUC 10 name	Status	Military (M) exclusions
41	0103000101	South Branch Moose River.		
42	0103000102	Moose River (2) above Attean Pond.		
43	0103000103	Moose River (3) at Long Pond.		
44	0103000104	Brassua Lake.		
45	0103000105	Moosehead Lake.		
46	0103000106	Kennebec River (2) above The Forks.		
47	0103000201	North Branch Dead River.		
48	0103000202	South Branch Dead River.		
49	0103000203	Flagstaff Lake.		
50	0103000204	Dead River.		
51	0103000301	Kennebec River (4) at Wyman Dam.		
52	0103000302	Austin Stream.		
53	0103000303	Kennebec River (6).		
54	0103000304	Carrabassett River.		
55	0103000305	Sandy River	Critical Habitat	M

Merrymeeting Bay SHRU	HUC 10 code	HUC 10 name	Status	Military (M) exclusions
56	0103000306	Kennebec River at Waterville Dam	Critical Habitat.	
57	0103000307	Sebasticook River at Pittsfield.		
58	0103000308	Sebasticook River (3) at Burnham.		
59	0103000309	Sebasticook River (4) at Winslow.		
60	0103000310	Messalonskee Stream.		
61	0103000311	Cobbosseecontee Stream.		
62	0103000312	Kennebec River at Merrymeeting Bay	Critical Habitat.	
63	0104000101	Mooselookmeguntic Lake.		
64	0104000102	Umbagog Lake Drainage.		
65	0104000103	Aziscohos Lake Drainage.		
66	0104000104	Magalloway River.		
67	0104000105	Clear Stream.		
68	0104000106	Middle Androscoggin River.		
69	0104000201	Gorham-Shelburne Tributaries.		
70	0104000202	Androscoggin River (2) at Rumford Point.		
71	0104000203	Ellis River.		
72	0104000204	Ellis River.		
73	0104000205	Androscoggin River (3) above Webb River.		
74	0104000206	Androscoggin River (4) at Riley Dam.		
75	0104000207	Androscoggin River (5) at Nezinscot River.		
76	0104000208	Nezinscot River.		
77	0104000209	Androscoggin River (6) above Little Androscoggin River.		
78	0104000210	Little Androscoggin River	Critical Habitat	M
96	0105000301	St. George River	Critical Habitat.	
97	0105000302	Medomak River	Critical Habitat.	
98	0105000303	Johns Bay.		
99	0105000304	Damariscotta River.		
100	0105000305	Sheepscot River	Critical Habitat.	
101	0105000306	Sheepscot Bay	Critical Habitat.	
102	0105000307	Kennebec River Estuary	Critical Habitat	M

(iii) HUC 10 watersheds in the Downeast Coastal SHRU analyzed for critical habitat, and those that meet the criteria for critical habitat, and those excluded under ESA section 4(b)(2):

Downeast SHRU	HUC 10 code	HUC 10 name	Status	Tribal (T) exclusions
79	0105000201	Dennys River	Critical Habitat.	
80	0105000203	Grand Manan Channel	Critical Habitat.	
81	0105000204	East Machias River	Critical Habitat	T
82	0105000205	Machias River	Critical Habitat.	
83	0105000206	Roque Bluffs Coastal	Critical Habitat.	
84	0105000208	Pleasant River	Critical Habitat.	
85	0105000209	Narraguagus River	Critical Habitat.	
86	0105000210	Tunk Stream	Critical Habitat.	
87	0105000211	Bois Bubert Coasta.		
88	0105000212	Graham Lake	Critical Habitat.	
89	0105000213	Union River Bay	Critical Habitat.	
90	0105000214	Lamoine Coastal.		
91	0105000215	Mt. Desert Coastal.		
104	0105000207	Chandler River	Critical Habitat.	

(3) *Primary constituent elements.* Within the GOM DPS, the primary constituent elements (PCEs) for the conservation of Atlantic salmon include sites for spawning and incubation, sites for juvenile rearing, and sites for migration. The physical and biological features of the habitat that are essential to the conservation of Atlantic salmon are those features that allow Atlantic salmon to successfully use sites for spawning and rearing and sites for migration. These features include:

(i) Deep, oxygenated pools and cover (*e.g.*, boulders, woody debris, vegetation, etc.), near freshwater spawning sites, necessary to support adult migrants during the summer while they await spawning in the fall;

(ii) Freshwater spawning sites that contain clean, permeable gravel and cobble substrate with oxygenated water and cool water temperatures to support spawning activity, egg incubation and larval development;

(iii) Freshwater spawning and rearing sites with clean gravel in the presence of cool, oxygenated water and diverse substrate to support emergence, territorial development, and feeding activities of Atlantic salmon fry;

(iv) Freshwater rearing sites with space to accommodate growth and survival of Atlantic salmon parr, and population densities needed to support sustainable populations;

(v) Freshwater rearing sites with a combination of river, stream, and lake habitats, that accommodate parr's ability to occupy many niches and to maximize parr production;

(vi) Freshwater rearing sites with cool, oxygenated water to support growth and survival of Atlantic salmon parr;

(vii) Freshwater rearing sites with diverse food resources to support growth and survival of Atlantic salmon parr;

(viii) Freshwater and estuary migratory sites free from physical and biological barriers that delay or prevent access to spawning grounds needed to support a recovered population;

(ix) Freshwater and estuary migration sites with abundant, diverse native fish communities to serve as a protective buffer against predation;

(x) Freshwater and estuary migration sites free from physical and biological barriers that delay or prevent emigration of smolts to the marine environment;

(xi) Freshwater and estuary migration sites with sufficiently cool water temperatures and water flows that coincide with diurnal cues to stimulate smolt migration;

(xii) Freshwater migration sites with water chemistry needed to support sea water adaptation of smolts; and

(xiii) Freshwater and marine sites with diverse, abundant assemblages of native fish communities to enhance survivorship as Atlantic salmon smolts emigrating through the estuary.

(4) *Exclusion of Indian lands.* Critical habitat does not include occupied habitat areas on Passamaquoddy Tribal Indian lands within the range of the GOM DPS. Critical habitat does include occupied habitat on Penobscot Tribal lands within the range of the GOM DPS. The Indian lands specifically excluded from critical habitat are those defined in the Secretarial Order 3206, including:

(i) Lands held in trust by the United States for the benefit of any Indian Tribe;

(ii) Lands held in trust by the United States for the benefit of any Indian Tribe or individual subject to restrictions by the United States against alienation;

(iii) Fee lands, either within or outside the reservation boundaries, owned by the tribal government; and

(iv) Fee lands within the reservation boundaries owned by individual Indians. We have determined that the rivers, streams, lakes, and estuaries of 9,571 acres (38.7 sq km) of tribal land within the areas occupied by the GOM DPS are excluded from critical habitat designation based on the principles of the Secretarial Order discussed above. Per request of the Penobscot Nation, 55,180 acres (223 sq km) of the Penobscot Nation lands are included as critical habitat.

(5) *Areas that do not meet the definition of critical habitat under section 4(a)(3)(B)(i).* Critical habitat does not include the following 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). These areas that are not included are:

(i) The 435 acres (1.8 sq km) of the Brunswick Naval Air Station in Brunswick Maine within the Little Androscoggin HUC 10 watershed in the Merrymeeting Bay SHRU; and

(ii) The 5,328 acres (21.5 sq km) of the Brunswick Naval Air Stations cold weather survival, evasion, resistance, and escape school within the Sandy River HUC 10 watershed in the Merrymeeting Bay SHRU.

(6) *Areas excluded under ESA Section 4(b)(2).* (i) The 396 acres (1.6 sq km) of the Great Pond Outdoor Adventure Center in the Graham Lake HUC 10 watershed in the Downeast Coastal SHRU;

(ii) The 3,000 acres (12.1 sq km) of the Naval Computer and Telecommunications Area Master Station Atlantic Detachment in the Roques Bluffs Coastal HUC 10 in the Downeast Coastal SHRU;

(iii) The Bath Iron Works ship building facility that provides the design, building, and support of complex Navy warships, including AEGIS Class Destroyers. The excluded area extends from U.S. Route 1 bridge over the Kennebec River down river to 50 feet below the south side of BIWs dry dock, but does not include any portion of Hanson Bay or the thoroughfare between Hanson Bay and the Kennebec River. The specific area excluded from designation lies within a box between four points with the following coordinates: Point 1: N43 54′39.8″, W069 48′43.5″; Point 2: N43 54′40″, W069 48′17.8″; Point 3: N43 54′0.0″, W069 48′47″; Point 4: N43 54′0.0″, W069 48′28″;

(iv) The Belfast Bay HUC 10 Watershed (HUC 105000218);

(v) The Passadumkeag River HUC 10 Watershed (HUC 102000503); and

(vi) The Molunkus Stream HUC 10 Watershed (HUC102000306).

(7) *Description of critical habitat.* Critical habitat is designated to include the areas defined in the following hydrological units in the three SHRUs with the exception of those particular areas specifically identified:

(i) Downeast Coastal SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watersheds:

Sub-basin	HUC 10 code	HUC 10 watershed name	Critical habitat		Excluded areas [type]*	
			River, stream and estuary (km)	Lake (sq. km)	River, stream and estuary (km)	Lake (sq. km)
Coastal Washington Hancock sub-basin.	0105000201	Dennys River	218	45		
	0105000203	Grand Manan Channel	641	15.5		
	0105000204	East Machias River	575	70	16 [T]	0.1 [T]
	0105000205	Machias River	991	58		
	0105000206	Roque Bluffs Coastal	321	.9	13(M)	.004(M)
	0105000207	Chandler River	154	0.1		
	0105000208	Pleasant River	325	6.5		
	0105000209	Narraguagus River	573	15.5		
	0105000210	Tunk Stream	117	14		
	0105000212	Graham Lake	974	121	2.3(M)	.2(M)
	0105000213	Union River Bay	303	18		
	0105000211	Bois Bubert Coastal.				
	0105000214	Lamoine Coastal.				
	0105000215	Mt. Desert Coastal.				

* Exclusion types: [E] = Economic, [M] = Military, and [T] = Tribal—considered unoccupied at the time of listing.

(ii) Penobscot Bay SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watersheds:

Sub-basin	HUC 10 code	HUC 10 watershed name	Critical habitat		Excluded Areas [Type]*	
			River, stream and estuary (km)	Lake (sq. km)	River, stream and estuary (km)	Lake (sq. km)
East Branch Penobscot sub-basin.	0102000202	Grand Lake Matagamon	326	30		
	0102000203	East Branch Penobscot River (2)	179	3		
	0102000204	Seboeis River	418	31		
	0102000205	East Branch Penobscot River (3)	588	5		
	0102000201	Webster Brook.				
West Branch Penobscot sub-basin.	0102000101	North Branch Penobscot River.				
	0102000102	Seeboomook Lake.				
	0102000103	W. Br. Penobscot R. at Chesuncook.				
	0102000104	Caucomgomok Lake.				
	0102000105	Chesuncook Lake.				
	0102000106	Nesowadnehunk Stream.				
	0102000107	Nahamakanta Stream.				
	0102000108	Jo-Mary Lake.				
	0102000109	West Branch Penobscot River (3).				
	0102000110	West Branch Penobscot River (4).				
Mattawamkeag River sub-basin.	0102000301	West Branch Mattawamkeag River	657	22		
	0102000302	East Branch Mattawamkeag River	315	12		
	0102000303	Mattawamkeag River (1)	192	0.5		
	0102000305	Mattawamkeag River (2)	451	8		
	0102000307	Mattawamkeag River (3)	226	3		
	0102000306	Molunkus Stream	0	0	438 [E]	11 [E]
	0102000304	Baskahegan Stream.				
Piscataquis River sub-basin.	0102000401	Piscataquis River (1)	762	15		
	0102000402	Piscataquis River (3)	382	6		
	0102000404	Pleasant River	828	17		
	0102000405	Seboeis Stream	312	36	8.2 [T]	0.03 [T]
	0102000406	Piscataquis River (4)	328	30		
	0102000403	Sebec River.				
Penobscot River sub-basin.	0102000501	Penobscot River (1) at Mattawamkeag	292	7		
	0102000502	Penobscot River (2) at West Enfield	551	29	3 [T]	
	0102000503	Passadumkeag River	0	0	583 [E]	79 [E]
	0102000505	Sunkhaze Stream	177	0.5		
	0102000506	Penobscot River (3) at Orson Island	211	0.5		
	0102000507	Birch Stream	120	1		
	0102000509	Penobscot River (4) at Veazie Dam	225	10		
	0102000510	Kenduskeag Stream	420	1.5		
	0102000511	Souadabscook Stream	341	5.5		
	0102000512	Marsh River	319	3		
	0102000513	Penobscot River (6)	514	29		
	0102000504	Olamon Stream.				
	0102000508	Pushaw Stream.				
Penobscot Bay sub-basin.	0105000218	Belfast Bay	.....	.....	177 [E]	9 [E]
	0105000219	Ducktrap River	76	4		
	0105000216	Bagaduce River.				
	0105000217	Stonington Coastal.				
	0105000220	West Penobscot Bay Coastal.				

* Exclusion types: [E] = Economic, [M] = Military, and [T] = Tribal—considered unoccupied at the time of listing.

(iii) Merrymeeting Bay SHRU. Critical habitat area (in sq km), areas excluded under ESA section 4(b)(2) (in sq km), and exclusion type, by HUC 10 watershed:

Sub basin	HUC 10 code	HUC 10 watershed name	Critical habitat		Excluded areas [type] *	
			River, stream and estuary (km)	Lake (sq. km)	River, stream and estuary (km)	Lake (sq. km)
Kennebec River above the Forks sub-basin.	0103000101	South Branch Moose River.				
	0103000102	Moose River (2) above Attean Pond.				
	0103000103	Moose River (3) at Long Pond.				
	0103000104	Brassua Lake.				
	0103000105	Moosehead Lake.				
	0103000106	Kennebec River (2) above The Forks.				
Dead River sub-basin	0103000201	North Branch Dead River.				
	0103000202	South Branch Dead River.				
	0103000203	Flagstaff Lake.				
	0103000204	Dead River.				
Merrymeeting Bay sub-basin.	0103000305	Sandy River	1,215	15.8	12 [M]	0.2 [M]
	0103000306	Kennebec River at Waterville Dam	794	14		
	0103000312	Kennebec River at Merrymeeting Bay	621	22		
	0103000310	Messalonskee Stream.				
	0103000301	Kennebec River (4) at Wyman Dam.				
	0103000302	Austin Stream.				
	0103000303	Kennebec River (6).				
	0103000304	Carrabassett River.				
	0103000307	Sebasticook River at Pittsfield.				
	0103000308	Sebasticook River (3) at Burnham.				
	0103000309	Sebasticook River (4) at Winslow.				
	0103000311	Cobbosseecontee Stream.				
Upper Androscoggin sub-basin.	0104000101	Mooselookmeguntic Lake.				
	0104000102	Umbagog Lake Drainage.				
	0104000103	Aziscohos Lake Drainage.				
	0104000104	Magalloway River.				
	0104000105	Clear Stream.				
	0104000106	Middle Androscoggin River.				
Lower Androscoggin sub-basin.	0104000210	Little Androscoggin River	549	10.5	1 [M]	
	0104000201	Gorham-Shelburne Tributaries.				
	0104000202	Androscoggin River at Rumford Point.				
	0104000203	Ellis River.				
	0104000204	Ellis River.				
	0104000205	Androscoggin River above Webb River.				
	0104000206	Androscoggin River at Riley Dam.				
	0104000207	Androscoggin River at Nezinscot River.				
	0104000208	Nezinscot River.				
	0104000209	Androscoggin R. above L. Andro. R.				
Coastal Drainages East of Small Point sub-basin.	0105000301	St. George River	624	32		
	0105000302	Medomak River	318	6		
	0105000305	Sheepscot River	553	19		
	0105000306	Sheepscot Bay	220	2		
	0105000307	Kennebec River Estuary	275	3.5	1 [M]	
	0105000303	Johns Bay.				
	0105000304	Damariscotta River.				

* Exclusion types: [E] = Economic, [M] = Military, and [T] = Tribal—considered unoccupied at the time of listing.

[FR Doc. E9–14268 Filed 6–18–09; 8:45 am]

BILLING CODE 2510–22–P

Federal Register

Friday,
June 19, 2009

Part III

Department of the Interior

Fish and Wildlife Service

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 17 and 224

Endangered and Threatened Species; Determination of Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon; Final Rule

DEPARTMENT OF INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 224

[Docket No. 0808191116–9709–02]

RIN 0648–XJ93

Endangered and Threatened Species; Determination of Endangered Status for the Gulf of Maine Distinct Population Segment of Atlantic Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Fish and Wildlife Service (USFWS), Interior.

ACTION: Final rule.

SUMMARY: We (NMFS and USFWS, collectively referred to as the Services) have determined that naturally spawned and conservation hatchery populations of anadromous Atlantic salmon (*Salmo salar*) whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, including those that were already listed in November 2000, constitute a distinct population segment (DPS) and hence a ''species'' for listing. We have determined that the Gulf of Maine (GOM) DPS warrants listing as endangered under the Endangered Species Act (ESA). Critical habitat for the GOM DPS will be designated in a subsequent **Federal Register** notice.

DATES: This rule is effective July 20, 2009.

ADDRESSES: Comments and materials received, as well as supporting scientific information used in the preparation of this rule, will be available for public inspection, by appointment, during normal business hours at: National Marine Fisheries Service, Northeast Regional Office, 55 Great Republic Drive, Gloucester MA 01930. An electronic copy of this final rule is available at: *http://www.nero.noaa.gov/prot_res/altsalmon/*. Public comments received can be viewed at *http://www.regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Rory Saunders, NMFS, at (207) 866–4049; Jessica Pruden, NMFS, at (978) 282–8482; Marta Nammack, NMFS, at (301) 713–1401; Lori Nordstrom, USFWS, at (207) 827–5938 ext. 13. Persons who use a Telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

We issued a final rule listing the GOM DPS of Atlantic salmon as endangered on November 17, 2000 (65 FR 69469). The GOM DPS was defined as all naturally reproducing wild populations and those river-specific hatchery populations of Atlantic salmon having historical, river-specific characteristics found north of and including tributaries of the lower Kennebec River to, but not including, the mouth of the St. Croix River at the U.S.-Canada border. In the final rule listing the GOM DPS, we did not include fish that inhabit the mainstem and tributaries of the Penobscot River above the site of the former Bangor Dam, the upper Kennebec River, or the Androscoggin River within the GOM DPS (65 FR 69469; November 17, 2000).

In late 2003, we assembled the 2005 Biological Review Team (BRT) composed of biologists from the Maine Atlantic Salmon Commission (now the Maine Department of Marine Resources Bureau of Sea-run Fisheries and Habitat (MDMR)), the Penobscot Indian Nation, and both Services. The 2005 BRT was charged with reviewing and evaluating all relevant scientific information relating to the current DPS delineation (including a detailed genetic characterization of the Penobscot population and data relevant to the appropriateness of including the upper Kennebec and Androscoggin rivers as part of the DPS), determining the conservation status of the populations not included in GOM DPS listed in 2000, and assessing their relationship to the GOM DPS as it was listed in 2000. The findings of the 2005 BRT, which are detailed in the 2006 Status Review for Anadromous Atlantic Salmon in the United States (Fay *et al.*, 2006), addressed: the DPS delineation, including whether populations that were not included in the 2000 listing should be included in the GOM DPS; the extinction risks to the species; and the threats to the species. The 2006 Status Review (Fay *et al.*, 2006) underwent peer review by experts in the fields of Atlantic salmon biology and genetics to ensure that it was based on the best available science. Each peer reviewer independently affirmed the major conclusions presented in Fay *et al.* (2006).

Policies for Delineating Species Under the ESA

Section 3 of the ESA defines ''species'' as including ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' The term ''distinct population segment'' is not recognized in the scientific literature. Therefore, the Services adopted a joint policy for recognizing DPSs under the ESA (DPS Policy; 61 FR 4722) on February 7, 1996. The DPS policy requires the consideration of two elements when evaluating whether a vertebrate population segment may be considered a DPS under the ESA: (1) The discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; and (2) the significance of the population segment to the species or subspecies to which it belongs.

A population segment of a vertebrate species may be considered discrete if it satisfies either one of the following conditions: (1) It is markedly separated from other populations of the same taxon (an organism or group of organisms) as a consequence of physical, physiological, ecological, or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation; or (2) it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist that are significant in light of section 4(a)(1)(D) of the ESA (*i.e.*, inadequate regulatory mechanisms).

If a population segment is found to be discrete under one or more of the above conditions, its biological and ecological significance to the taxon to which it belongs is evaluated. This consideration may include, but is not limited to: (1) Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon; (2) evidence that the loss of the discrete population segment would result in a significant gap in the range of a taxon; (3) evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range; and (4) evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics.

Listing Determinations Under the ESA

The ESA defines an endangered species as one that is in danger of extinction throughout all or a significant portion of its range, and a threatened species as one that is likely to become endangered in the foreseeable future throughout all or a significant portion of its range (sections 3(6) and 3(20), respectively). The statute requires us to determine whether any species is endangered or threatened because of any of the following five factors: (1) The present or threatened destruction, modification, or curtailment of its habitat or range; (2) overutilization for commercial, recreational, scientific, or educational purposes; (3) disease or predation; (4) the inadequacy of existing regulatory mechanisms; or (5) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A–E)). We are to make this determination based solely on the best available scientific and commercial data available after conducting a review of the status of the species and taking into account any efforts being made by states or foreign governments to protect the species.

Atlantic Salmon Life History

Anadromous Atlantic salmon are a wide ranging species with a complex life history. The historic range of Atlantic salmon occurred on both sides of the North Atlantic: from Connecticut to Ungava Bay in the western Atlantic and from Portugal to Russia's White Sea in the Eastern Atlantic, including the Baltic Sea.

For Atlantic salmon in the United States, juveniles typically spend 2 years rearing in freshwater. Freshwater ecosystems provide spawning habitat and thermal refuge for adult Atlantic salmon; overwintering and rearing areas for eggs, fry, and parr; and migration corridors for smolts and adults (Bardonnet and Bagliniere, 2000). Adult Atlantic salmon typically spawn in early November. During spawning, the female uses its tail to scour or dig a series of nests in the gravel where the eggs are deposited; this series of nests is called a redd. The eggs remain in the redd until they hatch in late March or April. At this stage, they are referred to as alevin or sac fry. Alevins remain in the redd for about 6 more weeks and are nourished by their yolk sac until they emerge from the gravel in mid-May. At this time, they begin active feeding and are termed fry. Within days, the fry enter the parr stage, indicated by vertical bars (parr marks) on their sides that act as camouflage. Atlantic salmon parr are territorial; thus, most juvenile mortality is thought to be density dependent and mediated by habitat limitation (Gee *et al.*, 1978; Legault, 2005). In particular, suitable overwintering habitat may limit the abundance of large parr prior to smoltification (Cunjak *et al.*, 1998). Smoltification (the physiological and behavioral changes required for the transition to salt water) usually occurs at age 2 for most Atlantic salmon in Maine. The smolt emigration period is rather short and lasts only 2 to 3 weeks for each individual. During this brief emigration window, smolts must contend with rapidly changing osmoregulatory requirements (McCormick *et al.*, 1998) and predator assemblages (Mather, 1998). The freshwater stages in the life cycle of the Atlantic salmon have been well studied; however, much less information is available on Atlantic salmon at sea (Klemetsen *et al.*, 2003).

Gulf of Maine Atlantic salmon migrate vast distances in the open ocean to reach feeding areas in the Davis Strait between Labrador and Greenland, a distance over 4,000 km from their natal rivers (Danie *et al.*, 1984; Meister, 1984). During their time at sea, Atlantic salmon undergo a period of rapid growth until they reach maturity and return to their natal river. Most Atlantic salmon (about 90 percent) from the Gulf of Maine return after spending 2 winters at sea; usually less than ten percent return after spending 1 winter at sea; roughly one percent of returning salmon are either repeat spawners or have spent 3 winters at sea (3 sea winter, or 3SW salmon) (Baum, 1997).

In addition to anadromous Atlantic salmon, landlocked Atlantic salmon have been introduced to many lakes and rivers in Maine, though they are only native to four watersheds in the State: The Union, including Green Lake in Hancock County; the St. Croix, including West Grand Lake in Washington County; the Presumpscot, including Sebago Lake in Cumberland County; and the Penobscot, including Sebec Lake in Piscataquis County (Warner and Havey, 1985). There are certain lakes and rivers in Maine where landlocked salmon and anadromous salmon co-exist. Recent genetic surveys have confirmed that little genetic exchange occurs between these two life history types (Spidle *et al.*, 2003; NMFS unpublished data).

Delineation of the Gulf of Maine Distinct Population Segment

Fay *et al.* (2006) concluded that the DPS delineation that resulted in the 2000 listing designation (65 FR 69469; November 17, 2000) was largely appropriate, except in the case of large rivers that were excluded in the previous listing determination (Section 6.2.4 of Fay *et al.*, 2006). As described below in the analyses of discreteness and significance of the population segment, Fay *et al.* (2006) concluded that the salmon currently inhabiting the larger rivers (Androscoggin, Kennebec, and Penobscot) are genetically similar to the rivers included in the GOM DPS as listed in 2000 (Spidle *et al.*, 2003), have similar life history characteristics, and occur in the same zoogeographic region (section 6.3 of Fay *et al.*, 2006). Further, the salmon populations inhabiting the large and small rivers from the Androscoggin River northward to the Dennys River differ genetically and in important life history characteristics from Atlantic salmon in adjacent portions of Canada (Spidle *et al.*, 2003; Fay *et al.*, 2006). Thus, Fay *et al.* (2006) (section 6.3.1.4 and 6.3.2.4) concluded that this group of populations (population segment) met both the discreteness and significance criteria of the DPS Policy and, therefore should be considered a DPS. Fay *et al.* (2006) recommended that the new GOM DPS include all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, including all associated conservation hatchery populations used to supplement these natural populations; currently, such conservation hatchery populations are maintained at Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH).

Delineating Geographic Boundaries

Determining the precise boundary of the GOM DPS is difficult. In the case of the GOM DPS, we use a wide array of independent sources of information to make this determination. These sources of information include recent genetic analyses, life history, and zoogeography, among others. Recent genetic analyses, in particular, have clarified these distinctions, and we rely on them heavily in the following analysis. When using genetic data to make these delineations, it is important to note that extant populations must exist in order to make meaningful comparisons. In the case of determining the northern boundary of the GOM DPS, extant populations were used in genetic analyses and thus inform the determination. However, in the case of the determination of the southern boundary of the GOM DPS, many populations south of the Androscoggin are extirpated, and thus there are no genetic data available to make these

comparisons. For this reason we rely on additional information to delineate the southern boundary of the GOM DPS below.

We relied on genetic data to inform our determination on the northern terminus of the GOM DPS. At a broad scale, it is clear that there are substantial differences in genetic structure between U.S. and Canadian populations of Atlantic salmon (Spidle *et al.*, 2003). However, there are no genetic data on the wild salmon that once occurred in the St. Croix watershed along the U.S.-Canada border. As listed in 2000, the northern terminus of the GOM DPS was the U.S.-Canada border at the St. Croix River, but as described on page 54 of Fay *et al.* (2006), the best available science suggests that the St. Croix groups with other Canadian rivers. Genetic analyses found that salmon in the Dennys River are more similar to populations in the United States than to Canadian salmon populations that are geographically proximate to the Dennys (Spidle *et al.*, 2003). Therefore, we find that the northern terminus of the GOM DPS is the Dennys River watershed, rather than the St. Croix.

We determined the southern terminus of the GOM DPS to be the Androscoggin River based on zoogeography rather than genetics because there are extremely few Atlantic salmon in the rivers on which to base genetic analyses as one moves southward. Due to the combination of low numbers of Atlantic salmon in some rivers (*e.g.*, Androscoggin) and the complete extirpation of the native stock in other rivers to the south (*e.g.*, Merrimack), complete genetic data are not and may never be available for the Services to be able to genetically characterize these populations. In the absence of clear genetic data, we used ecological factors to define the southern boundary of the GOM DPS. The Androscoggin River lies within the Penobscot-Kennebec-Androscoggin Ecological Drainage Unit (EDU) (Olivero, 2003) and the Laurentian Mixed Forest Province (Bailey, 1995), which separates it from more southern rivers that were historically occupied by Atlantic salmon. EDUs are aggregations of watersheds with similar zoogeographic history, physiographic conditions, climatic characteristics, and basic geography (Olivero, 2003). The substantial changes in physiographic conditions south of the Androscoggin drainage are reflected in the southern terminus of both the Laurentian Mixed Forest Province and the Penobscot—Kennebec—Androscoggin EDU occurring in that area. Basin geography, climate, groundwater temperatures, hydrography, and zoogeographic differences between the Penobscot—Kennebec—Androscoggin EDU and the EDUs to the south (*e.g.*, Saco-Merrimack-Charles, Lower Connecticut, Middle Connecticut, and Upper Connecticut) likely had a strong effect upon Atlantic salmon ecology and production. These differences would influence the structure and function of aquatic ecosystems (Vannote *et al.*, 1980; Cushing *et al.*, 1983; Minshall *et al.*, 1983; Cummins *et al.*, 1984; Minshall *et al.*, 1985; Waters, 1995) and create a different environment for the development of local adaptations than rivers, such as the Saco and Merrimack, to the south.

In the proposed rule, we proposed to include the entire Androscoggin, Kennebec, and Penobscot Watersheds within the GOM DPS boundary. Some comments from the public appropriately highlighted several impassable falls that limited the upstream extent to which anadromous salmon inhabited the rivers of Maine. NMFS also evaluated historical occupancy at the watershed scale for the process of proposing critical habitat for the GOM DPS. There is also considerable information provided in the 2006 Status Review pertaining to impassable falls as well. We are, therefore, using these information sources (and others cited therein) to delimit the upstream extent of anadromy for GOM salmon in this final rule.

We have identified seven impassable falls that substantially limited the upstream extent of the freshwater range of GOM salmon. These include Rumford Falls in the town of Rumford on the Androscoggin River, Snow Falls in the town of West Paris on the Little Androscoggin River, Grand Falls in Township 3 Range 4 BKP WKR, on the Dead River in the Kennebec Basin; the un-named falls (impounded by Indian Pond Dam) immediately above the Kennebec River Gorge in the town of Indian Stream Township on the Kennebec River; Big Niagara Falls on Nesowadnehunk Stream in Township 3 Range 10 WELS in the Penobscot Basin; Grand Pitch Falls on Webster Brook in Trout Brook Township in the Penobscot Basin; and Grand Falls on the Passadumkeag River in Grand Falls Township in the Penobscot Basin (Table 1).

TABLE 1—IMPASSABLE FALLS THAT LIMIT THE UPSTREAM EXTENT OF THE FRESHWATER RANGE OF GOM SALMON

Name of falls	Town	River	Basin
Rumford Falls	Rumford	Androscoggin River	Androscoggin.
Snow Falls	West Paris	Little Androscoggin River	Androscoggin.
Grand Falls	Township 3 Range 4 BKP WKR	Dead River	Kennebec.
Un-named	Indian Stream Township	Kennebec River	Kennebec.
Big Niagara Falls	Township 3 Range 10 WELS	Nesowadnehunk Stream	Penobscot.
Grand Pitch	Trout Brook Township	Webster Brook	Penobscot.
Grand Falls	Grand Falls Township	Passadumkeag River	Penobscot.

As a result, we have modified the geographic boundaries of the freshwater range of GOM salmon in the Androscoggin, Kennebec, and Penobscot Basins in the following ways: all freshwater bodies in the Androscoggin Basin are included up to Rumford Falls on the Androscoggin River and up to Snow Falls on the Little Androscoggin River; all freshwater bodies in the Kennebec Basin are included up to Grand Falls on the Dead River and the unnamed falls (currently impounded by Indian Pond Dam) immediately above the Kennebec River Gorge; and all freshwater bodies in the Penobscot Basin are included up to Big Niagara Falls on Nesowadnehunk Stream, Grand Pitch on Webster Brook, and Grand Falls on the Passadumkeag River.

We recognize that many other potentially impassable waterfalls exist throughout the range of GOM salmon. While other impassable falls may exist throughout the range, we did not exclude any other areas (other than the areas above the seven falls mentioned above) for the following reasons: (1) Their occurrence is typically in headwater areas that preclude access from relatively small portions of a given watershed; (2) identifying every impassable falls is impractical given

current information; and (3) no other impassable falls were brought to our attention during the public comment period.

In addition, we recognize that within every watershed, there is an upstream extent of anadromy. However, it is impossible to define that specific point in every watershed. The upstream extent of anadromy is ultimately limited by the incremental narrowing of a given river or stream. While a stream may be too small for an adult salmon to swim up any further, juveniles may ascend further than that point in search of suitable rearing habitat. In fact, upstream movement of even fry can be quite substantial. As such, we include all the freshwater bodies as part of the freshwater range of GOM salmon unless above one of the impassable falls mentioned in the text above.

Discreteness and Significance of the GOM DPS

With respect to the ''discreteness'' of this population segment, section 6.3.1 of Fay *et al.* (2006) considered ecological, behavioral, and genetic factors under the first discreteness criterion of the DPS Policy to examine the degree to which it is separate from other Atlantic salmon populations. Gulf of Maine salmon are behaviorally and physiologically discrete from other members of the taxon because they return to their natal GOM rivers to spawn (a process called homing), which leads to the separation in stocks that has been observed between the Gulf of Maine and other segments of the taxon. River-specific adaptation is an important mechanism that allows anadromous salmon to occupy diverse environments throughout their range. River-specific adaptation is facilitated by homing and is characteristic of all other anadromous salmonids (Klemetsen *et al.*, 2003; Utter *et al.*, 2004). Baum and Spencer (1990) found that roughly 98 percent of all tagged salmon returned to their natal rivers to spawn. As described below, these strong homing tendencies have led to the formation and maintenance of river-specific adaptations for GOM salmon as well.

Ecologically, GOM salmon are discrete from other members of the taxon. The core of the riverine habitat of this population segment lies within the Penobscot-Kennebec-Androscoggin EDU (Olivero, 2003) and the Laurentian Mixed Forest Province (Bailey, 1995). These environmental conditions have shaped life history characteristics of GOM salmon. In particular, GOM salmon life history strategies are dominated by age 2 smolts and 2SW adults, whereas populations to the north of this population segment are generally dominated by age 3 or older smolts and 1SW adults (called grilse). Smolt age reflects growth rate (Klemetsen *et al.*, 2003), with faster growing parr emigrating as smolts earlier than slower growing ones (Metcalfe *et al.*, 1990). Smolt age is largely influenced by temperature (Symons, 1979; Forseth *et al.*, 2001) and can therefore be used to compare and contrast growing conditions across rivers (Metcalfe and Thorpe, 1990). For GOM populations, smolt ages are quite similar across rivers with naturally-reared (result of either wild spawning or fry stocking) returning adults predominantly emigrating at river age 2 (88 to 100 percent) with the remainder emigrating at river age 3 (Fay *et al.*, 2006). Smolt ages from naturally-reared returning adults in rivers south of the Penobscot-Kennebec-Androscoggin EDU are also dominated by river age 2 smolts with some emigrating at river age 3, but a substantial proportion of river age 1 smolts are also present (See Table 6.3.1.1 in Fay *et al.*, 2006).

The strongest evidence that GOM salmon are discrete from other members of the taxon is genetic. Fay *et al.* (2006) described genetic structure of this population segment and other stocks in detail in section 6.3.1.3. In summary, three primary genetic groups of North American populations (Spidle *et al.*, 2003; Spidle *et al.*, 2004; Verspoor *et al.*, 2005) are evident. These include the anadromous GOM populations (including salmon in the Kennebec and Penobscot Rivers) (Spidle *et al.*, 2003), non-anadromous Maine populations (Spidle *et al.*, 2003), and Canadian populations (Verspoor *et al.*, 2005). Because of these behavioral, physiological, ecological and genetic factors, we conclude that the GOM anadromous population is discrete from other Atlantic salmon populations under the provisions of the DPS Policy.

With respect to the ''significance'' of this population segment, Fay *et al.* (2006) found that there are three attributes which are described as evidence for ''significance'' in the DPS policy that are applicable to the GOM DPS (section 6.3.2 of Fay *et al.*, 2006). Fay *et al.* (2006) (section 6.3.2.1) concluded that this population segment has persisted in an ecological setting unusual or unique to the taxon for several reasons. First, GOM salmon live in and migrate through a unique marine environment. The marine migration corridor for GOM salmon begins in the GOM that is known for unique circulation patterns, thermal regimes, and predator assemblages (Townsend *et al.*, 2006). Gulf of Maine salmon undertake extremely long marine migrations to feeding grounds off the West Coast of Greenland because the riverine habitat they occupy is at the southern extreme of the current North American range. While such vast marine migrations are more common for stocks on the northeast side of the Atlantic, the combination of the long migration distances and the unique setting of the GOM, described above, make the oceanic life history of the GOM DPS quite different from those of other stocks (ICES, 2008). In addition, the core of the riverine habitat of this population segment lies within the Penobscot-Kennebec-Androscoggin EDU (Olivero, 2003) and the Laurentian Mixed Forest Province (Bailey, 1995). The importance of this setting is evidenced by the tremendous production potential of its juvenile nursery habitat that allows production of proportionately younger smolts than Canadian rivers to the north (Myers, 1986; Baum, 1997; Hutchings and Jones, 1998). Thus, the combination of the unique rearing conditions in the freshwater portion of its range combined with the unique marine migration corridor led Fay *et al.* (2006) to conclude that this population segment has persisted in an ecological setting unusual or unique to the taxon.

Fay *et al.* (2006) also concluded that the loss of this population segment would result in a significant gap or constriction in the range of the taxon (Section 6.3.2.2 of Fay *et al.*, 2006). The extirpation of this population segment would represent a significant range reduction for the entire taxon *Salmo salar* because this population segment represents the southernmost native Atlantic salmon population in the western Atlantic. The temperature regimes in these southern rivers made possible the tremendous growth and production potential which resulted in the historically very large populations in these areas. Historic attempts to enhance salmon populations (in GOM rivers) using Canadian-origin fish failed. This further illustrates the importance of conserving native, river-specific populations and the difficulties of restoration if they are lost.

Fay *et al.* (2006) concluded that this population segment differs markedly from other populations of the species in its genetic characteristics (Section 6.3.2.3 of Fay *et al.*, 2006). While genetic differences were used to examine the ''discreteness'' of this population segment, Fay *et al.* (2006) suggested that the ''significance'' of these observed genetic differences is that they provide evidence of local adaptation. That is, low returns of exogenous smolts (*i.e.*, Canadian-origin

smolts stocked in Maine) and lower survival of smolts from these Maine rivers stocked outside their native geographic range (*e.g.*, into the Merrimack River) indicate that this population segment is adapted to its native environment. Based on this information related to significance, Fay *et al.* (2006) concluded that this population segment is significant to the Atlantic salmon species, and therefore, qualifies as a DPS (the new GOM DPS) under the provisions of the DPS Policy.

Fay *et al.* (2006) (section 6.3.4) explicitly considered whether to include hatchery populations in the GOM DPS and concluded that all conservation hatchery populations (currently maintained at GLNFH and CBNFH) should be included in the GOM DPS. This determination was based on the fact that there is a low level of genetic divergence between conservation hatchery populations and the rest of the GOM DPS because: (1) The river-specific hatchery programs collect wild parr or sea-run adults annually (when possible) for inclusion into the broodstock programs; (2) broodstocks are used to stock fry and other life stages into the river of origin, and, in some instances, hatchery-origin individuals represent the primary origin of Atlantic salmon due to low adult returns; (3) there is little evidence of introgression from Canadian-origin populations; and (4) there is minimal introgression from aquaculture fish because of a rigorous genetic screening program in the hatchery. Because the level of divergence is minimal, in Section 6.3.4 Fay *et al.* (2006) suggested that hatchery populations should be considered part of the GOM DPS. However, Fay *et al.* (2006) also noted the dangers of reliance on hatcheries. In short, genetic risks from hatcheries include artificial selection, inbreeding depression, and outbreeding depression, in addition to other risks such as the potential for disease outbreaks, loss of funding, or other catastrophic failure at one or more hatcheries. The reader is directed to ''Population Status of the GOM DPS'' section of this final rule and Section 8.5.1 of Fay *et al.* (2006) for an in depth discussion of these risks.

For the reasons described in Section 6 of Fay *et al.* (2006), we conclude that the GOM DPS as described above warrants delineation as a DPS (*i.e.*, it is discrete and significant). Specifically, we conclude that the GOM DPS is comprised of all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, including all associated conservation hatchery populations used to supplement these natural populations; currently, such populations are maintained at GLNFH and CBNFH. We consider the conservation hatchery populations that are maintained at CBNFH and GLNFH essential for recovery of the GOM DPS because the hatchery populations contain a high proportion of the genetic diversity remaining in the GOM DPS (Bartron *et al.*, 2006). Excluded are those salmon raised in commercial hatcheries for aquaculture and landlocked salmon because they are genetically distinguishable from the GOM DPS. The marine range of the GOM DPS extends from the Gulf of Maine to feeding grounds off Greenland. The freshwater range of the GOM DPS includes all freshwater bodies in the watersheds from the Androscoggin to the Dennys, except those watersheds excluded because of natural barrier falls as described in the ''Delineating Geographic Boundaries'' section of this final rule. The most substantial difference between the GOM DPS as listed in 2000 and the GOM DPS described in this final rule is the inclusion of the majority of the Androscoggin, Kennebec, and Penobscot Basins as well as the associated conservation hatchery population at GLNFH.

Several rivers outside the range of the GOM DPS in Long Island Sound and Central New England contain Atlantic salmon (Fay *et al.*, 2006; section 6.4). The native Atlantic salmon of these areas south of the GOM DPS were extirpated in the 1800s (Fay *et al.*, 2006). Efforts to restore Atlantic salmon to these areas (*e.g.*, Connecticut, Merrimack, and Saco Rivers) involve stocking Atlantic salmon that were originally derived from the GOM DPS. Atlantic salmon whose freshwater range occurs outside the range of GOM DPS do not interbreed with salmon within the GOM DPS, are not considered a part of the GOM DPS, and are not protected under the ESA.

Population Status of the GOM DPS

In evaluating the status of Atlantic salmon, we considered four basic attributes that contribute to a viable population: abundance, productivity, genetic diversity, and spatial distribution. The importance of considering each of these factors is briefly described below. However, it is important to note that our ability to conduct such analyses for Atlantic salmon is often limited by the availability of sufficient data. It is also important to note that the most recent data available at the time of writing of this final rule was from 2007. We consider the U.S. Atlantic Salmon Assessment Committee (USASAC) reports to be the data of record with respect to Atlantic salmon counts. USASAC reports are generally not available until several weeks after their annual meeting in March. Thus, 2008 data are considered only preliminary at the time of writing this final rule.

Considering abundance levels of a given species is critical to evaluating extinction risks. All else being equal, small populations are at greater risk of extinction than larger populations because, generally, larger populations are better able to withstand the effects of environmental variation, genetic processes, demographic stochasticity, ecological feedback, and catastrophes (Shaffer, 1981).

Population growth rate (productivity) provides information regarding how a population is performing in the habitat it occupies. In evaluating extinction risks, we ideally measure average productivity at different life stages and estimates of variance to describe the level of uncertainty inherent in the measurements. An example of life stage-specific data could be smolt emigration estimates which represent: (a) The population's potential to increase or (b) the population's ability to weather periods of poor marine conditions. Measuring productivity rates over time is quite difficult and resource intensive. Therefore, simple measures such as spawner population size and replacement rates may be used to provide more rapid detection of changes in conditions affecting population growth rates.

For small populations, spatial distribution is important to reduce extinction risks from genetic risks and demographic stochasticity. A population's spatial distribution depends on habitat quality (including accessibility), population dynamics, and dispersal characteristics of individuals in the population. Analysis of spatial distribution focuses primarily on spawning group distribution (even though spatial distribution is important at all life stages) and connectivity of populations. Since freshwater habitat is often quite heterogeneous, spawning habitat may be distributed as discrete patches. Straying is an important component contributing to spatial distribution and, typically, straying rates are higher at smaller scales (*e.g.*, occurring within subpopulations rather than between populations (Quinn, 1997)).

Genetic diversity allows species to adapt to a variety of environments that provide for the needs of the species and

protects against short-term environmental change while also providing the raw genetic material necessary to survive long-term environmental change. Natural demographic and evolutionary processes (patterns of mutation, selection, drift, recombination, migration, etc.) are important to maintaining a species' genetic diversity.

The influence of hatcheries on the GOM DPS must be carefully considered in evaluating the status of the species. The influence of hatcheries can be both positive and negative; we describe these effects in some detail below in this section of this final rule. It is important, however, to first describe the general operation of conservation hatcheries in Maine.

The USFWS operates two hatcheries in support of Atlantic salmon recovery efforts in Maine. Together, Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH) raise and stock over 600,000 smolts and 3.5 million fry annually within the range of the GOM Atlantic salmon DPS. The primary focus of the conservation hatchery program for the GOM Atlantic salmon DPS is to conserve the genetic legacy of Atlantic salmon in Maine until habitats can support natural, self-sustaining populations (Bartron *et al.,* 2006). As such, a great deal of consideration is given to broodstock collection, spawning protocols, genetic screening for aquaculture escapees, and other considerations as outlined by Bartron *et al.* (2006). The current program started in 1992, when a river-specific broodstock and stocking program was implemented for rivers in Maine (Bartron *et al.,* 2006). This strategy complies with the North Atlantic Salmon Conservation Organization (NASCO) guidelines for stock rebuilding (USASAC, 2005). The stocking program was initiated for two reasons: (1) Runs were declining in every river in Maine, and numerous studies indicated that restocking efforts are more successful when the donor population comes from the river to be stocked (Moring *et al.,* 1995); and (2) the numbers of returning adult Atlantic salmon to the rivers were very low, and artificial propagation had the potential to increase the number of juvenile fish in the river through fry and other early life stage stocking.

Current practices of fry, parr, and smolt stocking as well as recovery of parr for hatchery rearing are designed to ensure that river-specific brood stock is available for future production. Atlantic salmon from the Narraguagus, Pleasant, Sheepscot, Machias, East Machias, and Dennys populations are maintained at CBNFH in East Orland, Maine. These populations are augmented by annual collections of parr from their respective natal river; this program is described in detail by Bartron *et al.* (2006). Additionally, returning adult Atlantic salmon are trapped at the Veazie Dam on the Penobscot River throughout the duration of the run, transferred to CBNFH, and held until spawning in the fall of each year. In addition, domestic adults (*i.e.,* offspring of the sea-run adults representing all sea-run spawned families) from the Penobscot River are maintained at GLNFH in the event that insufficient sea-run adults return to the Veazie trap or in the event of a fish loss at CBNFH. Adult Atlantic salmon (with the exception of the Penobscot River) are maintained in one of six river-specific broodstock rooms at CBNFH. Within each broodstock room, adults are maintained separately by capture year. Capture year is defined as the year parr were collected from a river. Each capture year may represent one to two year classes. In addition, fully captive lines, or ''pedigree lines,'' are implemented when the recovery of parr from the river environment is expected to be too low to ensure future spawning stock is available (Bartron *et al.,* 2006). Pedigree lines are established at the time of stocking, where a proportional representation of each family from a particular river-specific broodstock is retained in the hatchery while the rest of the fry are stocked into the river. If parr are recovered from the fry stocking for the pedigree lines, individuals are screened to determine origin and familial representation and are integrated into the pedigree line to maintain some component of natural selection while maintaining a broad representation of the genetic diversity observed in the broodstock.

The goals of the captive propagation program include maintenance of the unique genetic characteristics of each river-specific broodstock and maintenance of genetic diversity within each broodstock (Bartron *et al.,* 2006). Evaluation of estimates of genetic diversity within captive populations, such as average heterozygosity, relatedness, and allelic richness are monitored within the hatchery broodstocks according to the CBNFH Broodstock Management Plan (Bartron *et al.,* 2006). Estimates of allelic richness within each broodstock have thus far, revealed consistent estimates over the brief time series available (generally 1994 to 2004; Bartron *et al.,* 2007). Information from genetic monitoring is used to evaluate management practices to reduce the potential for artificially reducing overall genetic diversity. Further details of annual genetic monitoring are described by Bartron *et al.* (2007).

The current low abundance of adult returns, integration of the majority of adult returns into the hatchery for the Penobscot, and recapture of parr from the wild for broodstock makes the wild and hatchery populations interwoven. In the following sections of this final rule, we describe the four population attributes of interest (abundance, productivity, spatial structure, and genetic diversity) and attempt to apply them first to the wild population and then discuss the impact the hatchery has on that attribute. For the reasons noted above, however, it is rarely possible to completely separate the wild and hatchery population in this analysis.

Abundance

The abundance of Atlantic salmon within the range of the GOM DPS has been generally declining since the 1800s (Fay *et al.,* 2006). Data sets tracking adult abundance are not available throughout this entire time period; however, Fay *et al.* (2006) in Figure 7.3.1 present a comprehensive time series of adult returns to the GOM DPS dating back to 1967. It is important to note that contemporary abundance levels of Atlantic salmon within the GOM DPS are several orders of magnitude lower than historical abundance estimates. For example, Foster and Atkins (1869) estimated that roughly 100,000 adult salmon returned to the Penobscot River alone before the river was dammed, whereas contemporary estimates of abundance for the entire GOM DPS have rarely exceeded 5,000 individuals in any given year since 1967 (Fay *et al.,* 2006).

Contemporary abundance estimates are informative in considering the conservation status of the GOM DPS today. After a period of population growth in the 1970s, adult returns of salmon in the GOM DPS have been steadily declining since the early 1980s and appear to have stabilized at low levels since 2000 (Figure 1). The population growth observed in the 1970s is likely attributable to favorable marine survival and increases in hatchery capacity, particularly at GLNFH, which was constructed in 1974. Marine survival remained relatively high throughout the 1980s, and salmon populations in the GOM DPS remained relatively stable until the early 1990s when marine survival rates decreased, leading to the declining trend in adult abundance observed in the early 1990s.

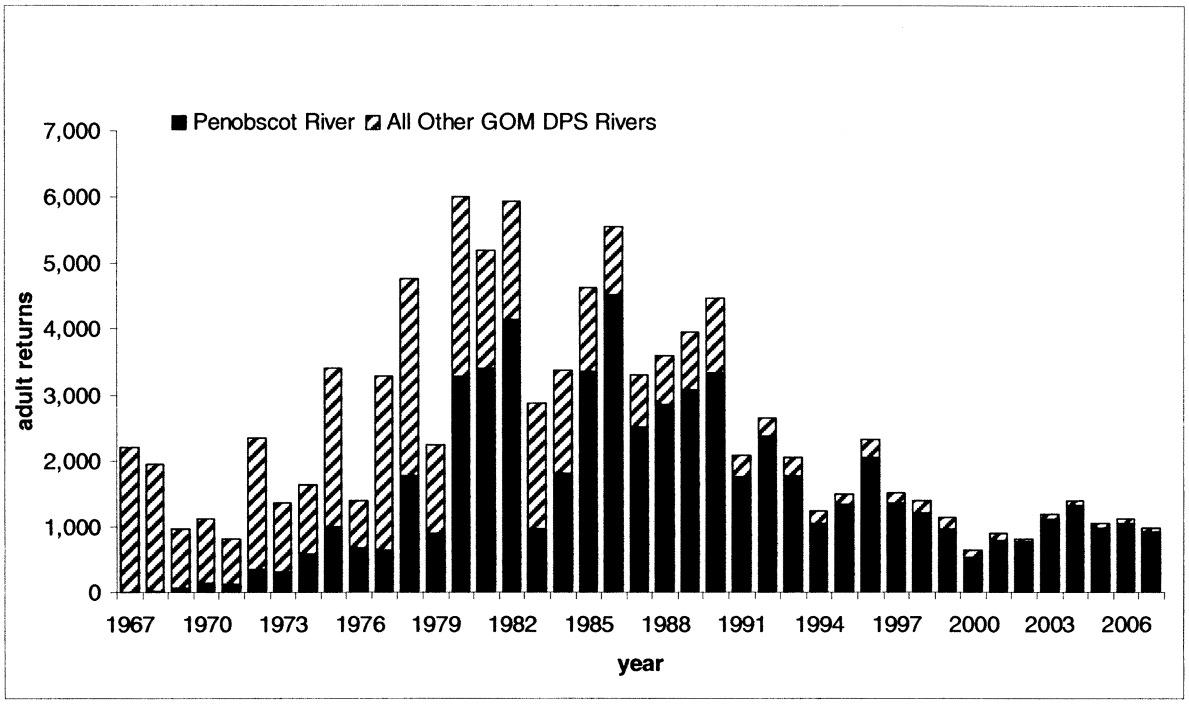

Figure 1. Total adult returns (spawners and catch) for the GOM DPS. Figure reproduced using data sets and similar methodology described by Fay et al. (2006).

Adult returns to the GOM DPS have been very low for many years and remain extremely low in terms of adult abundance in the wild. Further, the majority of all adults return to a single river, the Penobscot, which accounted for 91 percent of all adult returns to the GOM DPS in 2007 (Table 2). As illustrated by Table 3, of the 925 adult returns to the Penobscot in 2007, 802 were the result of smolt stocking and only the remaining 123 were naturally-reared. The term ''naturally-reared'' includes fish originating from natural spawning and hatchery fry (USASAC, 2008). Hatchery fry are included because hatchery fry are not marked; therefore, they cannot be distinguished from fish produced from natural spawning. Because of the extensive amount of fry stocking that takes place in an effort to recover the GOM DPS, it is likely that a substantial number of fish counted as naturally-reared were actually stocked as fry. The term ''hatchery-origin'' includes those fish stocked as either parr or smolt from either CBNFH or GLNFH.

The proportion of naturally reared fish that is attributed to fry stocking cannot be determined. Preliminary adult return data for 2008 (*http://www.maine.gov/dmr/searunfish/trapcounts.html*) indicated higher returns than in previous years, but remain well below conservation spawning escapement (CSE) goals that are widely used (*e.g.*, ICES, 2005) to describe the status of individual Atlantic salmon populations. When CSE goals are met, Atlantic salmon populations are generally self-sustaining. When CSE goals are not met (*i.e.*, less than 100 percent), populations are not reaching full potential, and this can be indicative of a population decline. For all rivers in Maine, current Atlantic salmon populations (including hatchery contributions) are well below CSE levels required to sustain themselves (Fay *et al.*, 2006) (section 7.1), which is further indication of their poor population status. Furthermore, calculation of returns relative to CSE for Atlantic salmon include salmon of fry-stocked origin; because these fish are not spawned in the wild, displaying returns as a percentage of CSE overestimates the degree to which the population is achieving self-sustainability.

TABLE 2—ADULT RETURNS TO THE SMALL COASTAL RIVERS, THE PENOBSCOT RIVER, THE KENNEBEC RIVER, AND THE ANDROSCOGGIN RIVER FROM 2001 TO 2007. THESE DATA ARE SUMMARIZED FROM TABLE 3.2.1.2 AND TABLE 16 IN THE UNITED STATES ATLANTIC SALMON ASSESSMENT COMMITTEE REPORT (USASAC, 2008)

Year	Small coastal rivers	Penobscot River trap count	Kennebec River trap count [a]	Androscoggin River trap count	Total known returns
2001	103	785	.....	5	893
2002	37	780	.....	2	819
2003	76	1112	.....	3	1191
2004	82	1323	.....	11	1416
2005	71	985	.....	10	1066
2006	79	1044	15	6	1144

TABLE 2—ADULT RETURNS TO THE SMALL COASTAL RIVERS, THE PENOBSCOT RIVER, THE KENNEBEC RIVER, AND THE ANDROSCOGGIN RIVER FROM 2001 TO 2007. THESE DATA ARE SUMMARIZED FROM TABLE 3.2.1.2 AND TABLE 16 IN THE UNITED STATES ATLANTIC SALMON ASSESSMENT COMMITTEE REPORT (USASAC, 2008)—Continued

Year	Small coastal rivers	Penobscot River trap count	Kennebec River trap count [a]	Androscoggin River trap count	Total known returns
2007	53	925	16	20	1014

[a] Counts not conducted on the Kennebec until 2006.

TABLE 3—ADULT RETURNS TO RIVERS WITHIN THE FRESHWATER RANGE OF THE GOM DPS BY ORIGIN IN 2007. THESE DATA ARE SUMMARIZED FROM TABLE 1 IN THE UNITED STATES ATLANTIC SALMON ASSESSMENT COMMITTEE REPORT (USASAC, 2008)

River	Hatchery-origin	Naturally-reared	Total
Androscoggin	17	3	20
Kennebec	9	7	16
Dennys	2	1	3
Narraguagus	0	11	11
Other GOM DPS	0	39	39
Penobscot	802	123	925
Total	830	184	1014

Declines in both hatchery-origin and naturally reared salmon are evident in the Penobscot River (Table 4). Declines in hatchery-origin adult returns are less sharp because of the effects of hatcheries. In short, hatchery supplementation over this time period has been relatively constant, generally fluctuating around 550,000 smolts per year (USASAC, 2008). In contrast, the number of naturally-reared smolts emigrating each year is likely to decline following poor returns of adults. Although it is impossible to distinguish truly wild salmon from those stocked as fry, it is likely that some portion of naturally reared adults are wild. Thus, wild smolt production would suffer 3 years after there were low adult returns, because the progeny of adult returns typically emigrate 3 years after their parents return. The relatively constant inputs from smolt stocking coupled with the declining trend of naturally reared adults result in the apparent stabilization of hatchery-origin salmon and the decline of naturally reared components of the GOM DPS observed over the last 2 decades.

TABLE 4—ADULT RETURNS, BY ORIGIN (HATCHERY-ORIGIN AND NATURALLY REARED) AND AGE (1SW INDICATES THE INDIVIDUAL SPENT ONE WINTER AT SEA; 2SW INDICATES THE INDIVIDUAL SPENT TWO WINTERS AT SEA; 3SW INDICATES THE INDIVIDUAL SPENT THREE WINTERS AT SEA; AND REPEAT INDICATES THE INDIVIDUAL WAS A REPEAT SPAWNER) TO THE PENOBSCOT RIVER FROM 1996 TO 2007

Year	Hatchery-origin				Naturally reared				Total
	1sw	2sw	3sw	Repeat	1sw	2sw	3sw	Repeat	
1996	484	1,218	6	18	11	303	3	1	2,044
1997	243	934	4	14	4	153	2	1	1,355
1998	238	793	0	10	31	133	1	4	1,210
1999	223	568	0	11	49	108	0	9	968
2000	167	265	0	15	16	69	0	2	534
2001	195	466	0	3	21	98	2	0	785
2002	363	344	0	15	14	41	1	2	780
2003	196	847	1	4	6	56	0	2	1,112
2004	276	952	10	16	5	59	3	2	1,323
2005	269	678	0	8	6	22	0	2	985
2006	338	653	1	4	15	33	0	0	1,044
2007	226	575	0	1	35	88	0	0	925

The influence of CBNFH and GLNFH on abundance of the GOM DPS is positive, thus reducing short-term extinction risks to the GOM DPS. Below, we briefly describe the three mechanisms by which the conservation hatchery programs positively affect the abundance of the GOM DPS:

1. Stocking of large numbers of smolts (Penobscot beginning in 1974, Dennys beginning in 2001, and Narraguagus beginning in 2008) increases adult returns, thus reducing demographic risks (*i.e.*, extinction risks) to populations that would otherwise be smaller.

2. Stocking large numbers of smolts also reduces the risks of catastrophic loss because at least one cohort is always at sea and could be collected as broodstock in case of a catastrophic event in freshwater (*e.g.*, a large contaminant spill) or in a hatchery (*e.g.*, disease outbreak).

3. Rivers without large scale fry stocking efforts have even fewer adult returns than those rivers with large scale stocking efforts. Further, rivers that lack significant hatchery contributions (fry stocking) have not experienced stable

levels of adult returns since the decline in marine survival in the early 1990s. For example, redd counts in the Ducktrap River (a river which is not stocked) have been steadily declining since the 1990s to a point where no redds were found in the Ducktrap River in 2007, a year with favorable conditions for redd counting and over 90 percent of spawning habitat surveyed (USASAC, 2008).

As illustrated by the above data, the abundance of Atlantic salmon in the GOM DPS is low and either stable or declining. The proportion of fish that are of natural origin is very small (approximately 10 percent) and is continuing to decline. The conservation hatchery has assisted in slowing the decline and helped stabilize populations at low levels, but has not contributed to an increase in the overall abundance of salmon and has not been able to halt the decline of the naturally-reared component of the GOM DPS.

Productivity

The historic productivity of the GOM DPS is unknown. Over long time frames, it is expected that productivity fluctuated widely according to a diverse range of biotic factors such as food availability and abiotic factors such as temperature regime and sea level.

Contemporary productivity rates for the GOM DPS can be inferred from replacement rates. In short, populations with a replacement rate of 1.0 or higher are stable or increasing while populations with a replacement rate less than 1.0 are declining. The USASAC has estimated the replacement rate for the GOM DPS (as listed in 2000) over the last several years. Replacement rate for the GOM DPS (as listed in 2000) had been below 1.0 for several generations until 2007, when replacement rate for the 2002 spawning cohort was 1.47. This translates to on average, every adult returning in 2002 replacing itself with 1.47 adults in 2007. While this increase is promising, it only represents 1 year; thus, it is premature to conclude that this is indicative of an increasing trend.

Replacement rate is a fairly imprecise measurement of productivity for several reasons. First, tracking adult to adult return rates of naturally reared fish necessarily includes those fish that result from stocking. Thus, it is not true replacement of fish in the wild because each river with substantial returns of adults is stocked with fry, or smolts as in the case of the Penobscot, Narraguagus, and Dennys Rivers. This situation results in an overestimation of productivity (because it does not account for the contribution that stocking makes to adult returns) and also emphasizes the importance of hatcheries to the security of the GOM DPS. Without stocking of hatchery fry and smolts, adult returns would presumably be lower and would result in even lower replacement rates.

The influence of hatcheries on productivity is not known with certainty, but overall productivity (even with hatchery supplementation) is quite low. The first goal of the captive broodstock program is to facilitate the recovery of the natural populations and minimize the risk of further decline or loss of individual populations (Bartron *et al.*, 2006). Over time, more adult returns should successfully spawn in the wild and result in replacement rates above 1.0. However, insufficient data exist to determine whether adult returns from hatchery contributions result in more spawners and ultimately more truly wild-origin adult returns. The National Research Council (NRC, 2004) and the Sustainable Ecosystems Institute (SEI, 2007) identified this as a key limitation in available data on the recovery efforts for salmon in Maine. Without this information, it is impossible to estimate, with any certainty, the effect of hatcheries on this key population attribute (productivity). Overall, however, replacement rates less than 1.0 (as has been the case most years since the early 1990s) are indicative of low productivity.

As illustrated by the above, productivity of the GOM DPS is low and has not consistently had a replacement rate above 1.0 such that population growth would be expected. There is no current evidence that hatcheries have increased or will increase productivity in the wild.

Spatial Distribution

The historic distribution of Atlantic salmon in Maine has been described extensively by Baum (1997) and Beland (1984), among others. In short, substantial populations of Atlantic salmon existed in nearly every river that was large enough to maintain a spawning population. The upstream extent of anadromy extended far into the headwaters of even the largest rivers. For example, Atlantic salmon were found throughout the West Branch of the Penobscot River as far as Penobscot Brook, a distance over 350 river km inland (Atkins, 1870). In the Kennebec River, Atlantic salmon ranged as far inland as the Kennebec River Gorge and Grand Falls on the Dead River, 235 km inland (Foster and Atkins, 1867; Atkins, 1887).

Today, the spatial structure of Atlantic salmon is limited by obstructions to passage and also by low abundance levels. Fish passage obstructions caused the decline of many salmon populations (Moring, 2005). Within the range of the GOM DPS, the Kennebec, Androscoggin, Union, and Penobscot Rivers contain dams that severely limit passage of salmon to significant amounts of spawning and rearing habitat.

In addition, the low abundance of salmon within the range of the GOM DPS serves to concurrently limit spatial distribution through two mechanisms: (1) Lack of sufficient source populations, and (2) hatchery limitations. First, in properly functioning salmon populations, some areas have relatively abundant salmon populations such that they may serve as ''source'' populations. Fish from source populations may seek out areas with fewer or no competitors. This is an important dispersal mechanism for all anadromous salmonids. Over evolutionary timescales, this process led to the colonization of nearly every river in Maine by Atlantic salmon. Because the abundance of salmon is so low today, this dispersal mechanism is likely not operating and will likely not operate until trends in productivity and abundance are reversed. Second, spatial distribution is limited today by hatchery capacity. The Penobscot River alone would require 12.5 million fry in order to properly seed all presently accessible rearing habitat (Trial, 2006), while GLNFH and CBNFH can only produce roughly 3.5 million fry annually (Barton *et al.*, 2006). Thus, hundreds of thousands of otherwise suitable habitat units are currently unoccupied (NMFS, 2008). The Sheepscot, Narraguagus, Dennys, Machias, East Machias, and Pleasant Rivers are usually stocked with as many fry as are needed to properly seed the habitat, although no stocking occurs within a 50-meter buffer around areas known to have spawning activity the previous year in order to reduce competition between potentially wild and hatchery fry (described in detail by Trial, 2006). Hatchery space for the Penobscot population is limited by hatchery capacity, such that only 2.5 million fry are typically allocated and stocked into the Penobscot River annually. Other rivers within the freshwater range of the GOM DPS have been stocked to a very limited degree in some years, usually with Penobscot-origin fry (see section 5 of Fay *et al.*, 2006, for a detailed review).

The influence of hatcheries on spatial structure of the GOM DPS is positive. Without hatchery contributions, fewer juveniles would inhabit the rivers of Maine. In section 7.2., Fay *et al.* (2006)

examined recent MDMR electrofishing data, which demonstrated that rivers with large scale stocking efforts have much higher juvenile densities compared to those rivers without large scale stocking efforts. The hatchery, therefore, has allowed for maintenance of the current spatial structure of the GOM DPS. Without the hatcheries, there likely would have been a greater reduction in spatial distribution. In summary, spatial distribution of the GOM DPS is positively influenced by the Atlantic salmon conservation hatchery supplementation program in the following ways:

1. The use of captive broodstock from seven separate populations reduces the risks of random environmental and demographic events;
2. Stocking maintains the spatial distribution of the GOM DPS;
3. Stocking has been used to repopulate unoccupied areas, when determined to be an appropriate management action.

As illustrated above, the spatial distribution of the GOM DPS has been significantly reduced from historic levels and is currently limited by low abundance of Atlantic salmon. However, we conclude that spatial distribution would have experienced even greater reductions without the influence of hatcheries.

Genetic Diversity

In general, large populations have higher levels of genetic diversity than small populations. As population sizes decrease, and the potential for mating related individuals increases, the threat of inbreeding in a population also increases. Inbreeding has been documented to decrease overall fitness of a population (Spielman *et al.*, 2004; Lynch and O'Hely, 2001), reducing the long-term population viability. Thus, maintaining sufficient levels of genetic variability and structure is of utmost importance to endangered and threatened species.

Historical salmon populations within the range of the GOM DPS were several orders of magnitude higher than they are today and occupied a greater diversity of habitats. As such, genetic diversity levels of the GOM DPS are likely to have been higher historically as well. Lage and Kornfield (2006) demonstrated significant reductions in diversity and effective population size in the Dennys River from 1963 to 2001. This raises concern that diversity levels today are lower than historical levels.

However, results from genetic surveys conducted by the USFWS suggest that, overall, the GOM DPS is not currently suffering significant negative effects due to inbreeding. Estimates of genetic diversity (*e.g.*, average heterozygosity, relatedness coefficients, and allelic diversity and frequency) within captive populations are evaluated within the hatchery broodstocks according to the CBNFH Broodstock Management Plan (Bartron *et al.*, 2006). Broodstock management is evaluated annually and is revised as needed to minimize the potential for inbreeding and maintain genetic diversity (Bartron *et al.*, 2006).

The effects of hatcheries on genetic diversity of the GOM DPS are both positive and negative; however, the positive effects outweigh the negative effects at this time. Below, we describe the positive and negative effects of hatcheries on diversity levels of the GOM DPS. Genetic diversity of the GOM DPS is positively influenced by the Atlantic salmon conservation hatchery supplementation program in the following ways:

1. A rigorous genetic screening program reduces the risks of outbreeding depression that may otherwise result from aquaculture escapees or their progeny being integrated into the hatchery program;
2. The effective use of spawning protocols preserves genetic variation inherent in each of the genetically unique river populations maintained at CBNFH, ensures the long-term maintenance of genetic variation, and minimizes the potential for inbreeding or domestication selection and associated reductions in fitness in the wild;
3. The use of pedigree lines for those populations most at risk reduces the chance of catastrophic loss of an entire population;
4. Stocking of juveniles into rivers significantly reduces the risks of catastrophic loss at CBNFH. That is, if a catastrophic loss of one or more captive broodstock lines occurred at CBNFH, a component of the genetic variability lost could be recovered by collecting parr for broodstock.

There are significant risks associated with the current reliance on hatcheries for the persistence of the GOM DPS. As mentioned previously, these risks include artificial selection, inbreeding depression, and outbreeding depression.

Over the long term, artificial selection for the hatchery environment is considered a threat to survival. If parr are not recovered in numbers sufficient for broodstock and spawning requirements, it becomes necessary to establish pedigree lines, which means that natural selection from fry to parr stage may no longer be incorporated into the life cycle (details of pedigree line management are in Fay *et al.*, 2006, and Bartron *et al.*, 2006). Establishment of pedigree lines is only resorted to in instances when one of the following criteria is met:

1. The number of broodstock for a particular population is low (less than collection target);
2. There is a threat of few or no hatchery or wild spawned parr being recovered; or
3. Loss of family variation through general parr collection practices is projected to cause appreciable losses in local population diversity in the near future.

In recent years, pedigree lines have been established for broodstock from the Pleasant River (due to insufficient parr collection) and the Dennys River (due to a large aquaculture escape event). Over time, this process could result in a population that is well adapted to the artificial environment and poorly adapted to the natural environment; this form of artificial selection is widely known as domestication selection (Hey *et al.*, 2005).

Both inbreeding depression and outbreeding depression are widely accepted as potential risks in artificial propagation programs. As population sizes decrease, and the potential for mating related individuals increases, the threat of inbreeding in a population also increases. Inbreeding may also decrease overall fitness of a population (Spielman *et al.*, 2004; Lynch and O'Hely, 2001), reducing the long-term population viability and, therefore, inhibiting the success of restoration and recovery efforts. Of similar concern is the threat of outbreeding depression and decreased fitness resulting from the mating of individuals from populations with significantly different genetic composition.

Over time, these risks will increase and more negative effects may appear. At this time, however, results from USFWS genetic screening programs suggest that domestication, inbreeding depression, and outbreeding depression do not appear to be negatively impacting the GOM DPS.

Summary

In summary, all available metrics of abundance, productivity, spatial distribution, and genetic diversity are cause for concern for the GOM Atlantic salmon DPS. Contemporary abundance estimates of adult spawners are several orders of magnitude lower than historical abundance. Estimates of productivity are well below those required to sustain a viable population over the long term. The spatial distribution of the GOM DPS has been severely reduced relative to historical

distribution patterns. Genetic diversity levels, though apparently stable, are likely much lower than they were historically (Lage and Kornfield, 2006) and lower than more abundant populations in Canada (Spidle *et al.*, 2003). Finally, while conservation hatcheries positively influence several of these metrics, they have not yet been able to reverse the observed declines in wild adult spawners. In the following sections of this final rule, we use this information combined with recent population viability analyses to analyze the current conservation status of the GOM DPS.

Population Viability Analyses

Statistical methods can be used to quantitatively estimate population growth, and more importantly, extinction probabilities for a species. The simplest type of model to perform this can be referred to as a simple Population Viability Analysis (PVA). A simple PVA quantitatively estimates population growth and extinction probabilities for a single population (Dennis *et al.,* 1991). A simple PVA is a stochastic exponential growth model of population size. These types of models are best used with census data where the sampling variability is small compared to the population or environmental variability (Dennis *et al.,* 1991).

More complex versions of PVAs have been developed where life history characteristics, such as the age distribution within abundance measures, are accounted for within the model. In addition, a modified approach has been developed where different life history processes are compartmentalized within the model allowing for the incorporation of such things as juvenile survival rates, adult survival rates, habitat limitations/degradation, age-specific fecundity, or migration rates (Brook *et al.,* 1999; Marmontel, 1997; Ratner *et al.,* 1997; Zhang and Wang, 1999). Other complex PVAs have been developed to help managers decide between competing management regimes, whereby population growth (or conversely extinction probability) can be predicted based on changes to survival at one or more life stages. Thus, PVA models can vary widely in complexity.

Some general caveats are associated with the use and interpretation of PVAs. It is particularly important to recognize that PVAs are merely projections about what might happen in the future based on the data used to compile the model and assumptions made to address uncertainties (Ralls *et al.,* 2002; Legault, 2005). Because PVAs do not account for all potential sources of future environmental variation and because of the uncertainty inherent in predicting future conditions, especially over longer timeframes, we use PVA results cautiously and consider them as just one of the pieces of information we evaluate in determining a species' conservation status.

For the purpose of considering the risks of extinction for Atlantic salmon, we have two PVAs to consider: the simple PVA conducted by Fay *et al.* (2006), and the SalmonPVA (Legault, 2004; Legault, 2005). Both are instructive in considering the relative extinction risks to the GOM DPS. They also help clarify the importance of marine survival and hatchery supplementation in considering extinction risks. It is important to note that the Services look at estimates of how extinction probability changes over multiple timeframes and not at only a single estimate of the extinction probability for a single time period. This is consistent with the cautions noted by Fay *et al.* (2006) and Legault (2005).

Fay *et al.* (2006) used a simple PVA to assess the extinction risk to the GOM DPS as defined in this final rule. This PVA examined a number of different scenarios and provided a wide range of alternative outputs. In particular, it included three different endpoints: 1 individual, 50 individuals, and 100 individuals. An endpoint greater than zero, referred to as a quasi-extinction threshold or QET, reflects the point at which the population is considered to be functionally extinct, that is, non-recoverable due to loss of fitness of individuals, inability of individuals to carry out essential population functions, or other problems. Compared with use of an extinction threshold of zero, use of a QET would produce a higher probability of extinction over the same time period or the same probability of extinction over a shorter time period. An extinction threshold of one individual, which recognizes that there is no longer a population to model, is not typically referred to as a QET; compared to a threshold of zero individuals, it will not materially affect a model's results. Although a model's results using different extinction thresholds are not directly comparable, they do provide useful information about the condition of the population over time.

Fay *et al.* (2006) presented a range of estimated extinction risks for a variety of time horizons (0 to 100 years, with 20-year intervals). This analysis used adult return data from two time series (1980–2004 and 1991–2004) to estimate population growth and extinction probabilities for the GOM DPS. The two time series were separated because of the regime shift in marine survival observed for Atlantic salmon throughout the North Atlantic that began in 1991 (ICES, 2005). This regime shift represents a change in productivity and marine survival of Atlantic salmon in the Northwest Atlantic that has persisted to date. In short, projections for the time period 1980 to 2004 are more ''optimistic'' because those data include roughly 10 years of higher marine survival; projections for the time period 1991 to 2004 are more ''pessimistic'' because they only include observations during the recent period of lower marine survival. Using this method, Fay *et al.* (2006) provided a wide range of extinction risks, but all scenarios considered clearly trended toward extinction. Comparing the two time series clearly shows the importance of marine survival; extinction risks are more severe for the 1991 to 2004 time series (Figure 3) compared to the 1980 to 2004 time series (Figure 2).

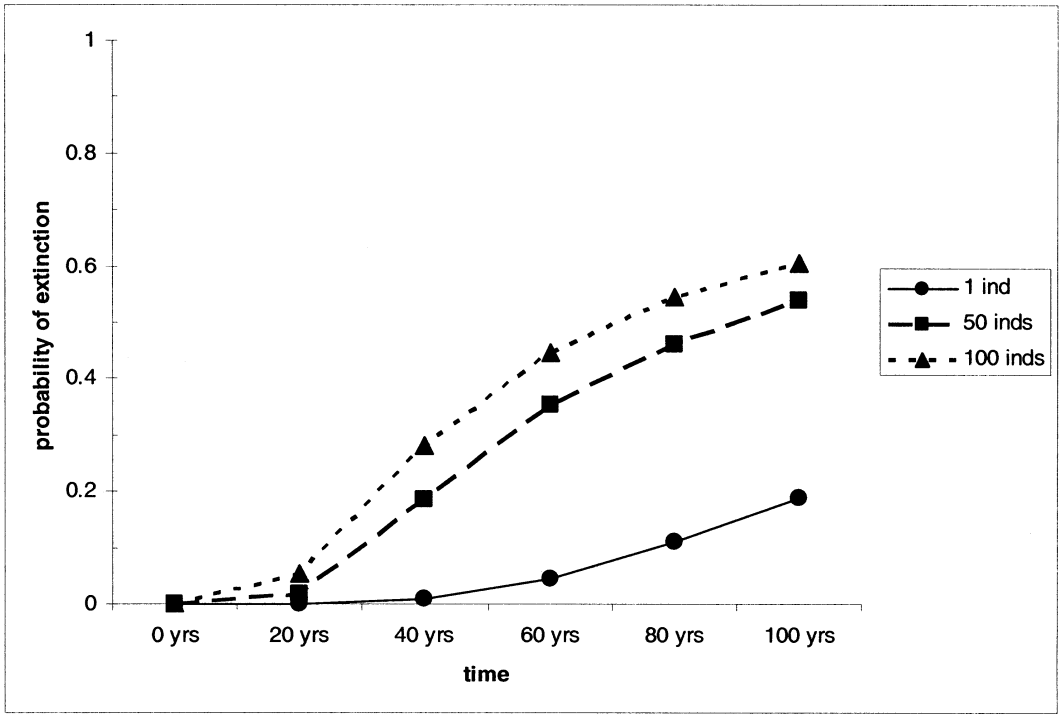

Figure 2. Estimated extinction risks based on the 1980-2004 dataset for the GOM DPS. Quasi-extinction thresholds of 1, 50, and 100 individuals were calculated at 20-year intervals (Fay et al., 2006).

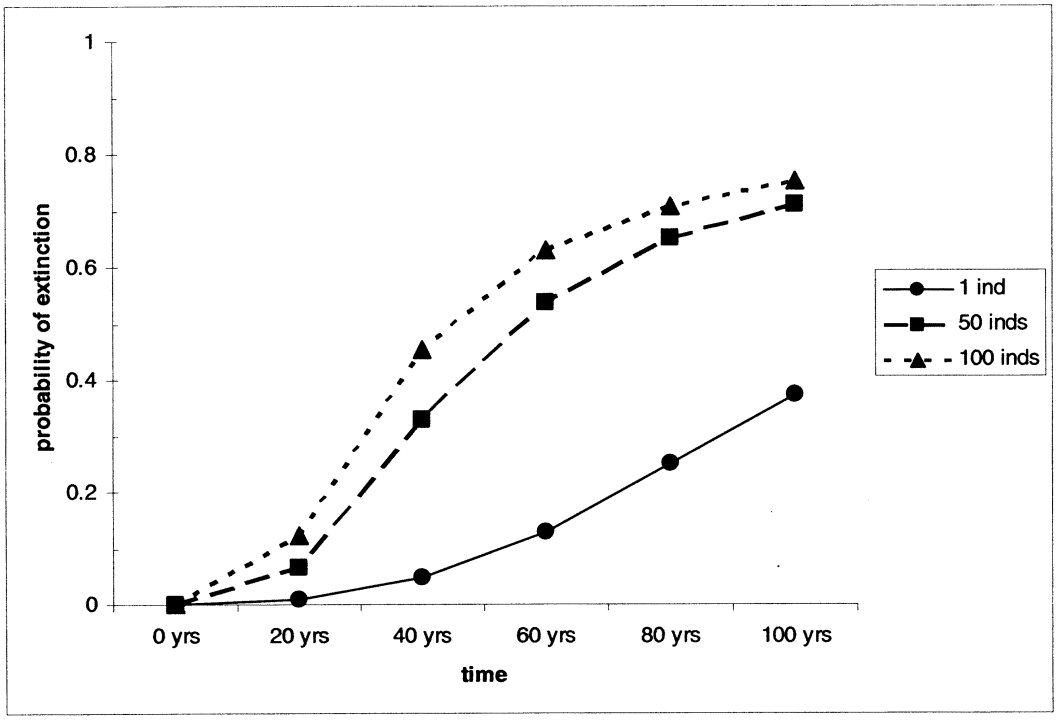

Figure 3. Estimated extinction risks based on the 1991-2004 dataset for the GOM DPS. Quasi-extinction thresholds of 1, 50, and 100 individuals were calculated at 20-year intervals (Fay et al., 2006).

The results of the Fay *et al.* (2006) PVA are based solely on the dynamics of the population during the timeframes examined (1980 to 2004) and are dependent on the following assumptions: (1) Hatchery supplementation continues into the future for up to 100 years at current levels with similar survival rates, and (2) similar threats to the species remain operative into the future (*i.e.*, environmental conditions remain unchanged). The Fay *et al.* (2006) PVA does not include the risk of disruptions to hatchery operations (*e.g.*, due to disease outbreak) or the risk of genetic effects (such as inbreeding and domestication selection described above) of hatchery supplementation.

The SalmonPVA (Legault, 2004) was developed for the GOM DPS of Atlantic salmon as listed in 2000 and does not include the Penobscot population. Given that smaller initial population sizes exacerbate the extinction process (Holmes, 2001), the probability of extinction for any given time period for the GOM DPS as defined in this final rule, which includes the Penobscot population, might be lower than the estimates produced by the model for the GOM DPS as listed in 2000. However, the Penobscot population is also in decline and subject to many of the same, as well as additional, environmental stressors. Thus, the model results are still generally instructive for this analysis. The SalmonPVA model was developed to aid in the formation of delisting criteria for the GOM DPS as listed in 2000 and to assess the efficacy of different management strategies towards this delisting goal.

The SalmonPVA (Legault, 2004, 2005) incorporates all salmon life stages, different survival rates for each stage, four different marine survival scenarios, freshwater habitat capacity, harvest, straying rates, and hatchery stocking as inputs into the model. Extinction in the SalmonPVA was defined as no fish alive at any life stage; this model, unlike the Fay *et al.* (2006) PVA, does not use QETs (*i.e.*, it does not identify an earlier point in decline at which the population would become functionally extinct).

The SalmonPVA (Legault, 2004, 2005) demonstrates that current levels of hatchery supplementation may reduce extinction risk to the GOM DPS as listed in 2000 depending on the rate of marine survival. In simulations where current low marine survival estimates increased to the mean of the last 30 years, the SalmonPVA estimated that the extinction risk in the next 100 years (for the GOM DPS as listed in 2000) was approximately 1 percent in simulations where hatchery supplementation continued for 50 years, 72 percent if continued hatchery supplementation was reduced from 50 years to 30 years, and near 100 percent if hatchery supplementation ceased in 10 years. Furthermore, in simulations using a constant low marine survival scenario representing the current environment, there was a 100 percent chance of extinction within 100 years regardless of the number of years of stocking, and extinction occurred within 20 years of the last stocking event.

Like the results of the Fay *et al.* (2006) PVA, the results of the SalmonPVA (Legault 2004, 2005) are dependent on assumptions about future conditions remaining the same. These assumptions include the level of hatchery supplementation (*i.e.*, number of fish stocked), freshwater survival, freshwater carrying capacity, and straying rates of adult fish among rivers. Also like the Fay *et al.* (2006) PVA, the SalmonPVA (Legault 2004, 2005) does not include the risk of disruptions to hatchery operations (*e.g.*, due to disease outbreak) or the genetic risks (such as inbreeding and domestication selection described above) of hatchery supplementation. It is expected that extinction would proceed much faster than indicated by the model's simulation results if and when these effects become operative in the GOM DPS. The SalmonPVA does include scenarios where hatchery operations cease (without attributing that to a cause which could be lack of funding, disease outbreak or evidence of significant genetic risks), and those scenarios illustrate that declines rapidly follow the elimination of the hatchery.

Both the Fay *et al.* (2006) and Legault (2004, 2005) PVAs assumed that hatchery supplementation would continue at its present level even when there were 100 or fewer returning adults in the Penobscot. However, hatchery supplementation (in particular, smolt stocking) could not continue at the same level in the future if returning adults fell below 150 because that is the number of adults necessary to make full use of the current conservation hatchery capacity for the smolt stocking program that currently sustains the Penobscot population (section 5.2.1 of Fay *et al.*, 2006). Smolt stocking increases the number of returning adults, so if the full number of smolts could not be produced and stocked, there would be fewer adults returning which would result in an even smaller population. Adult returns to the Penobscot constitute a substantial proportion of the total returns to the GOM DPS (Table 2).

Additional problems would arise if there were 150 or fewer adult returns to the Penobscot. If there were only 150 adult returns, it is likely all of their production would be used for smolt production (M. Bartron, USFWS, pers. comm., 2009). Fry production for the Penobscot would have to come from domestic broodstocks. If the domestic broodstocks (at GLNFH and other sources) were not able to be sustained because all the adult production was being used for smolt production, then there would be no fry production for the Penobscot. If the total production from 150 fish were used to produce smolts, and not to replenish domestic broodstocks, then those backup broodstocks for the Penobscot would no longer exist (M. Bartron, USFWS, pers. comm., 2009). Fry production in the other rivers (those maintained at CBNFH) would continue.

If there were 150 or fewer adults in the Penobscot, or if smolt stocking and fry stocking was curtailed, there would be an increased risk of genetic problems because the rate of loss of genetic diversity (and the potential for inbreeding) is inversely proportional to the effective population size (number of individuals reproducing). As the number of individuals reproducing decreases, the rate of loss of genetic diversity increases, as does the potential for inbreeding. The potential for loss of genetic diversity further increases when populations remain low for extended periods of time. A faster population decline and genetic impacts would increase the probability of extinction beyond the predictions of the two PVAs.

In addition to providing estimates of extinction probability, the Fay *et al.* (2006) and Legault (2004, 2005) PVAs also provide useful projections regarding the condition of the population over time. For example, the results of the Legault (2004, 2005) PVA demonstrate that, while the estimated extinction probability may be low under certain scenarios of long-term hatchery supplementation and improved marine survival, the population can continue to decline to extinction. For the model scenario producing an extinction probability estimate of 1 percent in 100 years if marine survival increased to the 30-year average and hatchery supplementation continued for 50 years, the replacement rate was still less than 1, indicating the simulated GOM DPS was still in decline. Also under this scenario, the model predicted that three of the eight river populations would be extirpated.

In summary, PVA results must be interpreted carefully. The two PVAs considered here do not include risks associated with other sources of environmental variation (*e.g.*, aquaculture escapement and disease

outbreak in the wild) identified in the Summary of Factors Affecting the Species section. Because these PVAs do not account for all potential sources of future environmental variation, and because of the uncertainty inherent in predicting future conditions, especially over longer timeframes, we do not consider the numerical estimates of extinction probabilities in the PVA of Fay *et al.* (2006) and the SalmonPVA (Legault 2004, 2005) to be the actual extinction probabilities of the newly defined GOM DPS.

We have no information to indicate that marine survival will significantly improve. We find that, based on the available trend information, it is most reasonable to assume that marine survival will continue at approximately its current low level. Therefore, we conclude that the results of the Fay *et al.* (2006) PVA and the Legault (2004, 2005) PVA that are based on marine survival values above the current low level are unrealistic.

Also, based on information on diseases (see Factor C in the Factors Affecting the Species section of this final rule), or concerns such as catastrophic loss to water supply or feed contamination (P. Santavy, USFWS, pers. comm., January 23, 2009), there is a risk of disruptions to hatchery operations. Based on the information on long-term hatchery operations (NRC, 2004; Fay *et al.*, 2006, at section 8.5.1; SEI, 2007), there is a risk of genetic problems from hatchery supplementation. At present, these risks are not quantifiable, and are therefore not accounted for in either PVA. However, we find that these risks are substantial in the long term because of the dependence on the conservation hatchery program.

Because the models do not include the risk of disruptions to hatchery operations, the risk of genetic effects of hatchery supplementation, and risks associated with other sources of environmental variation, we conclude that all of the results of the Fay *et al.* (2006) PVA and the Legault (2004, 2005) PVA may considerably underestimate the probability of extinction. Nevertheless, the Fay *et al.* (2006) PVA and the Legault (2004, 2005) SalmonPVA do tell us much about certain factors affecting the status of the GOM DPS as defined in this rule, especially the significance of hatchery supplementation and marine survival, and we use this information to provide important context for evaluating threats in the following sections of this rule.

Previous Federal Actions

In 1991, the FWS designated Atlantic salmon in five rivers in Downeast Maine (the Narraguagus, Pleasant, Machias, East Machias, and Dennys Rivers) as Category 2 candidate species under the ESA (56 FR 58804; November 21, 1991). Both Services received identical petitions in October and November of 1993 to list the Atlantic salmon (*Salmo salar*) throughout its historic range in the contiguous United States under the ESA. On January 20, 1994, the Services found that the petition presented substantial scientific information indicating that the petitioned action may be warranted (59 FR 3067).

The Services conducted a joint review of the species in January 1995, and found that the available biological information indicated that the species described in the petition, Atlantic salmon throughout its range in the United States, did not meet the definition of ''species'' under the ESA. Therefore, the Services concluded that the petitioned action to list Atlantic salmon throughout its historical United States range was not warranted (60 FR 14410; March 17, 1995). In the same notice, the Services determined that a DPS consisting of populations in seven rivers (the Dennys, East Machias, Machias, Pleasant, Narraguagus, Ducktrap, and Sheepscot Rivers) did warrant listing under the ESA. On September 29, 1995, after reviewing the information in the status review, as well as state and foreign efforts to protect the species, the Services proposed to list the seven rivers DPS as a threatened species under the ESA (60 FR 50530; September 29, 1995). The proposed rule contained a special rule under section 4(d) of the ESA which would have allowed for a State plan, approved by the Services, to define the manner in which certain activities could be conducted without violating the ESA. In response to that special provision in the proposed rule, the Governor of Maine convened a task force that developed a Conservation Plan for Atlantic Salmon in the seven rivers. That Conservation Plan was submitted to the Services in March 1997.

The Services reviewed information submitted from the public, current information on population levels, and assessed the adequacy of the Maine Atlantic Salmon Conservation Plan, and, on December 18, 1997, withdrew the proposed rule to list the seven rivers DPS of Atlantic salmon as threatened under the ESA (62 FR 66325). In that withdrawal notice, the Services redefined the species under analysis as the GOM DPS to acknowledge the possibility that other populations of Atlantic salmon could be added to the DPS if they were found to be naturally reproducing and to have wild stock characteristics. NMFS maintained the GOM DPS as a candidate species to acknowledge ongoing concern over the species' status. In the 1997 withdrawal notice, the Services outlined three circumstances under which the process for listing the GOM DPS of Atlantic salmon under the ESA would be reinitiated: (1) An emergency which poses a significant risk to the well-being of the GOM DPS is identified and not immediately and adequately addressed; (2) the biological status of the GOM DPS is such that the DPS is in danger of extinction throughout all or a significant portion of its range; or (3) the biological status of the GOM DPS is such that the DPS is likely to become endangered in the foreseeable future throughout all or a significant portion of its range.

The Services received the State of Maine 1998 Annual Progress Report on implementation of the Conservation Plan in January 1999. On January 20, 1999, the Services invited comment from the public on the first annual report and other information on protective measures and the status of the species. The comment period remained open until March 8, 1999 (64 FR 3067). The Services reviewed all comments submitted by the public and provided a summary of those, along with their own comments, to the State of Maine in March 1999. The State of Maine responded to the Services' comments on April 13, 1999.

In order to conduct a comprehensive review of the protective measures in place and the status of the species, as was committed to in the 1997 withdrawal notice, the BRT was reconvened to update the January 1995 Status Review for Atlantic salmon. The 1999 Status Review was made available on October 19, 1999 (64 FR 56297). On November 17, 1999, the Services published a proposed rule to list as endangered the GOM Atlantic salmon DPS, which was defined to include all naturally reproducing remnant populations of Atlantic salmon from the Kennebec River downstream of the former Edwards Dam site northward to the mouth of the St. Croix River at the United States-Canada border. At that time, the Services stated that, to date, they had determined that these populations were found in the Dennys, East Machias, Machias, Pleasant, Narraguagus, Sheepscot, and Ducktrap Rivers and in Cove Brook, all in eastern Maine. On November 17, 2000 (65 FR 69459), the Services published a final rule listing the GOM Atlantic salmon

DPS as endangered. In that final rule, we noted that a determination as to the appropriateness of adding the mainstem and upper tributaries of the Penobscot River to the DPS would be made upon completion of genetic analyses.

The 2006 Status Review for Anadromous Atlantic Salmon (*Salmo salar*) in the United States (Fay *et al.*, 2006) assessed genetic and life history information and concluded that the GOM DPS as defined in 2000 should be redefined to encompass the Penobscot, Kennebec, and Androscoggin Rivers.

We received a petition to list the ''Kennebec River population of anadromous Atlantic salmon'' as an endangered species under the ESA on May 11, 2005. NMFS published a notice in the **Federal Register** on November 14, 2006 (71 FR 66298), concluding that the petitioners (Timothy Watts, Douglas Watts, the Friends of Merrymeeting Bay, and the Maine Toxics Action Coalition) presented substantial scientific information indicating that the petitioned action may be warranted.

On September 3, 2008 (73 FR 51415), we proposed to revise the extent of the GOM DPS and list the DPS as endangered; we also announced our 12-month finding that listing was warranted for the petition to list Atlantic salmon in the Kennebec River as endangered. On September 5, 2008 (73 FR 51747), NMFS proposed to designate critical habitat for the revised GOM DPS of Atlantic salmon.

The Services jointly administer the ESA as it applies to anadromous Atlantic salmon. In 2006, the USFWS Region 5 and NMFS Northeast Region entered into a Statement of Cooperation to divide responsibility for ESA implementation with respect to Atlantic salmon in order to enhance efficiency and effectiveness. Experience implementing this agreement, changes in structure of the recovery program, and anticipated increases in workload associated with this listing action caused the Services to revisit the 2006 agreement. A new Statement of Cooperation has been signed which clarifies roles and responsibilities between the Services. The Statement of Cooperation assigns the following responsibilities to NMFS: critical habitat designation; section 7 consultations (for both the species and critical habitat) on activities within estuaries and marine waters; ESA activities and actions to address dams; assessment activities in the estuary and marine environment; and international science and management. The Statement of Cooperation assigns the following responsibilities to USFWS: Administrative lead for development of a new recovery plan; section 10 recovery permits; section 10 habitat conservation plans (for all activities except dams); section 7 consultations (for both the species and critical habitat) on activities in freshwater (except dams); and the conservation hatchery program.

Summary of Comments

With the publication of the proposed listing determination for the GOM DPS on September 3, 2008, we announced a 90-day public comment period extending through December 2, 2008. We held two public hearings at two different locations to provide additional opportunities and formats to receive public input as announced on October 21, 2008 (73 FR 62459). A joint NMFS/FWS policy requires us to solicit independent expert review from at least three qualified specialists, concurrent with the public comment period (59 FR 34270; July 1, 1994). In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure, and opportunities for public input. The OMB Peer Review Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to provide public oversight on the quality of agency information, analyses, and regulatory activities, and applies to information disseminated on or after June 16, 2005. We solicited technical review of the proposed listing determination from four independent experts, and received reviews from two of these experts. The independent expert review under the joint NMFS/FWS peer review policy collectively satisfies the requirements of the OMB Peer Review Bulletin and the joint NMFS/FWS peer review policy.

Comments were submitted from interested individuals; state, Federal and tribal agencies; fishing groups; environmental organizations; industry groups; and peer reviewers with scientific expertise. The summary of comments and our responses below are organized into seven general categories: (1) Tribal comments (2) peer review comments; (3) comments on the delineation of the GOM DPS; (4) comments on the conservation status of the GOM DPS; (5) comments on the Services' identification and consideration of specific threats; (6) comments on the consideration of conservation efforts in general as well as in relation to the conservation status of the GOM DPS; and (7) comments on the Federal management of the GOM DPS.

During the public comment period, the Services met with a number of groups to address specific concerns and questions on the proposed listing decision. The hydropower industry, agriculture industry, and various state agencies were among the groups with which the Services met. These discussions focused on clarification of information in the proposed rule and the potential implications of the listing decision on Atlantic salmon management and the ongoing operations of industry. These meetings were not held to solicit or receive comments on the proposed rule, but rather to provide clarification. Meeting participants were instructed to submit comments on the proposed rule through the regular means, and those are identified and addressed in the comments section of this rule. The Services also met with representatives from some of the Maine Tribes, including the Penobscot Indian Nation, The Houlton Band of Maliseets, the Aroostook Band of Micmacs, and the Passamaquoddy Tribe. The Services appreciate the importance of our Federal trust responsibilities and the spirit of government-to-government consultation embodied in Secretarial Order 3206 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act) and Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments). The focus of the government-to-government consultation was on the implications of the listing decision on Atlantic salmon management and exploring options to further enhance our cooperation on Atlantic salmon recovery.

Tribal Comments

Comment 1: The Penobscot Indian Nation commented that it maintains its right to directly take Atlantic salmon for sustenance purposes. Penobscot Indian Nation members have not lethally taken an Atlantic salmon since 1988 at which time two Atlantic salmon were harvested for ceremonial purposes. The Penobscot Indian Nation has not exercised its right to take any Atlantic salmon for traditional purposes since that time based upon concerns about the health of the Penobscot Atlantic salmon population. The Penobscot Indian Nation stated that it will continue to abstain from taking any Atlantic salmon until the status of the Penobscot population is healthy enough to be able to sustain some level of harvest.

Response: The Services appreciate the importance of Atlantic salmon to the Penobscot Indian Nation in particular as well as other Maine Tribes. The Services recognize both the Penobscot Indian

Nation's tribal rights and the Services' responsibility to implement the ESA. Given that Penobscot Indian Nation has not exercised its right to take Atlantic salmon since 1988 on a voluntary basis, the Services believe that there is no conflict provided the Penobscot Indian Nation continues to voluntarily abstain from taking based upon continued concerns about the conservation status of the Penobscot population.

Comment 2: The Penobscot Indian Nation commented that it would not take any position on whether the species should be listed as threatened or endangered. The Penobscot Indian Nation defers to the Services' expertise to make that determination.

Response: The Services have provided justification for the listing decision in this final rule.

Peer Review Comments

Comment 3: Both reviewers agreed with the delineation of the GOM DPS of Atlantic salmon. However, both reviewers felt there were parts of the text that could be further clarified, specifically consideration of available genetic data for the northern and southern boundaries in relation to the zoogeographic information used.

Response: The Services received comments from both peer reviewers and the general public regarding necessary clarification of the data used to support the southern boundary delineation in particular. The Services have clarified the text in the DPS delineation section of this final rule.

Comment 4: One of the peer reviewers stated that the discussion of the population PVA was perhaps overemphasized and could be simplified while still communicating extinction risk. The reviewer notes that there are simpler deterministic equilibrium models that could have been used to more simply state extinction risk.

Response: The Services have clarified the text of the rule addressing PVAs and the projections. The Services acknowledge that there are a number of different types of models that could have been used to project extinction risk or demonstrate the conservation status of the species. The Services chose the PVA models because they are useful in assessing extinction risks. Further, the Atlantic salmon conservation and management community in Maine are more familiar with them than with other models, given the public's previous exposure to them during the recovery planning process and the development of the 2006 Status Review. We agree with the peer reviewer that the PVA is just one piece of information considered in the listing determination; in the text of this final rule, we have clarified our findings with respect to the PVAs and how they factor into the biological status of the species.

Comment 5: Both reviewers noted that the proposed rule lacked necessary description for how threats were categorized as either primary or secondary threats. Neither felt that this was an incorrect way to communicate the magnitude of the threat; rather, the basis for this determination should be better explained and supported in the text.

Response: The Services agree that the description of threats as primary or secondary could have been better explained in the proposed rule. Upon review, the Services decided to take a different approach to describing the magnitude of the threat and its influence on the conservation status of the GOM DPS under the ESA. Rather than comparing the magnitude of the threats to each other, we have identified the relative impact of each of the threats on the species and its habitat. The text has been modified accordingly.

Comment 6: One of the reviewers had concerns about the discussion of artificial propagation under Factor E (Other Natural or Manmade Factors Affecting its Continued Existence). While the reviewer agrees with the Services' conclusion that the conservation hatchery program is reducing the risk of extinction of the GOM DPS, he highlighted areas where the text should be clarified. Specifically, the short- and long-term goals of the conservation hatchery program should be better described in relation to how the program is currently being conducted.

Response: Upon closer review and in response to the peer review, the Services have changed the way in which artificial propagation and specifically the conservation hatchery program are described and considered. While there are both positive and negative effects resulting from any artificial propagation program, the Services have determined that it would be more appropriate to move the discussion of the role of the conservation hatchery program and its influence on the current status of the species and recovery to the section of the rule describing the status of the species rather than describing it in the section pertaining to the threats. The Services have also revised the description of the program and its role in recovery of the GOM DPS in response to comments received from both peer reviewers and the general public.

Comment 7: One reviewer recommended minor clarifications to the text in Factor E addressing diadromous fish communities, marine survival, and competition.

Response: The Services have clarified the text in these sections to be responsive to comments from both peer reviewers and the general public.

Comment 8: Both reviewers commented that the section applying the *Policy for Evaluation of Conservation Efforts when making Listing Decisions (PECE)* to conservation actions was unclear and seemed incomplete. They questioned the analysis of only one conservation initiative, the Penobscot River Restoration Project (PRRP).

Response: The Services agree that analysis of conservation efforts under PECE is more transparent if a complete analysis of a variety of efforts is included in the rule. We have revised the section addressing analysis of conservation actions.

Comment 9: Both reviewers commented that the determination to list the GOM DPS of Atlantic salmon as endangered was sound and only suggested minor clarifications to the text.

Response: The Services have made minor changes and clarified the text in this section.

Public Comments

Comment 10: Many commenters believe that certain river systems, particularly the Androscoggin and the Union, should not be included within the GOM DPS boundaries. They argue that we erred in using different criteria (zoogeographic and genetic) to delineate the southern and northern boundaries of the DPS and that we should delay the decision to include the Androscoggin in the DPS until the naturally reared population in Androscoggin can be genetically characterized. Commenters also suggest that river systems where the species has been extirpated, such as the Union, should not be included within the DPS range.

Response: The 1996 Interagency Policy Regarding the Recognition of Distinct Vertebrate Populations Under the Endangered Species Act (61 FR 4722) (DPS Policy) states that a population segment may be considered discrete in relation to the remainder of the species to which it belongs if ''it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological or behavioral factors. Quantitative measures of genetic or morphological discontinuity may provide evidence of this separation.'' The DPS Policy does not restrict the Services to using only one measure to

define discreteness of a population segment. In fact, the introduction to the second element (significance) that must be met in evaluating whether a population qualifies as a DPS says that a population segment may be considered discrete based on ''one or more'' of the discreteness conditions.

As more thoroughly described in the ''Review of Species Delineation'' section of this final rule, genetic data were available for us to delineate the northern boundary of the GOM DPS. These data show clear genetic differentiation between populations inhabiting rivers in Maine and rivers in New Brunswick, with the Dennys River population clustering more closely with the Maine population and the St. Croix River population clustering more closely with populations in New Brunswick. Therefore, we used the Dennys watershed as the northern boundary of the DPS. However, because of the combination of low numbers of Atlantic salmon in some rivers (*e.g.*, only three naturally reared adult returns to the Androscoggin River (Table 3)) and the complete extirpation of the native stock in other rivers (*e.g.*, Merrimack River), complete genetic data are not, and may never be, available for us to genetically characterize these populations.

In the absence of clear genetic information to define the southern boundary of the GOM DPS, we used ecological factors in addition to the genetic factors described above. In particular, we used the zoogeographic boundary (the Penobscot-Kennebec-Androscoggin EDU and the Laurentian Mixed Forest Province) that ecologically separates the Androscoggin watershed from watersheds to the south (*e.g.*, Saco, Merrimack, and Connecticut watersheds). EDUs, defined by Olivero (2003), are aggregations of watersheds with similar zoogeographic history, physiographic conditions, climatic characteristics, and basin geography. EDUs generally have similar physiographic and climatic conditions (Higgins *et al.*, 2005). These differences would influence the structure and function of aquatic ecosystems (Vannote *et al.*,1980; Cushing *et al.*, 1983; Minshall *et al.*, 1983; Cummins *et al.*, 1984; Minshall *et al.*, 1985; Waters, 1995) and create a different environment for the development of local adaptations than rivers to the south. Therefore, we believe this zoogeographic boundary sufficiently satisfies the criteria to define discreteness for the southern edge of the GOM DPS.

In listing the GOM DPS, our goal is ultimately to recover the species so it no longer requires the protection of the ESA. Therefore, we have delineated boundaries for the GOM DPS that include all the areas of current and historical occupation of Atlantic salmon where those salmon would be identified as belonging to the GOM DPS. During recovery planning, we will further evaluate the recovery needs of the GOM DPS. It is likely that different levels of attention will be paid to the recovery of the DPS in different watersheds, based in part on the threats within a particular watershed and the habitat potential within a watershed. Delineating the entire GOM DPS conserves this ecosystem for Atlantic salmon survival and recovery, in addition to supporting straying, providing refugia, and buffering against catastrophic events.

Comment 11: Some commenters suggest that the boundaries of the DPS delineation should not extend into watersheds that were historically unoccupied by Atlantic salmon because they are upstream of historical, natural barriers (*e.g.*, waterfalls).

Response: Based on the comments received, analyses by NMFS (2008), and information contained in the 2006 Status Review, we delimited the freshwater range of the GOM DPS to include only those areas downstream of substantial barrier falls. For this final rule, we have modified the geographic boundaries of the freshwater range of the GOM DPS in the Androscoggin, Kennebec, and Penobscot Basins in the following ways: All freshwater bodies in the Androscoggin Basin are included up to Rumford Falls on the Androscoggin River and up to Snow Falls on the Little Androscoggin River; all freshwater bodies in the Kennebec Basin are included up to Grand Falls on the Dead River and the un-named falls (currently impounded by Indian Pond Dam) immediately above the Kennebec River Gorge; and all freshwater bodies in the Penobscot Basin are included up to Big Niagara Falls on Nesowadnehunk Stream, Grand Pitch on Webster Brook, and Grand Falls on the Passadumkeag River. See the ''Delineating Geographic Boundaries'' section of this final rule.

Comment 12: Many commenters stated that the Services did not accurately determine the conservation status of the GOM DPS. These commenters disagreed with the Services' proposal that the GOM DPS should be listed as endangered under the ESA. Instead, they argued that a threatened listing determination was more appropriate. The definition of endangered is ''in danger of extinction throughout all or a significant portion of its range.'' Several commenters argued the results of the PVA conducted by Legault (2004, 2005) demonstrated that the GOM DPS had a less than one percent chance of extinction provided that hatchery supplementation continued into the future. Thus, some commenters felt that the definition of threatened, ''likely to become endangered * * *'' was more appropriate given the role of hatcheries in preventing extinction. Commenters also cited the success of the conservation hatchery program as evidenced by the status of rivers within the 2000 GOM DPS that were supported by hatchery supplementation versus those that were not. The replacement rate reported by the USASAC was also cited as evidence of the positive contribution of the hatchery program to returns within the GOM DPS.

Response: We agree that the conservation hatcheries (CBNFH and GLNFH) provide a buffer against short-term extinction risks. Without these facilities in place, the status of the GOM DPS would be even more dire. However, as described in the ''Population Status of the GOM DPS'' section of this final rule, only three of the four population attributes of interest (abundance, spatial structure, and genetic diversity) are enhanced by the conservation hatcheries. In particular, the lack of any evidence that hatchery fish have the potential to result in wild returns over successive generations remains a significant concern. While the increase in replacement rate reported in 2007 by the USASAC is a positive sign, the overall trend remains negative when taken together. Further, 1 year of positive population growth is insufficient to justify threatened status.

The extended timeframes for extinction (provided that hatchery supplementation continues) projected by Legault (2005) are further evidence of the buffering effect of hatcheries. However, these projections do not include any consideration of the negative effects of reliance on hatcheries over successive generations. Recent evidence suggests that the negative effects of domestication, inbreeding depression, and outbreeding depression can accrue over just a few generations (Araki *et al.*, 2007). While we do not believe these negative effects are substantially reducing the long-term viability of the GOM DPS at this time, each successive generation will likely have higher risks of reduced fitness because of these effects. These additive risks over time are not modeled or otherwise accounted for in the extinction risks scenarios described by Legault (2005). The PVA results of Legault demonstrate that extinction occurs quickly when the conservation hatchery is eliminated. This provides

further evidence that the wild population is currently in danger of extinction.

Finally, the SalmonPVA (Legault 2005) showed that at the constant low marine survival scenario representing the current environment, there was a 100 percent chance of extinction within 100 years regardless of the number of years of stocking, and extinction occurred within 20 years of the last stocking event. Legault (2005) demonstrated that an increase in marine survival substantially decreased the extinction probabilities. The scenario in which Legault found there to be a 1 percent chance of extinction assumed an increase in marine survival to the high of the previous 30 years. Unfortunately, we have no information to indicate that marine survival will significantly improve; therefore, there is no scientifically sound basis for assuming there is only a one percent chance of the GOM DPS going extinct.

Comment 13: One commenter felt that both hatchery-origin and naturally reared Atlantic salmon should be equally weighted in terms of their population contribution to the GOM DPS. This commenter felt that the inclusion of both hatchery-origin and naturally reared Atlantic salmon in the GOM DPS was inconsistent with the way in which the Services weighted the relative contribution of each group to recovery. The Services' determination of the conservation status of the GOM DPS placed a higher weight on naturally reared fish in terms of their contribution to recovery versus hatchery origin fish (fish stocked as parr, smolts, or adults).

Response: The stated purpose of the ESA is ''to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved'' (16 U.S.C. § 1531(b)). Using captive propagation as a recovery tool is clearly warranted when necessary, as in the case of the GOM DPS. However, the intent of the ESA is quite clear: the ultimate goal of species recovery efforts should be recovery in the wild, free from human intervention. While CBNFH and GLNFH clearly reduce the immediate risk of extinction of the GOM DPS, they have not been shown to substantially contribute to recovery in the wild. The influence of hatcheries on productivity is not known with certainty, but overall productivity (even with hatchery supplementation) is quite low. Hatchery fish are included in the GOM DPS because they are essential to recovery, and the sole purpose of the conservation hatchery is recovery. But, recovery means recovery in the wild, so the goal of the hatchery is to, over time, increase the percentage of returns that are of wild origin to the point that the GOM DPS becomes self-sustaining and is no longer dependent on the hatchery. Over time, more adult returns should successfully spawn in the wild, resulting in replacement rates above 1.0. However, the idea that adult returns from hatchery contributions result in more spawners and, ultimately, more truly wild-origin adult returns, remains an untested hypothesis. The National Research Council (NRC, 2004) and the Sustainable Ecosystems Institute (SEI, 2007) identified this as a key limitation in available data on the recovery efforts of salmon in Maine. Without this information, it is impossible to estimate, with any certainty, the effect of hatcheries on this key population attribute (productivity). The conservation hatchery has assisted in slowing the decline and helped stabilize populations at low levels, but has not contributed to an increase in the overall abundance of wild salmon.

Comment 14: Several commenters felt that the Services' listing determination placed too much emphasis on the potential for a catastrophic failure at the conservation hatchery facilities. Commenters acknowledged that this may have been an issue when the Services initially listed the GOM DPS in 2000, given that all broodstock were held at CBNFH. However, the expansion of the GOM DPS to include the Penobscot and other rivers means that there are now several facilities that house broodstock (*e.g.*, GLNFH, the USDA facility, and the Cooke Facility on the Kennebec). Thus, loss of all broodstock due to a catastrophic failure is highly unlikely.

Response: The Services agree that the loss of all potential broodstock would be extremely unlikely. However, it would not take the loss of all broodstock to significantly jeopardize the long-term viability of the GOM DPS. Catastrophic broodstock loss or a catastrophic loss of fry, parr, or smolt cohorts would result in a decrease in effective population size, loss of genetic diversity, and a multi-year lag while life stages rebuild, during which time there would be limited or no hatchery production or stocking.

Domestic broodstock for the Penobscot is currently maintained at facilities in addition to GLNFH. These domestic broodstocks should be viewed as backups. These sources are meant to be replenished annually (*i.e.,* new domestic broodstock lines are created each year) for GLNFH to reduce long-term selection to the hatchery environment. If there was a situation where the numbers of adult returns were reduced to 150 or less, then all production would go toward smolt production and not to fry stocking or to replenish domestic broodstocks. These backup broodstocks would no longer exist (M. Bartron, USFWS, pers. comm., 2009). If these domestic broodstocks were used to propagate future domestic broodstocks, there would be greater concerns about the decreased fitness of their offspring in the wild from successive generations of selection to captivity.

The Services have concluded that the conservation hatcheries significantly contribute to the maintenance of the genetic diversity of the GOM DPS. However, there are both long-term and short-term risks of reliance on hatcheries that have been considered above in the ''Population Status of the GOM DPS'' section of this final rule. In addition, recent events provide additional evidence of the potential for catastrophic events to further exacerbate extinction risks. In January 2009, significant mortality occurred to eggs of Penobscot origin at CBNFH. Low egg survival rates in the Penobscot population required the use of the domestic line for smolt production (50,000) for the first time ever. The relative fitness rate of the sea-run line has not been compared to the domestic line, so the demographic effects are unpredictable. The cause for the low egg survival rate is unknown, but is being investigated at the time of writing of this rule.

Comment 15: Several commenters felt that by increasing the geographic scope of the GOM DPS to include additional populations, one being the Penobscot, which has the highest returns to the DPS, the extinction risk is substantially reduced. Therefore, these commenters felt that a threatened listing determination is warranted.

Response: All things being equal, larger populations do have lower extinction risks. However, the inclusion of the Penobscot population in the GOM DPS does not alter the trends in abundance, which are pointing toward extinction. The addition of the Penobscot population does provide some measure of security from immediate extinction risks, but does not reverse the long-term trend which is toward extinction.

Comment 16: At least one commenter argued that a threatened listing determination could be justified based upon the returns to both the Penobscot and Downeast Salmon Habitat Recovery Units (SHRU). These two SHRUs, according to the commenter, satisfy the minimum recovery criteria by having at

least 500 (naturally reared and hatchery origin) salmon within each SHRU.

Response: In developing its draft recovery criteria for use in the critical habitat designation process, NMFS specifically noted that in order to be eligible for recovery, SHRUs would not only need to meet a minimum population size of 500 individuals, but also show a positive population growth rate for at least two generations (10 years). Further, only wild-origin salmon are included in these measures because the goal of recovery is to achieve a self-sustaining population; a population that relies on hatchery stocking is not self-sustaining and therefore does not contribute to achievement of the recovery criteria. These criteria have clearly not been met in either case given the long-term downward trends in abundance and preponderance of hatchery-origin salmon composing the GOM DPS as described throughout this final rule. NMFS' draft recovery guidelines (2008) also state that in order to delist the GOM DPS, the threats identified at the time of listing must be addressed.

Comment 17: Many commenters argued that the PVA results of Legault (2004, 2005) and Fay *et al.* (2006), coupled with low returns and poor marine survival, demonstrate that the Services are correct in their proposal to list the GOM DPS as endangered under the ESA. These commenters felt that the intent behind the ESA is to recover wild populations and that hatchery origin fish are only a temporary option until the wild population recovers.

Response: We concur. We also recognize the long-term risks of reliance on hatcheries that are not accounted for in either PVA. Therefore, we are issuing this final rule to list the GOM DPS of Atlantic salmon as endangered.

Comment 18: A small number of commenters argued against listing the expanded GOM DPS at all. They argued that the rivers included in the expansion are heavily stocked and do not represent self-sustaining populations. They also stated that existing regulatory mechanisms are sufficiently protective, and thus, listing under the ESA is not necessary.

Response: Many endangered species are currently not self-sustaining. In fact, this is a key factor in determining whether a species should be listed; self-sustaining populations are generally less likely to need the protection of the ESA, depending on the threats facing the species. The Services do recognize the long history of stocking to support Atlantic salmon recovery in Maine. We describe both the positive and negative effects of hatchery supplementation in the ''Population Status of the GOM DPS'' section of this final rule. The weight of the available genetic, life history, and ecological data clearly indicates that the GOM DPS (including conservation hatchery populations used to supplement natural populations) satisfies both the discreteness and significance criteria of the DPS Policy, and therefore, is a DPS. The fact that the GOM DPS is not self-sustaining with the existing regulatory mechanisms and is trending toward extinction indicates it warrants the protection of the ESA.

Comment 19: Several commenters felt that the threat posed by dams was overstated. Specifically, they disagree with the Services' assertion that current fish passage technology results in a high level of mortality and that dams contribute to significant changes in fish assemblages and predation. One commenter stated that in focusing on the threat posed by dams, the Services failed to recognize hydropower as a clean source of energy production.

Response: The Services disagree that the threat posed by dams is overstated. The National Research Council stated in 2004 that the greatest impediment to self-sustaining Atlantic salmon populations in Maine is obstructed fish passage and degraded habitat caused by dams. There are many studies that support this conclusion that are reviewed and cited in Section 8 of Fay *et al.* (2006). Dams result in direct loss of production habitat, alteration of hydrology and geomorphology, interruption of natural sediment and debris transport, and changes in temperature regimes (Wheaton *et al.,* 2004). Riverine areas above impoundments are typically replaced by lacustrine habitat following construction. Dramatic changes to both upstream and downstream habitat directly result in changes in the composition of aquatic communities, predator/prey assemblages, and species composition (NRC, 2004; Fay *et al.,* 2006; Holbrook, 2007). Upstream changes in habitat are known to create conditions that are ideal for known predators of Atlantic salmon such as chain pickerel, smallmouth bass, and avian predators like double crested comorants (Fay *et al.,* 2006). Furthermore, dams not only change predator-prey assemblages, but dam passage also negatively affects predator detection and avoidance in salmonids (Raymond, 1979; Mesa, 1994). Adults may also be susceptible to predation when they are attempting to locate and pass an upstream passage facility at a dam when stressed by higher summer temperatures (Power and McCleave, 1980).

Even highly effective passage facilities cause Atlantic salmon mortality. Passage inefficiency and delays occur at biologically significant levels, resulting in incremental losses of pre-spawn adults, smolts, and kelts (a life stage after Atlantic salmon spawn). Dams are known to typically injure or kill between 10 and 30 percent of all fish entrained at turbines (EPRI, 1992). With rivers containing multiple hydropower dams, these cumulative losses could compromise entire year classes of Atlantic salmon. Studies in the Columbia River system have shown that fish generally take longer to pass a dam on a second attempt after fallback compared to the first (Bjornn *et al.,* 1999). Thus, cumulative losses at passage facilities can be significant and are an important consideration.

The Services do recognize that hydropower does not contribute to air pollution as do many other energy sources. However, dams remain a direct and significant threat to Atlantic salmon.

Comment 20: Several commenters stated that existing recreational fishing regulations in the State of Maine are sufficiently protective of Atlantic salmon. Specifically, minimum and maximum length limits are cited for landlocked salmon and brown trout, as well as gear restrictions, area closures, and outreach programs to educate anglers on identification and mandatory regulations. Several of these commenters highlighted the importance of the support of the angling community to the conservation and recovery effort. They encouraged the Services to coordinate with the angling community prior to enacting regulations to ensure that unnecessary regulations are not enacted and that angling opportunities are made available when biologically appropriate and that any changes are consistent with the *1996 Policy for Conserving Species Listed or Proposed for Listing Under the ESA While Providing and Enhancing Recreational Fishing Opportunities*. Several commenters directly stated that the health of the Penobscot population could indeed support a directed catch and release fishery.

Response: There are a number of minimum and maximum length limits that help reduce the threat of take of juvenile and adult anadromous Atlantic salmon. Similarly, closures have been enforced in certain areas where anadromous Atlantic salmon may be particularly susceptible to take. However, the Services believe that many of these regulations are still not sufficiently protective of outmigrating smolts and of adults. Minimum and

maximum length limits should be adjusted to be more protective, specifically, the maximum length limit of 25 inches (63.5 cm) for landlocked salmon should be decreased to 16 inches (40.6 cm) in certain areas. Closures should be prompted by the presence of adult Atlantic salmon in certain areas such as thermal refugia, overwintering areas, and holding pools. Some closures mandated by the State have been the result of emergency action following the lethal take of Atlantic salmon. A proactive approach to closures and regulation implementation will be more effective in terms of salmon recovery.

The Services recognize that the angling community has lent significant support to the conservation and recovery of Atlantic salmon in the GOM DPS. We believe that we have been very inclusive and transparent with respect to the angling community and issues of concern. We invited representatives of angler organizations to participate as members of the Atlantic Salmon Recovery Team and have been engaged and participated in critical discussions in other forums such as the Maine Atlantic Salmon Technical Advisory Committee and NASCO. We will continue to coordinate and collaborate with the angling community as we move forward with recovery and management of the GOM DPS. We believe that we have been consistent with the *1996 Policy for Conserving Species Listed or Proposed for Listing Under the ESA while Providing and Enhancing Recreational Fishing Opportunities* in our communication and coordination with the angling community, and we will continue to be consistent in the future.

It is not biologically appropriate, at this time, to allow a directed catch and release fishery on the Penobscot River. The Atlantic salmon population in the Penobscot River is highly dependent on hatchery stocking; broodstock goals have not been met in most recent years; and the population is less than 10 percent of its spawning escapement target. Given these low numbers, it is important to meet broodstock goals and also to allow some returning adults to spawn naturally in the river. Decreasing the chances of reaching both of these goals by allowing targeted fishing on returning adults does not further the conservation of the species. There also are legal restrictions on targeted fishing for a listed species.

Comment 21: Maine's Department of Inland Fish and Wildlife (MIFW) stocks a variety of fish species to provide angling opportunities to Maine citizens. The bulk of the comments on MIFW stocking programs were submitted as comments on Factor B (Overutilization for Commercial, Recreational, Scientific and Educational Purposes). While stocking programs do cause take of Atlantic salmon due to angling, they also can have a negative impact on Atlantic salmon due to competition, particularly from non-native species. Factor E (Other Natural or Manmade Factors Affecting Its Continued Existence) addresses the issue of competition. Thus, comments related to stocking and potential competition issues are addressed in the section of the response to comments under Factor E.

Comments that were directly related to the impact of stocking programs on Atlantic salmon as a result of the expansion or increase in angling opportunities cite coordination with the MDMR as evidence that measures are taken to minimize any harmful effects of stocking practices on Atlantic salmon. Commenters also stated that in some areas where the habitat is not fully seeded with Atlantic salmon, informal agreements between MDMR and MIFW have been reached to allow for a certain level of fish stocking to enhance angling opportunities without creating a significant threat to salmon that may be in the area. One commenter also cited guidelines that are in the process of being finalized that will be used to manage rainbow trout stocking. Several commenters disagree with the Services' conclusion that these stocking programs are harmful to Atlantic salmon.

Response: MIFW stocking practices that create more angling opportunities in areas occupied or used by Atlantic salmon contribute to the potential for take to occur as a result of misidentification, bycatch, or poaching. MIFW stocking programs are not directed to Atlantic salmon recovery or ecosystem restoration. They are intended to create and enhance angling opportunities, and, where these overlap with salmon, there is increased risk to salmon. MIFW currently stocks landlocked Atlantic salmon, brown trout, brook trout, rainbow trout, and splake in Atlantic salmon drainages, posing a threat to Atlantic salmon in the GOM DPS (Fay *et al.,* 2006). The information presented by commenters with respect to angling regulations and stocking program management does not change our conclusion that angling and stocking programs associated with increased angling opportunities pose an ongoing threat to Atlantic salmon in the GOM DPS. While coordination may reduce or minimize exposure of Atlantic salmon to increased angling pressure, the fact remains that angling pressure is higher than it would be in the absence of these stocking programs.

Comment 22: One commenter was concerned that the text on the threat of disease did not reflect the State of Maine's effort to attain Class A fish health ratings for the hatcheries managed by MIFW.

Response: The text has been changed to reflect the effort on behalf of the State of Maine to achieve the Class A fish health rating. With this effort, disease issues still pose a threat to Atlantic salmon as described in Factor C below.

Comment 23: One commenter felt that the text in the predation threat analysis did not acknowledge the restoration efforts of the State of Maine, specifically the Penobscot River Multi-species Management Plan and the Penobscot Interagency Technical Committee.

Response: The Services believe that these two conservation actions are more appropriately described and evaluated in the analysis of conservation efforts under the Policy for Evaluating Conservation Efforts. We have revised that analysis to incorporate information on both of these efforts.

Comment 24: Many commenters disagree with the Services' conclusion that the regulatory mechanisms to address the threat posed by dams are inadequate. These commenters stated that a number of laws directly (*e.g.*, Federal Power Act (FPA)) and indirectly (*e.g.*, ESA, National Environmental Policy Act) allow Federal resource agencies to influence passage issues and hydropower agreements. They state that the Federal Energy Regulatory Commission (FERC) process is very transparent and allows for public involvement. For non-FERC dams, commenters cited the oversight of the State of Maine Department of Environmental Protection (MDEP) in addressing fish passage, flow regimes, and water quality.

Response: Notwithstanding the ESA, the current state and Federal regulatory mechanisms in place to address operation of dams were not designed to address survival or recovery of endangered species. The Services recognize that there are a number of laws that create a process whereby industry, Federal resource agencies, the public, state agencies and other groups are involved in relicensing, brokering settlement agreements, or prescribing fish passage. However, as described in the section of this rule that addresses Factor D, there are substantial shortcomings associated with these processes. First, most of these processes require a ''balancing'' of energy and environmental resources. Under the ESA, deference is given to the species.

The FERC process is extremely lengthy, and any contentious fishway prescriptions could potentially take years to agree on and implement. Furthermore, neither upstream nor downstream fish passage measures are 100 percent efficient. Their limitations contribute to juvenile and adult injury and mortality, as well as habitat alterations that affect the health and survival of all life stages of Atlantic salmon. Sections 10(a) and 10(j) of the FPA could be used by the Services to address the impact of dams on habitat; however, these regulatory mechanisms are often discretionary and not necessarily required by FERC (Fay *et al.*, 2006). Section 4(e) of the FPA may also be used to recommend fisheries enhancements; however, this section is only applicable to certain Federal lands which are a rare occurrence in Maine (Fay *et al.*, 2006).

It is also important to recognize that, while settlement agreements can be a very useful tool to address passage issues, they are not necessarily removing the issue of passage mortality or in some cases, even ensuring passage facilities. For example, the Kennebec Hydro Developers Accord uses biological triggers to establish sequential upstream passage. If these biological triggers are not met, upstream passage could be suspended further into the future.

The majority of dams within the GOM DPS range do not require a FERC license or water quality certificate from the MDEP. These non-jurisdictional dams are usually small, non-generating dams that were historically used for flood control, water storage, and other purposes. Virtually none of these dams have fish passage facilities, and almost all of them are impacting historical salmon habitat. While there is a process whereby the public can petition the State of Maine to set minimum flows and water levels, the State has no authority to prescribe fishery enhancements without public request or petition. To our knowledge, no fishways have ever been installed at any dam in the State of Maine using the fishway petition process outlined pursuant to 12 Maine Revised Statutes Annotated (MRSA) § 12760. Therefore, significant issues are ongoing with respect to the current mechanisms in place to address the threat of both FERC and non-FERC licensed dams.

While regulations exist, these regulations have not proven effective in preventing impacts or quickly responding to remove impacts. In fact, the most progress on fish passage issues has been accomplished by working outside of these regulatory mechanisms in the negotiation of fish passage agreements. Aspects of the current regulations we find inadequate include the time delays experienced, extensive resource requirements, and inability to prescribe a solution which eliminates the impacts from dams.

Comment 25: Some commenters stated that Maine's existing water quality standards and criteria and its antidegradation policy under the Clean Water Act (CWA) as administered by the State of Maine (Maine Pollutant Discharge Elimination System (MPDES)) are sufficiently protective of all life stages of Atlantic salmon. Furthermore, commenters state that lack of requests by the Services to condition permits to avoid substantial impairment to Atlantic salmon is evidence that the present standards and criteria are protective of Atlantic salmon.

Response: Maine's water classification program, of which the State's antidegradation policy is a part, provides for different water quality standards for different classes of waters (*e.g.*, there are four classes for freshwater rivers, all of which are found within the GOM DPS range). Some portions of the GOM DPS are in the highest water quality classification where water quality standards are the most stringent. These standards become progressively less stringent with each lower water classification. These standards were not defined specifically for Atlantic salmon. Additionally, permits allow an area of initial dilution or mixing zone where water quality requirements are reduced. Salmon in or passing through such zones would be exposed to discharges below water quality standards.

Even where water quality standards are believed to be sufficiently protective when met, there are circumstances and conditions where discharges do not meet water quality standards. There are documented cases where minimum dissolved oxygen standards were not met in class C waters (MDEP, 2008). Adequate dissolved oxygen concentrations are necessary for fish health (Decola, 1970). The observed incidents of low dissolved oxygen were potentially harmful to any salmon present.

The fact that the Services have not requested that permits be conditioned to protect Atlantic salmon does not mean that water quality standards are sufficiently protective of Atlantic salmon. Currently, the Services review only permits that may affect salmon where listed in 2000, and the number of permits issued in this area has been relatively small. Expansion of the DPS as a result of this final rule will encompass rivers for which there are many more activities requiring Maine Pollutant Discharge Elimination System (MPDES) permits, and where water classifications and associated water quality standards are lower, which causes us to be concerned about potential impacts to salmon. See Factors A and D, below, for our analysis of the impact of water quality on the GOM DPS.

Comment 26: Some commenters stated that we inaccurately emphasized the effects of Overboard Discharges (OBD) on Atlantic salmon. They explain that the number of OBDs, the volume of discharge, and the treatment requirements result in a negligible effect on water quality within the range of the GOM DPS.

Response: In the proposed rule, we stated that we were concerned about the potential negative impacts of OBDs on water quality and identified OBDs as a threat to the GOM DPS. While we remain concerned about the potential for OBDs to impact Atlantic salmon, we have determined that we have insufficient information to determine whether OBDs are currently causing or will cause harm to the GOM DPS. Therefore, we have removed OBDs as an identified stressor under Factors A and D below.

Comment 27: Commenters emphasized the importance of Maine's water rule (MDEP Chapter 587 Rule) in protecting in-stream flows and habitat for aquatic life.

Response: We agree that the Water Rule represents substantial progress toward limiting negative impacts on in-stream flows due to water withdrawals, particularly for class AA waters. However, there are aspects of the water rule that are not sufficiently protective of Atlantic salmon. Because the flow standards for class A, B, and C waters are based on the seasonal base flow (the average flow over an entire season), withdrawals would be allowed that maintain flow above the seasonal base flow but reduce flow below the median monthly flow. During times when flows are naturally low, allowing withdrawals to reduce flows further, to levels below the median monthly flow, would negatively impact Atlantic salmon. See Factors A and D, below, for our analysis of the impacts of water withdrawals under Maine's water rule on the GOM DPS.

Comment 28: Some commenters noted Maine's forestry-related regulations and standards that are protective of Atlantic salmon.

Response: We concur that activities conducted in compliance with the Shoreland Zoning Act, Maine Forest

Practices Act, Natural Resource Protection Act, Protection and Improvement of Waters Act, Erosion and Sedimentation Control Law, and the Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas reduce threats to Atlantic salmon from sedimentation and other impacts related to forestry activities. The State's compliance monitoring and enforcement of these regulations and standards will assist in evaluating and confirming that forestry-related impacts to salmon are minimized. We discuss forestry activities and other potential non-point sources of pollution under Factors A and D below.

Comment 29: Several commenters indicated that the threat of poor marine survival was understated. They felt that considering that poor marine survival was characterized as one of the primary threats to the GOM DPS, the Services have failed to adequately address it in either the proposed rule or the 2006 Status Review.

Response: The Services agree and have incorporated additional information on marine survival into the final rule to properly reflect the significance of the threat of poor marine survival to the recovery of the GOM DPS. Marine survival and climate change are both addressed through analysis of the five factors specified in section 4(a)(1) of the ESA.

Comment 30: One commenter disagreed with the identification of depleted diadromous fish communities as a threat to the GOM DPS. The commenter felt that the State of Maine is making strides in implementing management actions aimed at restoration of diadromous fish communities. These programs will need time to achieve success; however, the commenter argues that the threat need not be considered given that there are programs in place to address diadromous fish restoration.

Response: The Services acknowledge the efforts by the State of Maine at diadromous species restoration in the analysis of State protective efforts. While the goal of these efforts is to restore the full suite of diadromous fishes, that goal is far from being realized. Further, there is not a high level of certainty that these actions will be implemented and effective. It is very encouraging that the role of restored diadromous fish communities is recognized; however, significant coordination, effort, and commitment are necessary to achieve the goal. Thus, the threat of depleted diadromous fish communities remains. The PECE analysis section of this rule contains the Services' evaluation of these programs as well as other conservation efforts.

Comment 31: One commenter disagreed that MIFW sport fish stocking programs pose a threat to Atlantic salmon. These comments were submitted under Factor B, but in large part were directed at the way the Services characterized the threat of competition due to stocking under Factor E. The commenter stated that coordination between MIFW and MDMR is evidence that measures are taken to minimize any harmful effects of stocking practices on Atlantic salmon. In some areas where the habitat is not fully seeded with Atlantic salmon, informal agreements allow for a certain level of stocking without adversely affecting Atlantic salmon. The commenter also cited guidelines that are in the process of being finalized that will be used to manage rainbow trout stocking.

Response: The Services disagree with the commenter that the threat posed by MIFW stocking programs is adequately addressed by the current stocking management program. Text has been added to the section of the rule that discusses competition to provide additional detail to clarify the negative impact current stocking programs have in terms of contributing to the threat of competition between other species and Atlantic salmon. The Services do recognize that a Memorandum of Understanding (MOU) exists between MDMR and MIFW that establishes a process for the management and stocking of freshwater salmonid fish species in Atlantic salmon river systems in Maine to ''reduce the effects of competing finfish species on Atlantic salmon populations.'' The MOU states that on an annual basis, at the very least, before April each year, biologists from MDMR and the MIFW will meet as a joint committee to: (1) Identify all current stocking programs for all finfish in identified Atlantic salmon river systems; (2) according to the best available scientific information on species interactions, assess the possible interactions between Atlantic salmon and inland fisheries management proposals; (3) identify and evaluate areas of concern and assess ways to minimize impacts; (4) implement agreed upon management actions or changes (no fish stocking or changes in management programs on these rivers shall take place other than in accordance with this agreement); and lastly, (5) develop recommendations for the Commissioner of Inland Fisheries & Wildlife and the other members of the Board of the Atlantic Salmon Commission for areas of concern that cannot be resolved by the joint committee. While this MOU does provide a process for managing stocking practices, it does not address all of the threats posed by the State's stocking practices. Some of the issues this process does not address include, but are not limited to, the following: (1) Cumulative effects of repeated stockings and multi-species stocking on Atlantic salmon; (2) competition for suitable over-wintering areas; (3) threats from introduction of parasites or disease from stocking; (4) the threats posed by Atlantic salmon/brown trout hybrids; and (5) management of other fish species (smallmouth bass, chain pickerel, etc.). Because these and other issues still have not been addressed fully, state stocking programs continue to pose a threat to the GOM DPS as is described in this rule.

Comment 32: Several commenters felt that the Services did not give enough consideration to ongoing conservation efforts in the GOM DPS. Commenters used specific examples, including, but not limited to, the Penobscot River Restoration Project, the Kennebec Hydro Agreement, and Project SHARE (Salmon Habitat and River Enhancement). Many commenters felt that the PECE was not appropriately applied. Commenters suggested that the Services may need to use the PECE to reevaluate projects like the Penobscot River Restoration Project for which funding and certainty of implementation may have changed since publication of the proposed rule.

Response: The Services agree that analysis of conservation efforts under PECE is more transparent if a more complete analysis of major efforts is included in the rule. We have revised the section addressing analysis of conservation efforts.

Comment 33: Some commenters are concerned that having two Federal agencies (NMFS and USFWS) share jurisdiction of Atlantic salmon is inefficient, which is detrimental to the overall conservation of Atlantic salmon. As a result, some recommended that NMFS be assigned the lead Federal agency for management of Atlantic salmon.

Response: Joint jurisdiction of Atlantic salmon was first established in 1994, when the Services worked together jointly to respond to a listing petition for Atlantic salmon. While we acknowledge that sharing jurisdiction for an endangered species is challenging, we believe that both agencies can contribute positively to recovery. Therefore, we will continue to share jurisdiction for Atlantic salmon. The goal of both agencies is the recovery of Atlantic salmon; to that end we will

strive to work cooperatively and effectively to conserve Atlantic salmon. To clarify roles and responsibilities of each agency and help resolve potential differences, we have developed a Statement of Cooperation (NMFS and USFWS, 2009). The preamble to this rule identifies how roles and responsibilities have been divided between the two agencies.

Comment 34: Some commenters were concerned about the lack of resources to fulfill the requirements of the ESA for Federal agencies, the State, Tribes, or the regulated community as will be required by listing the Atlantic salmon in a larger area.

Response: As required by section 4(b)(1)(A) of the ESA, listing decisions are to be made solely on the basis of the best scientific and commercial data available. We fully recognize that resources are limited and intend, through our collaborative partnership with the State and Tribes, to make most efficient use of our collective resources to conserve and recover Atlantic salmon. The challenge of addressing high workload with limited resources is one of the reasons the Services have divided responsibility for ESA implementation by activity as noted in the response above. We will work within the ESA's flexible framework to achieve the regulatory requirements of the ESA.

Comment 35: Several commenters suggested that listing determinations should consider the likelihood of future cooperation and collaboration toward recovery.

Response: Under the ESA, the Services must make each listing determination solely on the best available data on the status of the species, the five factors specified in section 4(a)(1) of the ESA, and the efforts being made to protect the species. The possibility of enhanced cooperation in future recovery actions is not one of the five statutory factors. While we recognize the importance of cooperation in achieving recovery, it is not one of the factors identified by the ESA for making listing determinations. Therefore, we have not considered it in this determination.

Summary of Factors Affecting the GOM DPS

Section 4 of the ESA (16 U.S.C. 1533) and implementing regulations at 50 CFR part 424 set forth procedures for adding species to the Federal List of Endangered and Threatened Species. Under section 4(a) of the ESA, we must determine if a species is threatened or endangered because of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence.

We have described the effects of various factors leading to the decline of Atlantic salmon in previous listing determinations (60 FR 50530, September 29, 1995; 64 FR 62627, November 17, 1999; 65 FR 69459, November 17, 2000) and supporting documents (NMFS and USFWS, 1999; NMFS and USFWS, 2005). The reader is directed to section 8 of Fay *et al.* (2006) for a more detailed discussion of the factors affecting the GOM DPS. In making this finding, information regarding the status of the GOM DPS of Atlantic salmon is considered in relation to the five factors specified in section 4(a)(1) of the ESA.

In making this evaluation, we have carefully considered the relative demographic effects of each threat to the GOM DPS. In particular, there are large distinctions between marine survival and freshwater survival that are important to characterize the current status of the GOM DPS. From a demographic viewpoint, incremental increases in marine survival have a much greater impact on the population than do increases in freshwater survival; although, increases in marine survival may be more difficult to achieve. It is important to note that marine survival is calculated from the last time smolts are counted in a river until adults return to spawn. Thus, marine survival estimates may include some portion of freshwater, estuarine, and near-shore mortality in addition to open ocean mortality.

The historical range of freshwater survival for U.S. populations is estimated to be approximately 0.13 to 6.09 percent (Legault, 2005). These estimates are based on numerous studies on different life stages of the freshwater phase across a wide spatial and temporal scale. Current marine survival (smolt to adult) for U.S. populations is estimated to range from 0.09 to 1.02 percent based on total smolt cohort return rates for the Penobscot (hatchery smolt returns, 1995 to 2004) and Narraguagus Rivers (naturally reared smolt returns, 1997 to 2004) (ICES, 2008). For the reasons mentioned above, marine survival estimates of hatchery smolts in the Penobscot also include dam-related mortality.

Improvements in these survival rates are necessary to reach the point where each fish is replacing itself and to eventually result in population growth toward recovery. Increases in freshwater survival will enhance the probability of recovery; however, improvements in marine survival are necessary to achieve stability and growth. While numerous natural and anthropogenic factors during the freshwater phase influence Atlantic salmon populations (Baum *et al.*, 1983; McCormick *et al.*, 1998; Parrish *et al.*, 1998), the effects of marine survival are thought to have a greater influence on population levels (Friedland *et al.*, 2003; Jonsson and Jonsson, 2004; Chadwick, 1987) in part because the annual variation in marine survival is nearly four times greater than that in freshwater (Bley, 1987; Reddin *et al.*, 1988). Thus, marine survival has a significant impact on adult production. As a result, marine survival must improve in order to recover the GOM DPS (Legault, 2005), and, thus, low marine survival is one of the most important threats contributing to the poor status of the species. Other factors affecting the freshwater stages of salmon within the range of the GOM DPS can be quite pervasive (*e.g.*, poor connectivity due to improperly sized culverts). Below, these factors are described as stressors that collectively contribute to the poor status of the GOM DPS; however, those factors that affect later life stages (typically considered as marine survival) have the greatest demographic effect.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Changes to the GOM DPS's natural environment are ubiquitous. Both contemporary and historic land and water use practices such as damming of rivers, forestry, agriculture, urbanization, and water withdrawal have substantially altered Atlantic salmon habitat by: (1) Eliminating and degrading spawning and rearing habitat, (2) reducing habitat complexity and connectivity, (3) degrading water quality, and (4) altering water temperatures. These impacts and their effects on salmon are described in detail by Fay *et al.* (2006). Here, we summarize the stressors that are having the greatest impact on the GOM DPS.

Dams

Dams are among the leading causes of both historical declines and contemporary low abundance of the GOM DPS of Atlantic salmon (NRC, 2004). Dams directly limit access to otherwise suitable habitat. Prior to the construction of mainstem dams in the early 1800s, the upstream migrations of salmon extended well into headwaters

of large and small rivers alike, unless a naturally impassable waterfall existed. For example, Atlantic salmon were found throughout the West Branch of the Penobscot River (roughly 350 km inland) and as far as Grand Falls (roughly 235 km inland) on the Dead River in the Kennebec Drainage (Foster and Atkins, 1867; Atkins, 1870). Today, however, upstream passage for salmon on the West Branch of the Penobscot is nonexistent and on the Kennebec is limited to trapping and trucking salmon above the first mainstem dam. Dams also change hydraulic characteristics of rivers. These changes, combined with reduced, non-existent, or poor fish passage, influence fish community structure. Specifically, dams create slow-moving impoundments in formerly free-flowing reaches. Not only are these altered habitats less suitable for spawning and rearing of Atlantic salmon, they may also favor nonnative competitors such as smallmouth bass (*Micropterus dolomieu*) over native species such as brook trout (*Salvelinus fontinalis*) and American shad (*Alosa sapidissima*). Fish passage inefficiency also leads to direct mortality of Atlantic salmon, including both smolts and adults; these later life stages are particularly important from a demographic perspective as described above. Upstream passage effectiveness for anadromous fish species never reaches 100 percent, and substantial mortality and migration delays occur during downstream passage through screen impingement and turbine entrainment. The cumulative losses of smolts incrementally diminish the productive capacity of all freshwater rearing habitat above hydroelectric dams. The demographic consequences of low marine survival (described above) are similar to those of the cumulative losses of adults at dams. Comprehensive discussions of the impacts of dams are presented in sections 8.1, 8.3, and 8.5.4 of Fay *et al.* (2006) and NRC (2004).

In short, dams directly and substantially reduce survival rates of salmon through the following ways:

1. Dams directly limit access to otherwise suitable habitat. This has reduced spatial distribution of the GOM DPS over the last 200 years.

2. Dams also directly kill and injure a significant number of salmon on both upstream and downstream migrations. Injury and mortality due to dams occurs at the smolt and adult life stages. These older life stages are particularly important from a demographic perspective (similar to marine survival) since slight changes in survival rates at older life stages can drive demographic trends.

3. Dams also degrade the productive capacity of habitats upstream by inundating formerly free-flowing rivers, reducing water quality, and changing fish communities.

Dams are also one of three primary factors that led to the declining abundance trends that began in the 1800s. The other two factors (pollution and overfishing), though still operative, have been greatly reduced in severity (Moring, 2005). Dams, however, represent a significant threat during the current period of decline (1800s to present) and are generally more pervasive (over 300 within the freshwater range of the GOM DPS today) over that same time period. These effects have led to a situation where salmon abundance and distribution have been greatly reduced, and thus, the species is more vulnerable to extinction through processes such as demographic and environmental stochasticity, natural catastrophes, and genetic drift inherent in all small populations (Shaffer, 1981).

As stated above, dams directly limit access to otherwise suitable habitat, directly kill and injure a significant number of salmon during both upstream and downstream migration, and degrade the productive capacity of habitats upstream by inundating formerly free-flowing rivers, reducing water quality, and changing fish communities. Dams affect multiple life stages in multiple ways, particularly by preventing or impeding access to spawning habitat for returning adult salmon; impacts at this late life stage have the greatest demographic effect. Therefore, dams represent a significant threat to the survival and recovery of the GOM DPS.

Habitat Complexity

Some forest, agricultural, and other land use practices have reduced habitat complexity within the range of the GOM DPS of Atlantic salmon. Large woody debris (LWD) and large boulders are currently lacking from many rivers because of historical timber harvest practices. When present, LWD and large boulders create and maintain a diverse variety of habitat types. Large trees were harvested from riparian areas; this reduced the supply of LWD to channels. In addition, any LWD and large boulders that were in river channels were often removed in order to facilitate log drives. Historical forestry and agricultural practices were likely the cause of currently altered channel characteristics, such as width-to-depth ratios (*i.e.*, channels are wider and shallower today than they were historically). Channels with large width-to-depth ratios tend to experience more rapid water temperature fluctuations, which are stressful for salmon, particularly in the summer when temperatures are warmer. Further discussions of the impacts of reduced habitat complexity are presented in section 8.1.2 of Fay *et al.* (2006). Reduced habitat complexity acts as a stressor on the GOM DPS by reducing spaces for hiding from predators and increasing water temperature.

Habitat Connectivity

Over the last 200 years, habitat connectivity within the freshwater range of the GOM DPS has been reduced because of dams and poorly designed road crossings. Further discussions of the impacts of reduced habitat connectivity are presented in section 8.1.2 of Fay *et al.* (2006). As a highly migratory species, Atlantic salmon require a diverse array of well-connected habitat types in order to complete their life history. Impediments to movement between habitat types can limit access to potential habitat and, therefore, directly reduce survival in freshwater. In some instances, barriers to migration may also impede recovery of other diadromous fishes as well. For example, alewives (*Alosa pseudoharengus*) require free access to lakes to complete their life history. To the extent that salmon require other native diadromous fishes to complete their life history (see ''Depleted Diadromous Communities'' in ''Factor E'' of this final rule), limited connectivity of freshwater habitat types may limit the abundance of salmon through diminished nutrient cycling, and a reduction in the availability of co-evolved diadromous fish species that provide an alternative prey source and serve as prey for GOM DPS Atlantic salmon. Restoration efforts in the Machias, East Machias, and Narraguagus Rivers have improved passage at road crossings by replacing poorly-sized and poorly-positioned culverts. However, many barriers of this type remain throughout the range of the GOM DPS. Reduced habitat connectivity is a stressor to the GOM DPS because it prevents salmon from fully using substantial amounts of freshwater habitat and changes fish community structure by preventing access for other native fish.

Water Quantity

Water withdrawals can directly impact salmon spawning and rearing habitat (Fay *et al.*, 2006). Survival of eggs, fry, and juveniles is also mediated by stream flow. Low flows constrain available habitat and limit populations.

Water quantity can be affected by the withdrawal of water for irrigation or other consumptive water uses as described in section 8.1.1.2 of Fay *et al.* (2006). The potential for water withdrawals reducing in-stream flows to levels that may impact Atlantic salmon is a concern in rivers classified under Maine's ''In-stream flow and water level standards'' as class A, B, or C. The flow standards for class A, B, and C waters are based on seasonal base flows (the average flow over an entire season) rather than median monthly flows. Because these flow standards are based on the seasonal base flow, withdrawals would be allowed that, while not reducing flow below the seasonal base flow, reduce flow below the median monthly flow. In some months, flows are naturally low (*e.g.*, late summer months), which is stressful to fish because habitat is more limited, water temperature increases, and dissolved oxygen decreases. During times when flows are naturally low, allowing withdrawals to reduce flows further, to levels below the median monthly flow, would negatively impact Atlantic salmon. Therefore, water withdrawal that reduces the instream flow below the median monthly flow is a stressor on the GOM DPS because it may reduce habitat, increase water temperature, and decrease dissolved oxygen during the months of naturally low flow.

Water Quality

Atlantic salmon likely are impacted by degraded water quality caused by point and non-point source discharges. The MDEP administers the National Pollutant Discharge Elimination System (NPDES) program under the CWA and issues permits for point source discharges from freshwater hatcheries, municipal facilities, and other industrial facilities. Maine's water classification system provides for different water quality standards for different classes of waters (*e.g.*, there are four classes for freshwater rivers, all of which are found within the GOM DPS range); however, these standards were not developed specifically for Atlantic salmon. Some portions of the GOM DPS are in areas with the highest water quality classification where water quality standards are the most stringent. These standards become progressively less stringent with each lower water classification. Additionally, permits allow an area of initial dilution or mixing zone where water quality requirements are reduced. Salmon in or passing through such zones would be exposed to discharges below water quality standards. The impacts to salmon passing through these zones are unknown. We are concerned that water quality standards for Class A, B, and C waters and mixing zones may not be sufficiently protective of all life stages of Atlantic salmon, particularly the more sensitive salmon life stages (*e.g.*, smolts).

Even where water quality standards are believed to be sufficiently protective, there are circumstances and conditions where discharges do not meet water quality standards. For example, there are documented cases in class C waters where dissolved oxygen standards (the lower bound of which is 5.0 ppm) were not met. This occurred in portions of the mainstem Androscoggin River, and in the East Branch of the Sebasticook River and Sabattus River (MDEP, 2008). When dissolved oxygen concentrations are less than 5.0 ppm, adult salmon breathing functions become impaired, embryonic development is delayed, and parr growth and health are impacted; conditions become lethal for salmon at dissolved oxygen concentrations less than 2.0 ppm (Decola, 1970). When water quality reaches levels that are harmful to salmon, it is a stressor to the GOM DPS.

Non-point source discharges such as elevated sedimentation from forestry, agriculture, urbanization, and roads can reduce survival at several life stages, especially the egg stage. Sedimentation can alter in-stream habitat and habitat use patterns by filling interstitial spaces in spawning gravels, and adversely affect aquatic invertebrate populations that are an important food source for salmon. Acid rain reduces pH in surface waters with low buffering capacity, and reduced pH impairs osmoregulatory abilities and seawater tolerance of Atlantic salmon smolts. A variety of pesticides, herbicides, trace elements such as mercury, and other contaminants are found at varying levels throughout the range of the GOM DPS. The effects of chronic exposure of Atlantic salmon, particularly during sensitive life stages such as fry emergence and smoltification, to many contaminants is not well understood. Fay *et al.* (2006) provide a discussion of water quality concerns in section 8.1.3. For these reasons, non-point source pollution, particularly sedimentation and acid rain, is a stressor to the GOM DPS.

In summary, we have determined that degraded water quality is a stressor on the GOM DPS because of the known situations when water quality did not meet standards and was at levels that negatively impact salmon and because of the impacts of non-point source pollution, particularly sedimentation and acid rain.

Factor B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The GOM DPS of Atlantic salmon has supported important tribal, recreational, and commercial fisheries. In the past, these fisheries have been conducted throughout nearly all of the GOM DPS' habitats, including in-river, estuarine, and off-shore (section 8.2 of Fay *et al.* (2006)).

Atlantic salmon are an integral part of the history of Native American tribes in Maine, particularly the Penobscot Indian Nation. The species represents both an important resource for food, and perhaps more importantly, a cultural symbol of the deeply engrained connection between the Penobscot Indian Nation and the Penobscot River. In accordance with the Maine Indian Land Claims Settlement Act, the Penobscot Indian Nation retains the right of its members to harvest Atlantic salmon for sustenance purposes, and to self-regulate that harvest. The Penobscot Indian Nation harvested two salmon under these provisions in 1988, and has voluntarily chosen not to harvest any Atlantic salmon since then because of the depleted status of the species (Francis, Penobscot Indian Nation in litt., 2009).

Recreational fisheries for Atlantic salmon in Maine date back to the early to mid-1800s. Since 1880, over 25,000 Atlantic salmon have been landed in Maine rivers, roughly 14,000 in the Penobscot River alone (Baum, 1997). Historically, Atlantic salmon sport anglers practiced very little catch and release. Beginning in the 1980s as runs decreased, the Maine Atlantic Sea Run Salmon Commission imposed increasingly restrictive regulations on the recreational harvesting of Atlantic salmon in Maine. The allowable annual harvest per angler was reduced from 10 salmon in the 1980s to one grilse in 1994. Angling was closed on the Pleasant River from 1986 to 1989. In 1990, a one-year catch and release fishery was allowed on the Pleasant River. In 1995, regulations were promulgated for catch and release fishing for sea-run Atlantic salmon throughout all other Maine salmon rivers, closing the last remaining recreational harvest opportunities for sea run Atlantic salmon in the United States. In 2000, all directed recreational fisheries for sea run Atlantic salmon in Maine were closed until 2006 when a short experimental catch and release fishery was opened on the Penobscot River below Veazie Dam. The 30-day

angling season began on September 15, 2006, and resulted in one Atlantic salmon being caught and released on September 20, 2006. This fishery was opened again on September 15, 2007. In 2008, the Maine Atlantic Salmon Commission Board authorized a 30-day catch and release fishery for the spring of 2008. This fishery poses a risk to returning sea-run Atlantic salmon because it occurs at a time of year before broodstock have been collected; broodstock are essential to maintaining current levels of conservation hatchery supplementation, and lack of broodstock would further reduce the likelihood of achieving the scientifically sound and mutually-agreed goals set forth in the Broodstock Management Plan (P. Kurkul, NOAA, in litt. February 1, 2008).

Poaching and incidental capture remain concerns to the status of Atlantic salmon in Maine. Incidental capture of parr and smolts, primarily by trout anglers, and of adult salmon, primarily by striped bass anglers, has been documented. Targeted poaching for adult salmon occurs at low levels as well. Low returns of adult salmon to Maine rivers highlight the importance of continuing to reduce any source of mortality, particularly at later life stages. While current state regulations for recreational angling do include minimum and maximum size limits for certain species (*e.g.*, landlocked salmon), area closures, and outreach and education programs, there is still a threat of take of Atlantic salmon from recreational angling.

Commercial fishing for Maine Atlantic salmon historically occurred in rivers, estuaries, and on the high seas. While most directed commercial fisheries for Atlantic salmon have ceased, the impacts from past fisheries are important in explaining the present low abundance of the GOM DPS. Also, the continuation of offshore fisheries for Atlantic salmon, albeit at reduced levels, influences the current status of the GOM DPS.

Nearshore fisheries for Atlantic salmon in Maine were quite common in the late 1800s. In 1888, roughly 90 metric tons (mt) of salmon were harvested in the Penobscot River alone. As stocks continued to decline through the early 1900s, the Maine Atlantic Sea Run Salmon Commission closed the nearshore commercial fishery for Atlantic salmon after the 1947 season when only 40 fish (0.2 mt) were caught. Any future opportunities for directed fisheries for Atlantic salmon in U.S. territorial waters were further limited by regulations implementing the Atlantic Salmon Fishery Management Plan (FMP) in 1987 (NEFMC, 1987). These regulations prohibit possession of Atlantic salmon in the U.S. Exclusive Economic Zone. While nearshore fisheries for Atlantic salmon have ceased, the impacts from past fisheries are important in explaining the present low abundance of the GOM DPS.

Directed fishing for other species has the potential to intercept salmon as by-catch. Beland (1984) reported that fewer than 100 salmon per year were caught incidental to other commercial fisheries in the coastal waters of Maine. Recent investigations also suggest that by-catch of Atlantic salmon in herring fisheries is not a significant source of mortality for U.S. stocks of salmon (ICES, 2004).

Offshore, directed fisheries for Atlantic salmon continue to affect the GOM DPS, though these fisheries have been substantially reduced in recent years. The combined harvest of 1SW Atlantic salmon of U.S. origin in the fisheries off West Greenland and Canada averaged 5,060 fish, and returns to U.S. rivers averaged 2,884 fish from 1968 to 1989 (ICES, 1993). We estimate that roughly 87 percent of all U.S. adult returns during the time period 1968 to 1989 originated from the GOM DPS as defined in this rule, and thus, roughly 2,519 of the 2,884 U.S. returns were GOM DPS fish. ICES (1993) estimated that adult returns to U.S. rivers could have potentially been increased by 2.5 times in the absence of the West Greenland commercial fishery (closed in 2001) and Labrador fisheries (closed in 1998) during that time period. The United States joined with other North Atlantic nations in 1982 to form NASCO for the purpose of managing salmon through a cooperative program of conservation, restoration, and enhancement of North Atlantic stocks. NASCO achieves its goals by managing the exploitation by member nations of Atlantic salmon that originated within the territory of other member nations. The United States' interest in NASCO stemmed from its desire to ensure that intercept fisheries of U.S. origin fish did not compromise the long-term commitment by the states and Federal government to rehabilitate and restore New England Atlantic salmon stocks. Since the establishment of NASCO in 1982, commercial quotas for the West Greenland fishery have steadily declined, as has the abundance of most stocks that make up this mixed stock fishery (including the GOM DPS). The West Greenland fishery has been restricted to an internal use fishery (*i.e.*, no fish were exported) in the following years: 1998–2000; 2003–2008. From 2002 to 2005, the internal-use fishery harvested between 19 and 25 mt (reported and estimated unreported catch) annually. Genetic analysis performed on samples obtained from the 2002 to 2004 fisheries estimated the North American contribution at 64–73 percent, with the U.S. contributing between 0.1 and 0.8 percent of the total. The 90 percent confidence interval for the U.S. estimates are 0 to 141 salmon in 2002, 5 to 132 salmon in 2003, and 0 to 64 salmon in 2004 (ICES, 2006).

In addition, a small commercial fishery occurs off St. Pierre et Miquelon, a French territory south of Newfoundland. Historically, the fishery was very limited (2 to 3 mt per year). There is great interest by the United States and Canada in sampling this catch to gain more information on stock composition. In recent years, there has been a reported small increase in the number of fishermen participating in this fishery. A small sampling program was initiated in 2003 to obtain biological data and samples from the catch. Genetic analysis on 134 samples collected in 2004 indicated that all samples originated from North America, and approximately 1.9 percent were of U.S. origin. The 90-percent confidence interval around this estimate was 0–77 U.S.-origin salmon (ICES, 2006), and since roughly 87 percent of all U.S. returns originated from the GOM DPS (as defined in this rule) in 2004 (USASAC, 2005), we estimate that up to 67 fish harvested in this fishery originated from the GOM DPS. Efforts to continue and increase the scope of this sampling program are ongoing through NASCO. These data are essential to understanding the impact of this fishery on the GOM DPS.

A multi-year conservation agreement was established in 2002 between the North Atlantic Salmon Fund and the Organization of Hunters and Fishermen in Greenland, effectively buying out the commercial fishery for Atlantic salmon for a 5-year period. The internal-use fishery was not included in the agreement. In June 2007, the agreement was extended and revised to cover the 2007 fishing season. The agreement may continue to be extended on an annual basis through 2013.

In summary, overutilization for recreational and commercial purposes was a factor that contributed to the historical declines of GOM DPS. Intercept fisheries in West Greenland and St Pierre et Miquelon, bycatch in recreational fisheries, and poaching act as stressors on the GOM DPS because they result in direct mortality or cause stress reducing reproductive success and survival.

Factor C. Disease or Predation

Disease

Fish diseases have always represented a source of mortality to Atlantic salmon in the wild (for a more thorough discussion see section 8.3.2 of Fay *et al.* (2006)). Atlantic salmon are susceptible to numerous bacterial, viral, and fungal diseases. Bacterial diseases common to New England waters include Bacterial Kidney Disease (BKD), Enteric Redmouth Disease (ERM), Cold Water Disease (CWD), and Vibriosis (Mills, 1971; Gaston, 1988; Olafsen and Roberts, 1993; Egusa, 1992). To reduce the likelihood of disease outbreaks or epizootic events, cultured salmon used for aquaculture purposes routinely receive vaccinations for these pathogens prior to stocking into marine sites. Fungal diseases such as furunculosis can affect all life stages of salmon in both fresh and salt water, and the causative agent (*Saprolignia* spp.) is ubiquitous to most water bodies. The risk of an epizootic occurring during fish culture operations is greater because of the increased numbers of host animals reared at much higher densities than would be found in the wild. In addition, stressors associated with intensive fish culture operations (*i.e.*, handling, stocking, tagging, and sea-lice loads) may increase susceptibility to infections. Disease from fish culture operations may be spread to wild salmon directly through effluent discharge or indirectly from either escapes of cultured salmon, or through smolts and returning adults passing through embayments where pathogen loads are increased to a level such that infection occurs and diseases may be transferred.

A number of viral diseases that could affect wild populations have occurred during the culture of Atlantic salmon, such as Infectious Pancreatic Necrosis, Salmon Swimbladder Sarcoma Virus, Infectious Salmon Anemia (ISA), and Salmon Papilloma (Olafsen and Roberts, 1993). In 2007, the Infectious Pancreatic Necrosis virus was isolated in sea run fish in the Connecticut River program. These fish most likely contracted the disease during their time at sea, and it was detected in the hatchery due to the rigorous fish health monitoring and assessment protocols. ISA is of particular concern for the GOM DPS because of the nature of the pathogen and the high mortality rates associated with the disease. Most notably, a 2001 outbreak of ISA in Cobscook Bay led to an emergency depopulation of all commercially cultured salmon in the Bay. In addition to complete depopulation of all cultured salmon, the MDMR ordered all cages be thoroughly cleaned and disinfected, all sites be fallowed for 3 months, and subsequent re-stocking of cages occur at lower densities with only a single year class. These measures were initially successful; however, subsequent testing for ISA revealed additional detections of the virus in Cobscook Bay (Maine) sites in 2003, 2004, 2005, and 2006.

In summary, the MIFW, MDMR, and the federally managed conservation hatcheries all must adhere to rigorous disease prevention and management regulations and protocols; despite these protocols there remains a risk of disease outbreaks. Additionally, there is a risk of a disease outbreak in the wild. While disease(s) can have devastating population-wide effects when they occur, there are efforts in place to prevent and manage disease outbreaks in conservation hatcheries and aquaculture facilities. Disease is not presently impacting the GOM DPS. However, the efforts in place to manage this risk cannot completely eliminate the potential for disease outbreak. Further, if a large outbreak were to occur, it could have significant impacts on the GOM DPS.

Predation

Predation is a natural and necessary process in properly functioning aquatic ecosystems (for a comprehensive discussion see section 8.3.1 of Fay *et al.* (2006)). Native freshwater fishes known to prey on Atlantic salmon include brook trout, burbot, American eel, fallfish, and common shiners. In estuarine and marine environments Atlantic salmon are prey to striped bass, Atlantic cod, pollock, porbeagle shark, Greenland shark, Atlantic halibut, and many other species. Many species of birds, mink, and several species of seal also prey on Atlantic salmon. Thus, predation levels may contribute to the low marine survival regimes currently experienced by the GOM DPS.

Atlantic salmon have evolved a suite of strategies that allow them to co-exist with the numerous predators they encounter throughout their life cycle. However, natural predator-prey relationships in aquatic ecosystems in Maine have been substantially altered through the spread of nonnative fish species (*e.g.*, smallmouth bass); habitat alterations; site specific and cumulative delay, injury, or stress experienced during migration and passage over/through dams; and the decline of other diadromous species that would otherwise serve as an alternative prey source for fish that feed on Atlantic salmon smolts and adults. For example, in the estuarine environment, cormorants are an important predator of outmigrating smolts. However, the abundance of alternative prey sources such as alewives likely minimized the impact of cormorant predation on the GOM DPS historically. Similarly, changes in fish assemblages due to stocking of non-native species have resulted in predator species inhabiting many of the same areas used by Atlantic salmon. This is particularly true of smallmouth bass and brown trout (van de Ende, 1993; MASC and MIFW, 2002). The threat posed by these predator species is simply compounded in areas where Atlantic salmon are experiencing physiological stress due to obstructions to passage (Raymond, 1979; Mesa, 1994; Blackwell *et al.*, 1997) and poor habitat quality and complexity (Cunjak, 1996; Blackwell and Krohn, 1997; Larinier, 2000).

In summary, the impact of predation on the GOM DPS of Atlantic salmon is important because of the imbalance between the very low numbers of adults returning to spawn and the increase in population levels of some native predators such as double-crested cormorants, striped bass, and several species of seals as well as non-native predators, such as smallmouth bass. Predation acts as a stressor on the GOM DPS because of high levels of predators and low numbers of Atlantic salmon.

Factor D. Inadequacy of Existing Regulatory Mechanisms

A variety of state and Federal statutes and regulations directly or indirectly address potential threats to Atlantic salmon and their habitat. These laws are complemented by international actions under NASCO and many interagency agreements and state-Federal cooperative efforts specifically designed to protect Atlantic salmon. Implementation and enforcement of these laws and regulations could be strengthened to further protect Atlantic salmon.

Dams

As stated previously, Atlantic salmon require a diverse array of well connected habitat types in order to complete their life history. Present conditions within the range of the GOM DPS only allow salmon to access a fraction of the habitat that was historically accessible. Even where salmon can presently access suitable habitat, they must often pass several dams to reach their natal spawning habitat.

Hydroelectric dams: Hydroelectric dams in the GOM DPS are licensed by the FERC under the FPA. Currently, within the historical range of Atlantic

salmon in the GOM DPS there are 19 hydroelectric dams in the Androscoggin watershed, 18 in the Kennebec watershed, and 23 in the Penobscot watershed. In the Androscoggin watershed 16 hydroelectric dams within the range of the GOM DPS are impassable due to the lack of fishways. In the Kennebec watershed, 15 dams are impassable, along with 12 dams in the Penobscot watershed. Presently, 15 dams in the Androscoggin, 7 dams in the Kennebec, and 9 dams in the Penobscot are FERC-licensed without any specific fish passage requirements.

1. Mechanisms Available at Hydroelectric Dams Outside of FERC (Re)licensing

Several mechanisms exist within the framework of the FPA that could potentially be used to address impacts of dams. However, many of these mechanisms are only available in relicensing. Of the 70 dams licensed by FERC in Maine, 3 are currently in relicensing, 3 are covered by the Penobscot River Restoration Project with plans to remove them before expiration of their licenses, and 8 will be up for relicensing in the 2010s, 22 in the 2020s, 19 in the 2030s, 11 in the 2040s, and 4 in the 2050s. Thus, the bulk of these projects will not be up for relicensing for 10 to 20 years or more. The current licenses for many, though by no means all, of these projects contain reservations of FPA section 18 authority that could allow fishways to be prescribed by the Services (16 U.S.C. 811). However, exercise of that authority requires administrative proceedings before the FERC and the Services which could themselves take several years, and the outcome is far from certain. As to the remainder of the projects whose licenses contain no reserved authority, reopening of these licenses may be dependent upon the success of a petition to the FERC to exercise its own reserved authority. This is not a dependable recourse as the decision to even consider such a petition is subject to FERC's discretion. Additional avenues may be available, consistent with the Interagency Task Force Report on Improving Coordination of ESA Section 7 Consultation with the FERC Licensing Process, but these remain largely untested.

Furthermore, lack of fish passage is not the only threat to salmon caused by hydroelectric dams. The effects of habitat degradation and the altered environmental features that favor nonnative species pose an equal or even greater impediment to Atlantic salmon recovery via reduction in production capacity of freshwater rearing areas above dams. These threats may not be addressed by the Services' reserved authority under Section 18 of the FPA; the only mechanism available outside of relicensing is a petition to FERC to exercise its own discretionary authority.

2. Mechanisms Available at Hydroelectric Projects in FERC (Re)licensing

Even in relicensing, the regulatory mechanisms for protection of salmon are inadequate to remove the significant threat to the survival of the species posed by dams. First, fish passage may be addressed by the Services in relicensing pursuant to their mandatory authority under Section 18 of the FPA (16 U.S.C. 811). However, as noted above, this requires a lengthy administrative proceeding before the Services and FERC, and the outcome is not certain. Moreover, the result is a FERC license containing a requirement to construct and operate fish passage. However, a substantial amount of mortality and passage inefficiency may occur even with fishways in place, given that fish passage facilities are never 100 percent efficient. Further, enforcement of FERC licenses can be done only by FERC, is subject to administrative processes with uncertain outcome, and has frequently, in the Services' view, been less than prompt where fish passage or fish habitat issues have been at stake.

The other threats posed by dams to Atlantic salmon, besides lack of fish passage, may also be addressed in relicensing by the Services, via Sections 10(a) and 10(j) of the FPA (16 U.S.C. sections 797 and 803). However, these are mechanisms for making recommendations to the FERC, which factors them into the balancing of factors in its public interest determination under Section 10(a) of the FPA. There is no guarantee that species protection would be a controlling factor in the FERC's decision. In practice, such recommendations are often not required by the FERC (Black *et al.*, 1998).

The Services recognize that they and the FERC are not the only authorities with a role to play in protecting fish in hydropower relicensing. For a hydropower project to be relicensed by the FERC, the State of Maine must first certify that continued operation of the project will comply with Maine's water quality standards pursuant to Section 401 of the CWA. The MDEP is the certifying agency for all hydropower project licensing and relicensing in the State of Maine, except for projects in unorganized territories subject to permitting by the Land Use Regulation Commission (LURC). Through the water quality certification process, the State of Maine can require fish passage and habitat enhancements at FERC licensed hydroelectric projects (See *S.D. Warren* v. *Maine Board of Environmental Protection* 547 U.S. 370, 126 S.Ct. 1843 (2006)). As with Section 18 authority, though section 401 authority is binding on the FERC, it requires administrative proceedings with uncertain outcomes. Also, it is not clear that this mechanism is available except in relicensing, or where MDEP has specifically reserved authority to alter the terms of its prior certification. Authority under section 401 of the CWA permits the certifying state to certify that the discharge will comply with the terms of the CWA, including any state water quality standards. It is not clear that section 401 permits regulation of conditions in the reservoirs above dams, except indirectly where the water quality of the reservoir is controlled by the quality of discharges from an upstream dam.

Finally, in other parts of the country, mandatory conditioning authority under section 4(e) of the FPA is often used by the Services in relicensing to recommend fisheries enhancements. However, this authority is only available to a Federal agency where there are Federal lands under its jurisdiction within the project boundary, and acts as a mechanism to protect the ''reservation.'' Federal lands where Section 4(e) could be applied are rare in Maine, and 4(e) does not provide an adequate mechanism for protection of Atlantic salmon throughout the GOM DPS.

Non-hydroelectric dams: The vast majority of dams within the range of the GOM DPS do not require either a FERC license or MDEP water quality certificate. These dams are typically small dams historically used for a variety of purposes, including flood control, storage, and process water (for industries such as blueberry harvesting). Because they do not generate electricity, they are not subject to the jurisdiction of the FERC under the FPA. Practically none of these dams within the range of the GOM DPS have fish passage facilities, and all impact historical Atlantic salmon habitat. Many of these non-jurisdictional dams are no longer used for their intended purposes; however, many smaller dams maintain water levels in lakes and ponds. Lack of fish passage and other impacts to salmon may currently be addressed only through the mechanisms of State law.

Fish passage may be required by the State of Maine under 12 M.R.S.A section 12760. However, this requires an administrative process and a hearing, if one is requested by the dam owner. An

order to construct fish passage under this statute requires a finding that fish can be restored ''in substantial numbers'' and that habitat above the dam ''is sufficient and suitable to support a substantial commercial or recreational fishery.'' These are very different considerations from the ESA's focus on prevention of extinction. Furthermore, this statute has never been used to require fish passage at any dam in Maine, and, despite the one hearing ongoing at this time, the statute remains untested in the courts and at the administrative level. Nor, of course, does it address threats beyond lack of fish passage.

Finally, although the MDEP can be petitioned by the public to set minimum flows and water levels at the dams not under FERC jurisdiction, the MDEP has no direct statutory authority under Maine law to require fisheries related enhancements without public request or petition. Removal of non-hydropower generating dams in Maine may require a permit under the Maine Natural Resources Protection Act or the Maine Waterway Development and Conservation Act. Owners of non-hydroelectric dams can petition the MDEP to be released from ownership; however, the MDEP does not have the authority to require dam removal without the consent of the owner.

In summary, the inadequacy of existing regulatory mechanisms for dams significantly affects the GOM DPS because dams pose a significant threat. Existing regulatory mechanisms do not provide a timely and dependable means to eliminate the effects of dams on salmon and their habitat.

Water Withdrawals

The State of Maine has made substantial progress in regulating water withdrawals. In 2007, it finalized a new rule (Chapter 587 of the Code of Maine Rules ''In-stream flow and water level standards'') that establishes river and stream flows and lake and pond water levels to protect aquatic life and other designated uses in Maine's waters. The new standards are based on maintaining natural variation of flows and water levels, but allow variances if water use will still be protective of applicable state and Federal water quality classifications. The flow standards are based on seasonal aquatic base flows. We believe that the water rules for class AA waters will be protective of Atlantic salmon because the flow standards are based on natural flows, and exceptions are allowed only under clearly defined limits. However, the flow standards for class A, B, and C waters are based on seasonal base flows, which allow withdrawals when flow is at or below median monthly flow. These standards are not sufficiently protective of Atlantic salmon because they allow reduced in-stream flows that reduce habitat, increase water temperature, and decrease dissolved oxygen (as described in Factor A, above).

Water withdrawals that reduce flow below the median monthly flow are a stressor on the GOM DPS (see Factor A). These withdrawals are allowed under the Maine flow standards; therefore, the existing regulatory mechanisms for water quantity are inadequate.

Water Quality

As described above in Factor A, the MDEP administers the NPDES program under the CWA (known as the MPDES program). MDEP issues permits for point source discharges from freshwater hatcheries, municipal facilities, and other industrial facilities. Maine's water classification system provides for different water quality standards for different classes of waters (*e.g.*, there are four classes for freshwater rivers all of which are found within the GOM DPS range). However, these standards are not based on water quality requirements of Atlantic salmon. Also, as described under Factor A above, there have been cases when water quality did not meet standards and was at levels that negatively impact salmon. Therefore, we are concerned that water quality standards may not be sufficiently protective of Atlantic salmon and that lack of compliance with existing standards may continue to harm salmon.

Factor A also describes concerns we have regarding non-point source discharges. Sedimentation and other non-point source discharges related to forestry activities are regulated by the Shoreland Zoning Act, Maine Forest Practices Act, Natural Resource Protection Act, Protection and Improvement of Waters Act, Erosion and Sedimentation Control Law, and the Statewide Standards for Timber Harvesting and Related Activities in Shoreland Areas. Non-compliance with these regulatory mechanisms has resulted in impacts to Atlantic salmon habitat and continues to pose a risk to the GOM DPS (Fay *et al.*, 2006, page 83).

In summary, the MPDES program and the associated water quality standards do not regulate all potential water quality problems for salmon. We have determined that lack of compliance with existing water quality standards and with regulations to reduce sedimentation from forestry activities may continue to impact Atlantic salmon. Therefore, we find that inadequacy of existing regulatory mechanisms for water quality is a stressor to the GOM DPS.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Artificial Propagation

In the proposed rule we included a discussion of artificial propagation under Factor E. However, because of the essential role of conservation hatcheries in currently sustaining the GOM DPS of Atlantic salmon, in this final rule we evaluated the positive and negative effects of hatcheries in the status of the species section. We find that, in the short-term, conservation hatcheries are a benefit to the GOM DPS. The role of the conservation hatchery program is discussed above in the ''Status of the GOM DPS'' section.

Aquaculture

Atlantic salmon that escape from farms and commercial hatcheries pose a threat to native Atlantic salmon populations (Naylor *et al.*, 2005) because captive-reared fish are selectively bred to promote behavioral and physiological attributes desirable in captivity (Hindar *et al.*, 1991; Utter *et al.*, 1993; Hard *et al.*, 2000); for further discussion of the threat of aquaculture see section 8.5.2 in Fay *et al.* (2006)). Experimental tests of genetic divergence between farmed and wild salmon indicate that farming generates rapid genetic change as a result of both intentional and unintentional selection in culture and those changes alter important fitness-related traits (McGinnity *et al.*, 1997; Gross, 1998). Consequently, aquaculture fish are often less fit in the wild than naturally produced salmon (Fleming *et al.*, 2000). Annual invasions of escaped adult aquaculture salmon can disrupt local adaptations and reduce genetic diversity of wild populations (Fleming *et al.*, 2000). Bursts of immigration also disrupt genetic differentiation among wild Atlantic salmon stocks, especially when wild populations are small (Mork, 1991). Natural selection may be able to purge wild populations of maladaptive traits but may be less able to if the intrusions occur year after year. Under this scenario, population fitness is likely to decrease as the selection from the artificial culture operation overrides wild selection (Hindar *et al.*, 1991; Fleming and Einum, 1997), a process called outbreeding depression. The threat of outbreeding depression is likely to be greater in North America where aquaculture salmon have been based, in part, on European strain. To

minimize these risks, the use of non-North American strains of salmon has been phased out in the United States.

In addition to genetic effects, escaped farmed salmon can disrupt redds of wild salmon, compete with wild salmon for food and habitat, transfer disease or parasites to wild salmon, and degrade benthic habitat (Windsor and Hutchinson, 1990; Saunders, 1991; Youngson *et al.*, 1993; Webb *et al.*, 1993; Clifford *et al.*, 1997). Farmed salmon have been documented to spawn successfully, but not always at the same time as wild salmon (Lura and Saegrov, 1991; Jonsson *et al.*, 1991; Webb *et al.*, 1991; Fleming *et al.*, 1996). Late spawning aquaculture fish could limit wild spawning success through redd superimposition. There has also been recent concern over potential interactions when wild adult salmon migrate past closely spaced cages, creating the potential for behavioral interactions, disease transfer, or interactions with predators (Lura and Saegrov, 1991; Crozier, 1993; Skaala and Hindar, 1997; Carr *et al.*, 1997; DFO, 1999). In Canada, the survival of wild postsmolts moving from Passamaquoddy Bay to the Bay of Fundy was inversely related to the density of aquaculture cages (DFO, 1999).

Atlantic salmon aquaculture has developed and expanded in the North Atlantic since the early 1970s. Production of farmed Atlantic salmon in 2007 was estimated at over 1.27 million metric tonnes worldwide, 859,103 metric tonnes in the North Atlantic, and 8.16 metric tonnes in Maine (ICES, 2008). The Maine Atlantic salmon aquaculture industry is concentrated in Cobscook Bay near Eastport, Maine. The industry in Canada, just across the border, is approximately twice the size of the Maine industry. Five freshwater commercial hatcheries in the United States have provided smolts to the sea cages and produce up to four million smolts per year.

Three primary broodstock lines have been used for farm production. The lines include fish from the Penobscot River, St. John River, and historically an industry strain from Scotland. The Scottish strain was imported into the United States in the early 1990s and is composed primarily of Norwegian strains, frequently referred to as Landcatch. Milt of Norwegian origin was also imported by the industry from Iceland (Baum, 1998). However, placement of reproductively viable non-North American origin Atlantic salmon into marine cages in the United States has been eliminated.

Escaped farmed salmon are known to enter Maine rivers. For example, at least 17 percent (14 of 83 fish) of the rod catch in the East Machias River were captive-reared adults in 1990. In addition to the frequency and magnitude of escape events that drive annual variability, returns of captive-reared adults to Maine rivers are influenced by the amount of production and proximity of rearing sites in adjacent bays. About 60 percent of commercial salmon production in Maine occurs at sites on Cobscook and Passamaquoddy Bays, into which the Dennys River flows; 35 percent on Machias Bay and the estuary of the Little River, within 11.26 kilometers of the Machias and East Machias Rivers; and the remainder on the estuaries of the Pleasant and Narraguagus Rivers, or adjacent to Blue Hill Bay. The percentage of captive-reared fish in adult returns is highest in the St. Croix (not a part of the GOM DPS) and Dennys Rivers and lowest in the Penobscot River (less than 0.01 percent in the years 1994 to 2001), with the Narraguagus runs having low and sporadic proportions of captive-reared salmon.

A large escape event occurred in 2005 when four marine salmon aquaculture sites in Western New Brunswick, Canada, were vandalized from early May through November 2005, resulting in approximately 136,000 escaped farmed salmon. Most escapees were unmarked 1SW salmon of similar size (2 to 5 kg). Escaped aquaculture-origin salmon from these vandalism events entered the Dennys River and possibly other Eastern Maine rivers in 2005. The Services and MDMR cooperated to implement a program to minimize genetic and ecological risks from this escape (Bean *et al.*, 2006).

Aquaculture escapees and resultant interactions with native stocks are expected to continue to occur within the range of the GOM DPS given the continued operation of farms. While recent containment protocols have greatly decreased the incidence of losses from hatcheries and pens, the risk of large escapes occurring is still significant. Escaped farmed fish are of great concern in Maine because, even at low numbers, they can represent a substantial portion of the returns to some rivers. Wild populations at low levels are particularly vulnerable to genetic intrusion or other disturbance caused by escapees (Hutchings, 1991; DFO, 1999).

Despite the concerns with aquaculture described above, recent advances in containment and marking of aquaculture fish limit the negative impacts of aquaculture fish on the GOM DPS. Permits issued by the Army Corps of Engineers (ACOE) and MDEP require: genetic screening to ensure that only North American strain salmon are used in commercial aquaculture; marking to facilitate tracing fish back to the source and cause of the escape; containment management plans and audits; and rigorous disease screening.

In summary, aquaculture is a stressor to the GOM DPS. If the current regulatory measures were no longer in place, were less protective, or less effective, the threat from aquaculture would be much greater.

Low Marine Survival

As noted previously, Atlantic salmon leave Maine rivers as smolts, and the majority spend 2 years at sea before returning to spawn. Survival during the time at sea directly influences the number of adults that return to spawn. During this extensive marine migration, U.S. Atlantic salmon can be affected directly and indirectly by commercial fisheries (discussed in Factor B) and natural mortality. Given significant reductions in commercial intercept fisheries, the continued low marine survival rates indicate that natural mortality is having a significant impact. Natural mortality in the marine environment can be attributed to four general sources: predation (Factor C), starvation, disease/parasites (Factor C), and abiotic factors (*e.g.*, ocean conditions). While our understanding of the marine ecology of Atlantic salmon has increased substantially in the past decade, the specific role or contribution of the four sources identified above remains unclear.

In general, return rates for Atlantic salmon across North America have declined over the last 30 years (ICES, 1998). Chaput *et al.* (2005) reported on the possibility of a phase (or regime) shift of productivity for Atlantic salmon in the Northwest Atlantic. A phase or regime shift refers to a large and sudden change in abundance (Beamish *et al.*, 1999). Evidence is presented that the productivity of North American Atlantic salmon in the Northwest Atlantic Ocean has decreased since the early 1990s, likely the result of reduced marine survival (Chaput *et al.*, 2005). Specifically, there has been a decrease in the recruit-per-spawner relationship for these populations, which likely occurred over several years in the late 1980s into the early 1990s. This has resulted in a similar number of lagged spawners (index of the parental stock that produced the pre-fishery abundance) resulting in a 2–3 fold decrease in the number of pre-fishery abundance fish (number of North

American 2SW salmon in the ocean at a specific time) when comparing pre-early 1990s to post-early 1990s. The concept of phase shift has previously been documented and discussed for Pacific salmon populations (Beamish *et al.*, 1999). Chaput *et al.* (2005) did not speculate on the causes of the reduced marine survival.

The phase shift described above resulting in lower survival of salmon in the Northwest Atlantic beginning in the 1990s is supported by documented low marine survival rates since 1991 for U.S. stocks of Atlantic salmon, (see section 8.5.3 of Fay *et al.* (2006)). For the period 2003 to 2007, 2SW return rates for wild Narraguagus River smolts ranged from 0.54 to 0.94 percent. Return rates for this same period for 2SW hatchery Penobscot River smolts ranged from 0.11 to 0.17 percent (ICES, 2008). Data for 2007, which is based on the 2005 and 2006 smolt cohorts, showed that 1SW and 2SW adult returns for hatchery and wild populations in many rivers in Newfoundland, Quebec, Scotia-Fundy, and the United States were the lowest in the available time series (1971–2000) (ICES, 2008).

North American stocks have experienced greater declines than European stocks, and southern stocks have experienced greater declines than northern stocks. Bley and Moring (1988) have suggested that Atlantic salmon with longer migration routes typically suffer from lower marine survival rates. Stock abundances and management regimes are highly variable throughout the range. The synchronous population declines on both sides of the North Atlantic despite diverse management regimes suggests that large scale processes in the common marine environment are affecting Atlantic salmon in the ocean and are at least partially responsible for the negative trends in abundance (Friedland *et al.*, 2003; Jonsson and Jonsson, 2004; Friedland *et al.*, 2005; Spares *et al.*, 2007). Furthermore, sonic telemetry studies of emigrating smolts in southern European and North American rivers suggest that smolt mortality in estuaries, though variable, is broadly similar in both regions (ICES, 2008). Numerous ultrasonic tracking studies have begun to provide estimates of nearshore mortality for a number of different populations (Dieperink *et al.*, 2002; Lacroix *et al.*, 2005; Kocik *et al.*, 2008), and it has been suggested that nearshore survival has a particularly large influence on overall marine survival (Ritter, 1989; Dieperink *et al.*, 2002; Potter *et al.*, 2003). These and other studies demonstrate that poor marine survival is being experienced throughout the Atlantic Ocean and is heavily influenced by nearshore survival in addition to open ocean survival and that patterns of decline are most evident in southern stocks (ICES, 2008). Higher freshwater productivity in southern populations may offset poorer marine survival; however, as mentioned above, marine survival is much more variable and has a highly significant impact on adult production regardless of freshwater production.

Efforts to understand marine survival are being undertaken at national and international levels. NMFS is specifically engaged in activities at the national level (*e.g.*, smolt trapping and telemetry studies, and post-smolt trawl surveys) in an effort to understand migration/survival dynamics of smolts, survival estimates by ecological zone, smolt health and behavior during transition to the marine environment, and environmental conditions/ecosystem health during smolt migration. Data collected from these studies inform salmon management at the national levelands contribute to international efforts. As stated previously, the United States is a member of NASCO, an international treaty organization. Through NASCO, the United States participates in high seas sampling, marine research, and the sampling program for the West Greenland fishery. NMFS is also currently participating in an effort supported by NASCO called Salmon At Sea (SALSEA), an initiative to develop international scientific collaboration to understand marine survival issues. SALSEA is geared towards understanding marine survival issues on the high seas. Ongoing SALSEA work includes, but is not limited to, efforts to merge genetics and ecology data to try and understand marine migration and distribution patterns, trawl surveys, and fishery sampling.

Marine survival is thus critical to shaping recruitment patterns in Atlantic salmon, with low marine survival causing the low abundance of adult salmon; however, the mechanisms of the observed persistent decline in marine survival remain unknown. It is clear that marine survival has to improve dramatically in the future in order to reverse the GOM DPS decline.

It is important to note that the above discussion focuses primarily on survival at sea, beyond the territorial waters of any one country. Mortality of outmigrating smolts in the estuaries and bays of the GOM DPS is also affecting the population. Tagging and tracking studies conducted by NMFS indicate that approximately half of the smolts leaving our rivers do not enter the open ocean. Improvements in survival in this transition zone could ultimately result in improvements in marine survival. It is also likely that if we are able to identify the factors affecting survival of outmigrating smolts in our estuaries and bays, we will have a greater chance of influencing those factors than the factors that may be affecting salmon survival at sea. In summary, the observed, persistent decline in marine survival is directly responsible for the low abundance of adult salmon. Low marine survival poses a significant threat to the GOM DPS because it is driving population status and projections for recovery. Recovery of the species is dependent on increases in marine survival. The mechanisms driving low marine survival remain unknown.

Depleted Diadromous Communities

The ecological setting in which Maine Atlantic salmon evolved is considerably different than what exists today. Ecological changes that have occurred over the last 200 years are ubiquitous and span a wide array of spatial and temporal scales. Of particular concern for Atlantic salmon recovery efforts within the range of the GOM DPS is the dramatic decline observed in the diadromous fish community. At historic abundance levels, Fay *et al.* (2006) and Saunders *et al.* (2006) hypothesized that several of the co-evolved diadromous fishes may have provided substantial benefits to Atlantic salmon through at least four mechanisms: serving as an alternative prey source for salmon predators; serving as prey for salmon directly; depositing marine-derived nutrients in freshwater; and increasing substrate diversity of rivers. A brief description of each mechanism is provided below.

Fay *et al.* (2006) and Saunders *et al.* (2006) hypothesized that the historically large populations of clupeids (*i.e.*, members of the family Clupeidae, such as alewives, blueback herring, and American shad) likely provided a robust alternative forage resource (or prey buffer) for opportunistic native predators of salmon during a variety of events in the salmon's life history. First, pre-spawn adult alewives likely served as a prey buffer for migrating Atlantic salmon smolts. Evidence for this relationship includes significant spatial and temporal overlap of migrations, similar body size, numbers of alewives that exceeded salmon smolt populations by several orders of magnitude (Smith, 1898; Collette and Klein-MacPhee, 2002), and a higher caloric content per individual (Schulze, 1996). Thus, alewives were likely a substantial

alternative prey resource (*i.e.*, prey buffer) that protected salmon smolts from native predators such as cormorants, otters, ospreys, and bald eagles within sympatric migratory corridors (Mather, 1998; USASAC, 2004). Second, adult American shad likely provided a similar prey buffer to potential predation on Atlantic salmon adults by otters and seals. Pre-spawn adult shad would enter these same rivers and begin their upstream spawning migration at approximately the same time as adult salmon. Historically, shad runs were considerably larger than salmon runs (Atkins and Foster, 1869; Stevenson, 1898). Thus, native predators of medium to large size fish in the estuarine and lower river zones could have preyed on these 1.5 to 2.5 kg size fish readily. Third, juvenile shad and blueback herring may have represented a substantial prey buffer from potential predation on Atlantic salmon fry and parr by native opportunistic predators such as mergansers, herons, mink, and fallfish. Large populations of juvenile shad (and blueback herring, with similar life history and habitat preferences to shad) would have occupied mainstem and larger tributary river reaches through much of the summer and early fall. Juvenile shad and herring would ultimately emigrate to the ocean, along with juvenile alewives from adjacent lacustrine habitats, in the late summer and fall. Recognizing that the range and migratory corridors of these juvenile clupeids would not be precisely sympatric with juvenile salmon habitat, there nonetheless would have been a substantial spatial overlap amongst the habitats and populations of these various juvenile fish stocks. Even in reaches where sympatric occupation by juvenile salmon and juvenile clupeids may have been low or absent, factors such as predator mobility and instinct driven energetic efficiency (*i.e.*, optimal foraging theory) need to be considered since the opportunity for prey switching would have been much greater than today, and the opportunity for prey switching may produce stable predator-prey systems with coexistence of both prey and predator populations (Krivan, 1996).

At historical abundance levels, other diadromous species also represented significant supplemental foraging resources for salmon in sympatric habitats. In particular, anadromous rainbow smelt are known to be a favored spring prey item of Atlantic salmon kelts (Cunjak *et al.* 1998). A 1995 radio tag study found that Miramichi River (New Brunswick, Canada) kelts showed a net upstream movement shortly after ice break-up (Komadina-Douthwright *et al.*, 1997). This movement was concurrent with the onset of upstream migrations of rainbow smelt (Komadina-Douthwright *et al.*, 1997). In addition, Moore *et al.* (1995) suggested that the general availability of forage fishes shortly after ice break-up in the Miramichi could be critical to the rejuvenation and ultimate survival of kelts as they prepared to return to sea. Kelts surviving to become repeat spawners are especially important, from a demographic perspective, due to higher fecundity (Baum, 1997; NRC, 2004). The historical availability of anadromous rainbow smelt as potential kelt forage in lower river zones may have been important in sustaining the viability of this salmon life stage. Conversely, the broad declines in rainbow smelt populations may be partially responsible for the declining occurrence of repeat spawners in Maine's salmon rivers.

Historically, the upstream migrations of large populations of adult clupeids, sea lamprey, and salmon themselves, provided a conduit for the import and deposition of biomass and nutrients of marine origin into freshwater environments. Mechanisms of direct deposition included discharge of urea, discharge of gametes on the spawning grounds, and deposition of adult carcasses (Durbin *et al.*, 1979). Migrations and other movements of mobile predators and scavengers of adult carcasses likely resulted in further distribution of imported nutrients throughout the freshwater ecosystem. Conversely, juvenile outmigrants of these sea-run species represented a massive annual outflux of forage resources for Gulf of Maine predators, while also completing the cycle of exporting base nutrients back to the ocean environment. These types of diffuse mutualism are only recently being recognized (Hay *et al.*, 2004). Sea lampreys also likely played a role in nutrient cycling. Lampreys prefer spawning habitat that is very similar (location and physical characteristics) to that used by spawning Atlantic salmon (Kircheis, 2004). Adult lampreys spawn in late spring, range in weight from 1 to 2 kg, and experience 100 percent post-spawning mortality on spawning grounds (semelparous). This results in the deposition of marine-origin nutrients at about the same time that salmon fry would be emerging from redds and beginning to occupy adjacent juvenile production habitats. These nutrients would likely have enhanced the primary production capability of these habitats for weeks or even months after initial deposition, and would gradually be transferred throughout the trophic structure of the ecosystem, including those components most important to juvenile salmon (*e.g.*, macroinvertebrate production).

Sea lampreys likely provide an additional benefit to Atlantic salmon spawning activity in sympatric reaches. In constructing their nests, lamprey carry stones from other locations and deposit them centrally in a loose pile within riffle habitat and further utilize body scouring to clean silt off stones already at the site (Kircheis, 2004). Ultimately, a pile of silt-free stones as deep as 25 cm and as long as a meter is formed (Leim and Scott, 1966; Scott and Scott, 1988), into which the lamprey deposit their gametes. The stones preferred by lampreys are generally in the same size range as those preferred by spawning Atlantic salmon. Thus, lamprey nests can be attractive spawning sites for Atlantic salmon (Kircheis, 2004). Kircheis (2004) also notes the lamprey's silt-cleaning activities during nest construction that may improve the ''quality'' of the surrounding environment with respect to potential diversity and abundance of macroinvertebrates, a primary food item of juvenile salmon.

Depleted diadromous fish communities are a stressor to the GOM DPS. Because diadromous fish populations have been significantly reduced, ecological benefits from marine derived nutrient deposition, prey buffering, and alternative sources of food for Atlantic salmon are likely significantly lower today compared to historical conditions. These impacts may be contributing, at some undetermined level, to decreased marine survival through the reduction of prey for reconditioning kelts, through increased predation risks for smolts in lower river and estuarine areas, and through increased predation risks to adults in estuarine and lower river areas. Although these impacts do not occur in the open ocean, the demographic impact to the species occurs after smolt emigration, and is thus a component of the marine survival regime.

Competition

Prior to 1800, the resident riverine fish communities in Maine were relatively simple, consisting of brook trout, cusk (burbot), white sucker, and a number of minnow species. Today, Atlantic salmon co-exist with a diverse array of nonnative resident fishes, including brown trout, largemouth bass, smallmouth bass, and northern pike

(MIFW, 2002). The range expansion of nonnative fishes is important, given evidence that niche shifts may follow the addition or removal of other competing species (Fausch, 1998). For example, in Newfoundland, Canada, where fish communities are simple, Atlantic salmon inhabit pools and lakes that are generally considered atypical habitats in systems where there are more complex fish communities (Gibson, 1993). Use of lacustrine (or lake) habitat, in particular, can increase smolt production (Matthews *et al.*, 1997). Conversely, if salmon are excluded from these habitats through competitive interactions, smolt production may suffer (Ryan, 1993). Even if salmon are not completely excluded from a given habitat type, they may select different, presumably sub-optimal, habitats in the presence of certain competitors (Fausch, 1998). Thus, competitive interactions may limit Atlantic salmon production through niche constriction (Hearn, 1987).

The range expansion of nonnative species (*e.g.*, smallmouth bass, brown trout, and rainbow trout) is of particular concern since these species often require similar resources as salmon and are, therefore, expected to be competitors for food and space. MIFW currently stocks landlocked Atlantic salmon, brown trout, brook trout, rainbow trout and splake in Atlantic salmon river drainages, posing a threat to Atlantic salmon in the GOM DPS (Fay *et al.*, 2006). The range of northern pike has also been expanded through stocking, and they now exist in at least 16 lakes within the Kennebec and Androscoggin drainages as well as Pushaw Lake that drains into Lower Penobscot River (MIFW, 2001). Yellow perch, white perch, and chain pickerel were historically native to Maine, though their range has been expanded by stocking and subsequent colonization (MIFW, 2002).

Brown trout, rainbow trout, and splake are all non-native species known to prey on Atlantic salmon and have been stocked throughout the range of the GOM DPS by the MIFW (Fay *et al.*, 2006). The species most likely to compete for food and habitat with Atlantic salmon in the GOM DPS include brown trout, land locked Atlantic salmon, brook trout, and smallmouth bass (Fay *et al.*, 2006). Atlantic salmon and rainbow trout juveniles require similar resources; therefore, competition is expected to be significant in areas of overlap (Fay *et al.*, 2006). Rainbow trout would be important competitors if they overlapped with Atlantic salmon to a greater extent (Fay *et al.*, 2006). Rainbow trout are present in at least three reaches of the Kennebec River and in the Androscoggin (Fay *et al.*, 2006). Illegal introductions and legal stocking programs continue to expand their range (Pellerin, 2002). Atlantic salmon and rainbow trout juveniles require similar resources; therefore, competition is expected to be significant in areas of overlap (Fay *et al.*, 2006).

There are some areas within the range of the GOM DPS where landlocked Atlantic salmon spawn successfully and rear in sympatry with anadromous Atlantic salmon (Fay *et al.*, 2006). For these populations, competitive interactions for food and habitat are expected to be very high given the nearly identical early life history requirements of the two ecotypes (Fay *et al.*, 2006). Competition between brown trout and Atlantic salmon is expected to be significant in areas where they co-occur given similarities in their life history requirements (Fay *et al.*, 2006). Brown trout currently inhabit the Androscoggin, Kennebec Rivers, and the Piscataquis River in the upper Penobscot watershed, as well as many lakes and ponds (Boland, 2001; MIFW, 2002). Most evidence suggests that brown trout will displace or otherwise outcompete Atlantic salmon from pool habitats in both summer and winter (Kennedy and Strange, 1986; Harwood *et al.*, 2001). The ability of brown trout to outcompete Atlantic salmon has significant negative effects on Atlantic salmon, including changes in habitat use and behavior that may limit salmon production through niche constriction when the two species co-occur (Hearn, 1987; Fausch, 1988). In summary, competition is a stressor to the GOM DPS because it can exclude salmon from preferred habitats, reduce food availability, and increase predation.

Climate Change

Since the 1970s there has been a historically significant change in climate (Greene *et al.*, 2008). Climate warming has resulted in increased precipitation, river discharge, and glacial and sea-ice melting (Greene *et al.*, 2008). The past 3 decades have witnessed major changes in ocean circulation patterns in the Arctic, and these were accompanied by climate associated changes as well (Greene *et al.*, 2008). Shifts in atmospheric conditions have altered Arctic ocean circulation patterns and the export of freshwater to the North Atlantic (Greene *et al.*, 2008; IPCC, 2006). With respect specifically to the North Atlantic Oscillation (NAO), changes in salinity and temperature are thought to be the result of changes in the earth's atmosphere caused by anthropogenic forces (IPCC, 2006). The NAO impacts climate variability throughout the northern hemisphere (IPCC, 2006). Data from the 1960s through the present show that the NAO index has increased from minimum values in the 1960s to strongly positive index values in the 1990s and somewhat declined since (IPCC, 2006). This warming extends over 1000 m deep and is deeper than anywhere in the world oceans and is particularly evident under the Gulf Stream/North Atlantic Current system (IPCC, 2006). On a global scale, large discharges of freshwater into the North Atlantic subarctic seas can lead to intense stratification of the upper water column and a disruption of North Atlantic Deepwater (NADW) formation (Greene *et al.*, 2008; IPCC, 2006). There is evidence that the NADW has already freshened significantly (IPCC, 2006). This in turn can lead to a slowing down of the global ocean thermohaline (large-scale circulation in the ocean that transforms low-density upper ocean waters to higher density intermediate and deep waters and returns those waters back to the upper ocean), which can have climatic ramifications for the whole earth system (Greene *et al.*, 2008).

The changes in freshwater export and circulation patterns have resulted in significant salinity changes (IPCC, 2006), leading to two main ecological shifts (Pershing *et al.,* 2005; Greene and Pershing 2007; Greene *et al.,* 2008). The first major ecological shift is the biogeographic range expansion by Boreal Plankton, including trans-Arctic exchanges of Pacific species with the Atlantic (Greene *et al.,* 2008). The second ecological shift had mainly affected the Northwest Atlantic where, during the early 1990s, a dramatic shift in shelf ecosystems occurred (Pershing *et al.,* 2005; Greene and Pershing, 2007; Greene *et al.,* 2008). The major shifts observed specifically in the GOM and Scotian shelf ecosystems in the early 1990s are specifically linked to these changes in salinity and lower trophic level communities (Pershing *et al.,* 2005; Greene and Pershing, 2007; Greene *et al.,* 2008). These changes may be related to changes in higher trophic level consumer populations as well (Greene *et al.,* 2008). Shifts in ecological communities in the Northwest Atlantic include commercially harvested fish and crustacean populations, both of which underwent large changes in abundance during the 1990s (Frank *et al.,* 2005; Pershing *et al.,* 2005; Vilhjalmsson *et al.,* 2005). While overfishing was the predominant cause

of the collapse of cod in particular, the cold, low-salinity Arctic waters entering the northern portion of the range of cod, seem to have hampered their subsequent recovery (Rose *et al.,* 2000; Vilhjalmsson *et al.,* 2005). Other species, such as shrimp and snow crab, have increased in abundance in the absence of cod predation (Frank *et al.,* 2005).

With respect to the GOM DPS, Greene *et al.* (2008) describe that changes in salinity can result in more localized effects on ocean circulation patterns and climate that are confined to the North Atlantic basin and the adjacent landmasses. For example, these changes specifically affect thermal regimes within the range of the GOM DPS (see section 8.1.4 of Fay *et al.* (2006)). Within the range of the GOM DPS, the spring runoff occurs earlier; water content in snow pack for March and April has decreased; and the duration of river ice has been reduced (Dudley and Hodgkins, 2002). Several studies indicate that small thermal changes may substantially alter reproductive performance, smolt development, species distribution limits, and community structure of fish populations (Van Der Kraak and Pankhurst, 1997; McCormick *et al.,* 1997; Keleher and Rahel, 1996; McCarthy and Houlihan, 1997; Welch *et al.,* 1998; Schindler, 2001). For Atlantic salmon specifically, Juanes *et al.* (2004) suggest that observed changes in adult run timing may be a response to global climate change. Friedland *et al.* (2005) summarized numerous studies that suggest that climate mediates marine survival for Atlantic salmon as well as other fish species. Recent analyses of bottom water temperatures found that negative NAO years are warmer in the north and cooler in the Gulf of Maine (Petrie, 2007). Positive NAO years are warmer in Gulf of Maine and colder in the north (north of 45° N) (Petrie, 2007). Strength of NAO is related to annual changes in diversity of potential predators: at southern latitudes, there are more species during positive NAO years (Fisher *et al.,* 2008). The effect is system-wide where 133 species showed at least a 20 percent difference in frequency of occurrence in years with opposing NAO states (Fisher *et al.,* 2008).

This is currently leading to different hypotheses regarding the effect these changes may be having on Atlantic salmon. One hypothesis is that salmon migrating during positive NAO years confront a steeper gradient of cooler to warmer water. This gradient may be resulting in changes in the composition of species as Atlantic salmon undertake their marine migration, potentially increasing the vulnerability of Atlantic salmon to predators (Gibson, 2006; NMFS Nearshore Workshop #2, 2009). Other hypotheses being explored relate to potential linkages between ocean climate and effects on wind velocities and nearshore wind driven currents and adverse impacts on post smolt migration, as well as the potential influence of air temperatures and sea surface temperature and potential impacts on migration cues (NMFS Nearshore Workshop #2, 2009). These current efforts to understand changes in ocean productivity are focused on whether environmental changes could be contributing, whether there are any other species where similar shifts in productivity have had negative effects, and whether there are correlations between this particular phase shift and population dynamics of other species.

While some physiological changes at the individual level are quite predictable when changes in temperature are known, we do not understand how or to what degree climate change may affect the freshwater and marine environment of the GOM DPS. At this time, we do not have enough information to determine whether the GOM DPS is threatened or endangered because of the effects of climate change.

Efforts Being Made To Protect the Species

Section 4(b)(1)(A) of the ESA requires the Secretary of Commerce to make listing determinations solely on the basis of the best scientific and commercial data available after taking into account efforts being made to protect a species. Therefore, in making a listing determination, we first assess a species' level of extinction risk and identify factors that have led to its decline. We then assess existing efforts being made to protect the species to determine if these conservation efforts improve the status of the species such that it does not meet the ESA's definition of a threatened or endangered species.

In judging the efficacy of existing protective efforts, we rely on the Services' joint ''Policy for Evaluation of Conservation Efforts When Making Listing Decisions'' (''PECE;'' 68 FR 15100; March 28, 2003). PECE provides direction for the consideration of protective efforts identified in conservation agreements, conservation plans, management plans, or similar documents (developed by Federal agencies, state and local governments, tribal governments, businesses, organizations, and individuals) that have not yet been implemented, or have been implemented but have not yet demonstrated effectiveness. The policy articulates several criteria for evaluating the certainty of implementation and effectiveness of protective efforts to aid in determining whether a species should be listed as threatened or endangered. Evaluation of the certainty that an effort will be implemented includes whether: (1) The conservation effort, the party(ies) to the agreement or plan that will implement the effort, and the staffing, funding level, funding source, and other resources necessary to implement the effort are identified; (2) the legal authority of the party(ies) to the agreement or plan to implement the formalized conservation effort, and the commitment to proceed with the conservation effort are described; (3) the legal procedural requirements (*e.g.* environmental review) necessary to implement the effort are described, and information is provided indicating that fulfillment of these requirements does not preclude commitment to the effort; (4) authorizations (*e.g.,* permits, landowner permission) necessary to implement the conservation effort are identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the effort will obtain these authorizations; (5) the type and level of voluntary participation (*e.g.,* number of landowners allowing entry to their land, or number of participants agreeing to change timber management practices and acreage involved) necessary to implement the conservation effort is identified, and a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain that level of voluntary participation (*e.g.,* an explanation of how incentives to be provided will result in the necessary level of voluntary participation); (6) regulatory mechanisms (*e.g.,* laws, regulations, ordinances) necessary to implement the conservation effort are in place; (7) a high level of certainty is provided that the party(ies) to the agreement or plan that will implement the conservation effort will obtain the necessary funding; (8) an implementation schedule (including incremental completion dates) for the conservation effort is provided; and (9) the conservation agreement or plan that includes the conservation effort is approved by all parties to the agreement or plan. The evaluation of the certainty of an effort's effectiveness is made on the basis of whether the effort or plan meets the following elements: (1) The nature and extent of threats being

addressed by the conservation effort are described, and how the conservation effort reduces the threats is described; (2) explicit incremental objectives for the conservation effort and dates for achieving them are stated; (3) the steps necessary to implement the conservation effort are identified in detail; (4) quantifiable, scientifically valid parameters that will demonstrate achievement of objectives, and standards for these parameters by which progress will be measured, are identified; (5) provisions for monitoring and reporting progress on implementation (based on compliance with the implementation schedule) and effectiveness (based on evaluation of quantifiable parameters) of the conservation effort are provided; and (6) principles of adaptive management are incorporated.

PECE also notes several important caveats. Satisfaction of the above mentioned criteria for implementation and effectiveness establishes a given protective effort as a candidate for consideration, but does not mean that an effort will ultimately change the risk assessment for the species. The policy stresses that, just as listing determinations must be based on the viability of the species at the time of review, so they must be based on the state of protective efforts at the time of the listing determination. PECE does not provide explicit guidance on how protective efforts affecting only a portion of a species' range may affect a listing determination, other than to say that such efforts will be evaluated in the context of other efforts being made and the species' overall viability. There are circumstances where threats are so imminent, widespread, and/or complex that it may be impossible for any agreement or plan to include sufficient efforts to result in a determination that listing is not warranted.

Outlined below are current and future protective efforts that may minimize threats facing the GOM DPS. Each of these efforts or projects is measured against the PECE criteria to evaluate the certainty of implementation and effectiveness to determine the relative contribution of the efforts to reducing extinction risk.

Fish Passage, Dams, and Hydropower

The Services are involved in hydroelectric project relicensing and other fish passage issues. Fisheries agencies in Maine continue to work to establish and improve upstream and downstream fish passage, and to remove dams and other blockages to habitat connectivity. The majority of fish passage work in the range of the GOM DPS focuses on FERC licensed dams on the Penobscot, Kennebec, and Androscoggin watersheds and on opportunities to enhance passage throughout historical Atlantic salmon habitat. This includes participating in the Penobscot River Restoration Project, negotiating improved passage on a number of dams on the Kennebec River pursuant in part to the 1998 Lower Kennebec River Comprehensive Hydropower Settlement Accord, replacing culverts on highways and logging roads, and removing dams. The Services, in coordination with other state and Federal agencies, are also making efforts to improve fish passage on the Narraguagus and Sheepscot Rivers. Information regarding some of the most notable efforts made to improve passage for Atlantic salmon in the GOM DPS is summarized below.

(1) Lower Kennebec River Comprehensive Hydropower Settlement Accord (KHDG Accord, May 26th, 1998): The KHDG Accord addresses fish passage issues at eight hydroelectric projects on the Kennebec River and Sebasticook River. The 1998 Accord was signed by various state and Federal fishery agencies and approved by the FERC. In addition, the Anson and Abenaki Offer of Settlement (January 30, 2002), also signed by various state and Federal fishery agencies and approved by FERC, addresses fish passage provisions on two hydroelectric projects within the middle reaches of the Kennebec River (Anson and Abenaki Projects). On the Kennebec River, fish passage agreements were reached at the lower four hydroelectric projects including the Lockwood, Hydro-Kennebec, Shawmut, and Weston as part of the KHDG Accord. The lowermost hydroelectric project, Edwards Dam, was removed as part of the KHDG Accord. On the Sebasticook River, fish passage agreements were reached on the Benton and Burnham Projects, and in 2008, the Fort Halifax dam was breached pursuant to the passage agreement.

During the spring of 2006, upstream fish passage facilities were installed at the Lockwood Dam, the lowermost dam in the Kennebec, pursuant to the KHDG Accord. Fish passage at the Lockwood Dam currently consists of a fish lift with trap and truck facilities. Atlantic salmon captured at the Lockwood Dam are transported upstream to suitable habitat in the Sandy River. In 2006, upstream fish passage, in the form of a fish lift, was also installed at the Benton Falls and Burnham facilities on the Sebasticook River, a tributary to the Kennebec. Currently on the Kennebec, only the Lockwood Dam has upstream fish passage facilities for Atlantic salmon (FPL Energy Maine Hydro LLC, 2008). While some salmon rearing habitat is now available in the restored reach below Lockwood, the vast majority of salmon habitat (nearly 90 percent) in the Kennebec River watershed is located above Lockwood.

The KHDG Accord and Anson-Abenaki Settlement contain biological triggers for implementing upstream passage on the Kennebec River. Based upon the KHDG biological triggers, the next mainstem dam upstream of Lockwood (Hydro-Kennebec) may not have upstream fish passage facilities installed until 2010 at the earliest, and the last dam with upstream habitat may not have fishways until 2020. The main biological trigger to sequential implementation of upstream passage at the remaining KHDG dams is the establishment of a large run of shad in the Kennebec that will be trapped at Lockwood. The shad program in the Kennebec is supported by stocking; however, that program is limited by funding and production capabilities. Funding was secured through 2008; however, funding for the stocking program for 2009 and beyond is highly uncertain. The KHDG Accord does offer one other alternative to state and Federal resource agencies to trigger fishway installation. Text in the Accord states the alternative approach is available to state and Federal resource agencies ''should the growth of salmon or river herring runs make it necessary to adopt an alternative approach for triggering fishway installation.'' However, this process would have to be handled through FERC, and the Licensee would have to agree to the proposed alternative triggers. Even after fish passage facilities are installed in the Kennebec River in accordance with this plan, Atlantic salmon will need to pass at least six mainstem dams (Lockwood, Hydro-Kennebec, Shawmut, Weston, Abenaki, and Anson).

The KHDG Accord and Anson-Abenaki Settlement are legally binding, requiring all parties to fulfill their obligations as stated in the agreement. When all of the conditions in the Accord and Settlement have been fulfilled, passage on the Kennebec River and some of the tributaries will be improved, allowing Atlantic salmon and other diadromous species access to important habitat. However, neither the Accord nor the Settlement is likely to recover Atlantic salmon in the Kennebec watershed in the foreseeable future. The legal procedural requirements in the agreements are based upon biological triggers that currently are contingent upon the

success of a shad stocking program for which production capacity and funding are uncertain for 2009 and beyond. Therefore, the second, third and seventh criteria in the PECE for certainty of implementation are not satisfied. Under PECE, the effectiveness of the agreements to fully address passage issues for Atlantic salmon in the Kennebec River, or the entire GOM DPS, also can not be fully guaranteed at this time, given that all objectives and project parameters are based upon biological triggers that are uncertain. Thus, while the Accord and the Settlement have time tables associated with implementation, monitoring components, and project objectives (effectiveness criteria two, three, and five), these are contingent upon biological triggers being met.

(2) Penobscot River Restoration Project (PRRP): Perhaps the most significant of the agreements mentioned above is the PRRP. The PRRP is the result of many years of negotiations between Pennsylvania Power and Light (PPL), U.S. Department of the Interior (*i.e.,* USFWS, Bureau of Indian Affairs, National Park Service), Penobscot Indian Nation, the state of Maine (*i.e.,* Maine State Planning Office, Inland Fisheries and Wildlife, MDMR), and several non-governmental organizations (NGOs; Atlantic Salmon Federation, American Rivers, Trout Unlimited, Natural Resources Council of Maine, among others). If implemented, the PRRP would lead to the removal of the two lowermost mainstem dams on the Penobscot River (Veazie and Great Works) and would decommission the Howland Dam and construct a nature-like fishway around it. This initiative would improve habitat accessibility for all diadromous species. For example, less than 7 percent of post-project salmon habitat will be above four or more dams, and at least 43 percent of the habitat would require, at most, one dam passage in each direction with conventional passage facilities. At least 15 percent of salmon habitat would have no intervening dams remaining, compared to 2.5 percent presently (see section 8.1 in Fay *et al.,* 2006).

In addition to improved habitat accessibility for Atlantic salmon and other diadromous species, the PRRP will also provide an opportunity to study the ecological linkages between Atlantic salmon and the 11 other diadromous species with which they co-evolved. The linkage between other diadromous species and Atlantic salmon may be crucial to recovering Atlantic salmon to self-sustaining levels. As stated previously, this co-evolution likely provided ecological benefits to the diadromous species complex (*e.g.,* marine-derived nutrient deposition and prey buffering), which may enhance Atlantic salmon survival at key life stages. Therefore, a full understanding of these benefits and a multi-species approach is required for the successful recovery of Atlantic salmon to the Penobscot system.

In June 2004, the Parties to the negotiations signed the Penobscot Multiparty Settlement Agreement (MPA). The MPA includes a 5-year option period during which time the ''Penobscot River Restoration Trust'' raised the necessary funds to purchase the dams. In addition, another $25–30M is required for decommissioning and removal. NOAA's budget for the 2008 fiscal year contained $10M to support the PRRP.

There is a significant effort on behalf of the Parties to the MPA and other Federal and non-Federal bodies to secure funds for the purchase, decommissioning, and removal of the dams. However, as stated above, the certainty of that funding is not known at this time. While the necessary funding has been committed by the government and other private donors to achieve the purchase of the dams, a significant amount of money still must be acquired in order for the parties to exercise the option to decommission and remove the dams as well as construct a nature like fishway. While significant progress has been made in fundraising and permitting, staffing, funding level, funding source and other resources necessary to fully implement the PRRP are not identified at this time. There is not currently a high level of certainty that the necessary funding will be obtained. Therefore, at this time, the PRRP does not satisfy criteria one and seven in the certainty of implementation of the PECE. Permitting and regulatory requirements are also uncertain at this stage because they are contingent upon the ability of the parties to raise the full amount of funds necessary, FERC approval of the Trust's permit to surrender the dams, and completion of required environmental review. Thus, the PRRP does not satisfy criterion four of the PECE, which requires that all authorizations (*e.g.,* permits, land owner permission) necessary to implement the conservation effort are identified and that there is a high certainty that the parties to the agreement will obtain all necessary authorizations. If proper funding is acquired to fulfill the MPA and the project undergoes the appropriate environmental and regulatory review and permitting, Atlantic salmon in the Penobscot River will clearly benefit. However, it is not possible to state at this time with a high level of certainty that this project will be fully implemented, especially in light of the present economic conditions and energy issues facing the United States. If the removal option is not exercised, fishway prescriptions issued by the Services will be implemented.

The PRRP provides unique opportunities for restoration efforts. Many species will benefit from the PRRP directly, but many other passage impediments exist in the basin. Some diadromous fish species, such as Atlantic salmon, alewife, and shad, may require additional habitat improvements (barrier removal, fishways, etc.) or stocking. Thus, additional active restoration measures may be required to realize the full potential of the PRRP. Due to the high profile of the project and the high costs involved, there is a need to prioritize restoration efforts in the basin to increase the probability for project success. There are many ways to determine what a ''successful'' PRRP would look like. In March 2008, the Penobscot Interagency Technical Committee (PNITC) was formed to develop operational management plans for diadromous fish within the basin. Members of the PNITC include managers and scientists from MDMR, MIFW, NMFS, the Penobscot Indian Nation, and FWS. The PNITC has been tasked with developing one set of restoration goals and priorities for the basin. To help facilitate this goal, we have begun developing an ecologically-based GIS tool to help set goals and to help identify and prioritize various restoration efforts. The outputs of this tool will help to ensure that achievable goals are established, and that funding and restoration efforts are applied in the most appropriate manner. The PNITC, in conjunction with NMFS, are making strides towards defining the scope of restoration efforts and operational plans for diadromous species including Atlantic salmon. Despite these efforts, the effectiveness of the PRRP is still uncertain given that explicit incremental objectives and an implementation plan still need to be identified (criteria two and three); quantifiable, scientifically valid parameters by which to measure progress have yet to be established (criterion four); and provisions for reporting and monitoring have not been established (criterion five).

(3) New England Atlantic Salmon Committee (NEASC): In addition to these efforts, NEASC requested that the USASAC provide a list of the top priority fish passage projects in New England. NEASC hopes to use this information to leverage funding from a

variety of sources to implement these projects. The prioritized list was developed by soliciting information from representatives from each of the New England states responsible for managing Atlantic salmon. NEASC hopes that this initiative will result in a large scale effort to improve passage and remove obstructions for salmon and other diadromous fish species throughout New England. This effort may result in gaining both support and resources for improved passage. However, the outcome of this effort is highly uncertain in terms of both implementation and effectiveness. Therefore, the NEASC effort to prioritize fish passage projects in hopes to leverage funding for implementation does not satisfy any of the six effectiveness and nine implementation criteria of the PECE.

Adaptive Management Initiatives

(1) Habitat Connectivity: In 2006, 18 stream habitat connectivity projects were completed in 3 of the Downeast Rivers. The principal funding sources were Natural Resources Conservation Service-Wildlife Habitat Improvement Program, USFWS, Maine Atlantic Salmon Conservation Partnership-Student Career Experience Program, Project Salmon Habitat and River Enhancement, Washington County Soil and Water Conservation District, and private landowner contributions. Four stream-road crossings (culverts) were completely removed in the Machias River watershed. The remaining 14 projects replaced undersized culverts with open bottom arches that spanned 1.2 times bankfull stream width in the Machias, Narraguagus, and East Machias watersheds. These restoration projects are effectively contributing to salmon recovery by improving access to habitat for Atlantic salmon and other diadromous species. These types of restoration initiatives are likely to continue; however, they are contingent upon the continued availability of funding sources, voluntary participation of landowners and other groups, and identification of specific implementation dates. Therefore, while the aforementioned projects are deemed to be effective, the certainty of implementation of additional projects is unknown and the future initiatives do not satisfy certainty of implementation criteria one, five, seven and eight.

(2) Watershed Councils: Watershed councils are actively engaged in cooperative Atlantic salmon conservation activities. Local watershed councils, formed under the auspices of the Maine Atlantic Salmon Conservation Partnership, continue to play an important role in recovery activities in their respective watersheds, particularly the planning and implementation of watershed-specific habitat protection and restoration. Watershed councils have representatives from state and Federal agencies, conservation groups, industries, towns, landowners and other interested groups or individuals. These groups coordinate their efforts with those of local groups with similar goals. The councils continue to review the status of threats in each watershed and determine the need for continued or new efforts to further minimize any potential threat to Atlantic salmon from future activities present in the watershed. The process ensures that all stakeholders in the watersheds have the opportunity to participate in decisions concerning conservation actions. The activities of watershed councils are largely voluntary and vary by council, depending on the level of participation from members. Many of the efforts undertaken by watershed councils have been and continue to be extremely effective at contributing to salmon recovery. Future efforts will likely continue to make positive contributions as well, provided that voluntary participation within each council continues. There is no overarching management plan that outlines the collective work or goals of the councils into the future; therefore, it is uncertain what projects will be implemented on an annual basis, and whether the necessary resources will be available to implement the projects in terms of both funding sources and voluntary participation. PECE criteria one, five, seven and eight require a high level of certainty that: the necessary resources are identified and secured; the necessary voluntary participation and permissions to implement conservation plan have been obtained; and an implementation schedule for the project is provided. While past activities have been effective in restoring salmon habitat and improving access, the effectiveness of future efforts can not be evaluated in terms of the conservation contribution to the status of the species.

(3) Large Woody Debris Project: Maine's rivers have experienced dramatic changes over the last 300 years. One of the most sweeping is the removal, lack of recruitment, and subsequent attrition of LWD. The result is that the rivers likely have very low loading of LWD, and thus, have less complex fish habitat compared to the past. LWD creates pools, retains gravel and nutrients, supports benthic macroinvertebrates, influences current velocities and water depth, provides cover, and during high water, refugia for fishes. The value of LWD in promoting productive Atlantic salmon habitat is undocumented. In October 2006, a project was implemented to enhance habitat at a scale that will have population-level benefits, with a design that evaluates the effects of LWD additions on stream geomorphology. LWD was added to two sites, each with a paired control site, in Creamer Brook, East Machias Drainage. Streams in the Narraguagus, Machias, and East Machias drainages were also evaluated for potential LWD additions. The Creamer Brook sites were scouted and surveyed for similarity and surveyed for fish populations immediately prior to the habitat work. Each site was electrofished using multiple pass depletion, and fish were weighed, measured, and released into their site. LWD was added at a rate of approximately 12 pieces per 100m by cutting trees in the riparian zone and adjusting their placement to achieve either stability or geomorphologic effect. In addition, all LWD (existing and added) in the treatment sites was tagged with metal numeric tags and marked with spray paint. The site was surveyed before and after LWD placements. Trees were also felled in the riparian zone to increase roughness to minimize channel migration as a result of the LWD additions.

The LWD project directly incorporates the principles of adaptive management. The project is aimed at improving the complexity of fish habitat through the addition of LWD. The project plan lays out explicit objectives, qualitative and quantitative parameters by which progress will be measured, and sites to be monitored, fulfilling two through six of the PECE effectiveness criteria. The effectiveness of this project has not been demonstrated because LWD additions have not been shown to enhance salmon survival. Therefore, it is not yet clear to what extent the LWD project is addressing the threat posed by the loss of habitat complexity; thus, criterion one of the certainty of effectiveness is not satisfied.

(4) The Penobscot Indian Nation Water Quality Monitoring Program: Water quality is a critical issue to the Penobscot Indian Nation, given that many of the fish and other aquatic species serve as an important source of traditional food. Industrial discharge has resulted in the presence of harmful chemicals in the waters that flow through reservation waters. The Penobscot Indian Nation has implemented a rigorous water quality testing program to: ensure that water

quality standards are being met and that licensed discharges are in compliance with permit conditions; upgrade river and tributary classifications; identify and remediate sources of non-point source pollution; and gather data needed to support the role of the tribe in hydroelectric re-licensing. The Penobscot Indian Nation also has a cooperative agreement with the MDEP to share water quality data and technical assistance. The data provided by the Penobscot Indian Nation has led to the revision of water classifications for over 500 rivers and streams and improved water quality. The Penobscot Indian Nation's water quality monitoring program satisfies all of the certainty of effectiveness and implementation criteria. While this program is very important in terms of improving water quality and the health of aquatic organisms, the results of the program in terms of threat abatement across the entire GOM DPS are not sufficient to warrant a change in the listing status of the GOM DPS.

International Efforts

(1) North Atlantic Salmon Conservation Organization: The Convention for the Conservation of Salmon in the North Atlantic Ocean, ratified by the United States in 1982, provides a mechanism for managing the international commercial fishery for Atlantic salmon for the purpose of conserving and restoring salmon stocks. The Convention provides a forum for coordination among members, proposing regulatory measures, and for making recommendations regarding scientific research. The Convention was adopted by the United States, Canada, Greenland (as represented by Denmark), Iceland, Faroes Islands, Norway, and the European Commission. Russia joined later. The NASCO was formed by this Convention. The United States became a charter member of NASCO in 1984. NASCO is charged with the international management of Atlantic salmon stocks on the high seas. NASCO is composed of three geographic Commissions: Northeast Atlantic, West Greenland, and North American. NASCO seeks scientific advice from the International Council for the Exploration of the Seas (ICES) on the status of stocks, the effectiveness of management measures, monitoring and data needs, and catch options. NASCO uses this scientific advice as a basis for formulating biologically sound management recommendations for the conservation of North Atlantic salmon stocks. Providing catch options for the fishery at West Greenland is one area where this advice is specifically applied.

The West Greenland fishery was one of the last directed Atlantic salmon commercial fisheries in the Northwest Atlantic. In 2005, in recognition of the depressed status of the stocks and the fact that the resulting scientific advice was unchanged year-to-year, the NASCO Parties asked ICES for multi-annual regulatory advice. Based on this advice, a provisional multi-annual regulatory measure was adopted at the 2006 annual meeting of NASCO to restrict the fishery in 2006 to internal use only and conditionally also for 2007 and 2008. The provisional multi-annual regulatory measure adopted in 2006 was contingent upon finalization and acceptance of a finalized Framework of Indicators (FWI). ICES provided NASCO with a finalized FWI for the mixed stock off West Greenland that all Parties accepted in 2007. The multi-annual regulatory measure agreed to in 2006 were continued for 2007 and 2008. This measure, like those of recent years, limits harvest in West Greenland to internal use only (estimated to be about 20 mt). Denmark, representing Greenland and the Faroe Islands, stated that it would accept the FWI for a fixed period 2006–2008 and would consider accepting new multi-annual catch advice at the 2009 Annual Meeting in light of further development of the FWI, the continued research of the mortality of salmon stocks, and possible improvement of the stocks.

In 2001, NASCO established an International Atlantic Salmon Research Board (IASRB) to promote collaboration and cooperation on research on the causes of marine mortality of Atlantic salmon and the opportunities to counteract this mortality. The IASRB has made great progress in improving coordination of the existing research and supporting initiation of new research projects. However, there are still substantial gaps in our knowledge of what factors may be affecting salmon at sea. The IASRB, therefore, commissioned the development of an international program of cooperative research on salmon at sea (SALSEA). The SALSEA program has been developed by scientists from all NASCO's Parties. The four areas on which SALSEA is currently focusing are: (1) Supporting technologies to assist in the genetic identification of the origin of salmon sampled at sea, improving efficiency of sampling of salmon at sea, and improving standardized scale analysis of salmon at sea; (2) studying early migration through the inshore zone: fresh waters, estuaries, and coastal waters to specifically understand what factors may be influencing marine mortality; (3) studying the distribution and migration of salmon at sea; and (4) improving communications and public relations. The United States has contributed $150,000 to the IASRB to help fund SALSEA. The United States has also participated in a marking workshop sponsored by SALSEA and actively participates in the West Greenland Sampling Program on an annual basis.

The West Greenland Sampling Program is an international sampling program of the internal use fishery at West Greenland. Scale and tissue samples are taken to allow examination of stock origin, catch composition, and fish health. This sampling program has provided a wealth of information on the extent, location, and origin of the catch. Scale and genetic analyses have allowed for detailed knowledge of the characteristics of the catch, including age and continent of origin. In recent years, approximately 70 percent of the catch has been of North American origin and 30 percent of European origin.

The United States intends to continue to participate fully in NASCO and associated negotiations over the West Greenland Fishery. The legislative authority, funding, authorizations, staffing resources, an approved plan (U.S. Implementation Plan) and associated schedule for implementation of actions, and legal requirements allowing for United States participation in NASCO are certain. Although NASCO does not have any regulatory authority over any of the Parties, it has been successful at influencing salmon management in member states. The West Greenland fishery is a prime example of NASCO facilitating negotiations and ultimately, management, of this fishery for the benefit of salmon as a whole in the North Atlantic Ocean. However, while NASCO has been successful in reducing the threat of directed harvest of Atlantic salmon in the West Greenland fishery, a small, but significant, portion of the catch continues to be Atlantic salmon of U.S. origin. The NASCO guidelines and agreements are contributing to reducing threats to salmon recovery (*e.g.*, fishing, disease, aquaculture, habitat destruction, stocking practices). While the NASCO agreements and guidelines appear to have reduced the threat from direct harvest, the agreements and guidelines are not regulatory. It is incumbent on each Party to NASCO to enforce the actions identified in the Implementation Plan drafted by each country as well as report on their success relative to the health of salmon stocks. Therefore, the effectiveness of

specific NASCO guidelines and agreements is not certain. Some parties have failed to develop rigorous Implementation Plans with explicit incremental objectives and dates for achieving the action, scientific parameters, and ability to report under these plans. Thus, effectiveness criteria two through five are not certain at this time. There is also some uncertainty in terms of the implementation of the NASCO guidelines and agreements. There is even more uncertainty about the individual Implementation Plans, given that, in some regions, there is not the necessary voluntary support by landowners, necessary funding to implement the conservation measures, or even the necessary regulatory mechanisms within the jurisdiction of each Party to regulate certain activities. Thus, certainty of implementation criteria four to seven cannot be satisfied for the NASCO guidelines and agreements. It is also unknown to what extent current IASRB and SALSEA activities will abate the threat from poor marine survival.

(2) West Greenland Conservation Agreement: In August 2002, a multi-year conservation agreement with an annual termination date (available to both parties) was established between the North Atlantic Salmon Fund and the Organization of Hunters and Fishermen in Greenland, effectively buying out the commercial fishery for Atlantic salmon for a 5-year period. The internal-use fishery is not included in the agreement. In June 2007, the agreement was extended and revised to cover the 2007 fishing season with a provision which allows the agreement to continue to be extended on an annual basis through 2013. An implementation plan and schedule are already developed as well as the necessary authorizations and legal authority. However, certainty of implementation criteria five, seven, and nine cannot be satisfied, considering the certainty that the necessary funding has not been secured, and it is not known if all parties will agree to extend the Agreement.

Summary of Protective Efforts

The current endangered status of the GOM DPS as listed in 2000 and the desire to restore the Penobscot to a free flowing river have created an incentive for various agencies, groups, and individuals to carry out a number of efforts aimed at protecting and conserving salmon. These actions are being directed at reducing threats faced by Atlantic salmon and could contribute to the recovery and restoration of the GOM DPS and its ecosystem substantially in the future. However, apart from the Penobscot Indian Nation Water Quality Monitoring Program, there is still considerable uncertainty regarding the implementation and effectiveness of these efforts in the future. Therefore, they cannot be considered to affect the listing status of the GOM DPS.

Finding

As stated previously in this final rule, the main difference between the GOM DPS as listed in 2000 and the GOM DPS as finalized in this rule is the inclusion of the majority of the Androscoggin, Kennebec, and Penobscot River basins. The 2000 GOM DPS consisted of only small coastal rivers on either side of the Penobscot River.

The small coastal rivers were subject to similar threats, including water withdrawals, aquaculture escapees, and habitat degradation. Although the rivers to the east and west of the Penobscot are exposed to different stressors, they have more threats in common with each other than with the larger river systems included in the GOM DPS as currently defined. Habitat degradation from poor water quality and water withdrawals still pose a threat to salmon within some of the small coastal rivers. For the most part, the small coastal rivers included within the 2000 GOM DPS boundaries are not dammed for hydroelectric generation (an exception would be the Union River), and, therefore, this threat was not highlighted in the 2000 listing. However, other barriers were identified in the 2000 listing as impacting habitat.

The larger river basins face some additional threats compared to the small coastal rivers because they have higher human population densities, more development, and a significant number of dams and other barriers. Dams are present on all three of the larger rivers within the range of the GOM DPS and impact all salmon moving up and downstream. Given the number of salmon affected by dams and the amount of the habitat within the GOM DPS affected by dams, this threat is a significant factor in this listing determination.

Poor marine survival was identified as one of the most significant threats in our 2000 listing. Since then, we have improved our knowledge and understanding of the impact of marine survival on the GOM DPS. Survival and eventual recovery of the GOM DPS depends on an increase in marine survival, which is why that threat is a significant factor in this listing determination.

There are extremely few naturally-reared, spawning adult salmon present in the GOM DPS (184 in 2007). With the addition of Atlantic salmon in the Penobscot and other large rivers to the GOM DPS, the demographic security is somewhat increased because populations that are geographically widespread are less likely to experience spatially-correlated catastrophes. However, the number of naturally-reared, spawning adults within the GOM DPS is extremely low and the majority of returning adults (whether naturally-reared or smolt-stocked) are found in the Penobscot River, despite the addition of other large rivers to the range of the DPS. In 2007, only 16 adults returned to the Kennebec and 20 returned to the Androscoggin.

The GOM DPS is sustained by a carefully managed hatchery supplementation program. Hatchery supplementation is crucial to the continued existence of the GOM DPS, though we recognize that reliance on artificial propagation carries risks that cannot be completely avoided despite managers' best efforts. We have carefully examined both the positive and negative effects of hatchery supplementation, including the risk of disruptions to hatchery operations (*e.g.*, due to disease outbreak) or the genetic risks (such as inbreeding and domestication selection). Although hatchery supplementation of the GOM DPS is currently important in maintaining genetic diversity levels, these programs have not been successful at recovering or maintaining wild, self-sustaining populations of Atlantic salmon.

Further, at the present time, there is no evidence to suggest that marine survival will increase in the near future. In short, without both conservation hatcheries continuing to operate and an increase in marine survival, the risk of extinction is high.

As described above, the demographic effects of the currently low marine survival on the GOM DPS are severe, dams limit the viability of salmon populations through numerous and sometimes synergistic ways (*e.g.*, blocking up and downstream passage, entrainment, water quality effects, fish community effects), and the existing regulatory mechanisms for dams are inadequate. As a result, we find that low marine survival, dams, and the inadequacy of existing regulatory mechanisms for dams are each significant factors in this listing determination.

We find that threats from reduced habitat complexity, reduced habitat connectivity, and reduced water quantity and degraded water quality within Factor A; overutilization within Factor B; disease and predation within

Factor C; inadequacy of existing regulatory mechanisms for water withdrawals and water quality within Factor D; and aquaculture, depleted diadromous fish communities, and competition within Factor E all act as stressors on the GOM DPS. Collectively, these are significant factors in this listing determination, contributing to the poor status of the GOM DPS. At this time, we do not have enough information to determine whether climate change (within Factor E) is a threat to the long-term persistence of the GOM DPS.

We have considered all the above factors, efforts to protect the species, and the status of the species. We have concluded that the GOM DPS of Atlantic salmon is in danger of extinction. Therefore, we are listing it as endangered.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the ESA include recovery actions, requirements for Federal agencies to avoid jeopardizing the continued existence of the species, and prohibitions against taking the species, as defined in the ESA. Recognition through listing may improve public awareness and encourage conservation actions by Federal, state, and local agencies, private organizations, and individuals. The ESA provides for possible land acquisition and cooperation with the States and provides for recovery actions to be carried out for listed species. The requirement of Federal agencies to avoid jeopardy and the prohibitions against take are discussed below.

Section 7(a) of the ESA, as amended, requires Federal agencies to evaluate their actions with respect to any species that is listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the ESA are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) 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 destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us under the provisions of section 7(a)(2) of the ESA.

Several Federal agencies are expected to have involvement under section 7 of the ESA regarding the Atlantic salmon. The Environmental Protection Agency may be required to consult on its permitting oversight authority for the CWA and Clear Air Act. The ACOE may be required to consult on permits it issues under section 404 of the CWA and section 10 of the Rivers and Harbors Act. The FERC may be required to consult on licenses it issues for hydroelectric dams under the FPA. The Federal Highway Administration may be required to consult on transportation projects it authorizes, funds, or carries out.

ESA section 9(a) take prohibitions (16 U.S.C. 1538(a)(1)(B)) apply to all species listed as endangered. Those prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take, import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any wildlife species listed as endangered, except as provided in sections 6(g)(2) and 10 of the ESA. It is also illegal under ESA section 9 to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Section 11 of the ESA provides for civil and criminal penalties for violation of section 9 or of regulations issued under the ESA.

The ESA provides for the issuance of permits to authorize incidental take during the conduct of activities that may result in the take of threatened or endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in the course of otherwise lawful activities provided that certain criteria are met.

It is our policy, published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify, to the maximum extent practicable at the time a species is listed, those activities that would or would not likely constitute a violation of section 9 of the ESA. The intent of this policy is to increase public awareness of the effects of the listing on proposed and ongoing activities within a species' range.

The Services believe that, based on the best available information, the following actions are unlikely to result in a violation of section 9:

(1) Any incidental take of GOM DPS Atlantic salmon resulting from an otherwise lawful activity conducted in accordance with the conditions of an incidental take permit issued by one of the Services under section 10 of the ESA. Examples of such actions may include operation of dams and fishways, State sport fish stocking programs, State recreational fishing programs for other species, silviculture, agriculture, State programs regulating water quality, and State programs regulating water withdrawals and instream flow;

(2) Any action authorized, funded, or carried out by a Federal agency that is likely to adversely affect the GOM DPS of Atlantic salmon, when the action is conducted in accordance with the terms and conditions of an incidental take statement issued by either of the Services under section 7 of the ESA. Examples of such actions may include dam construction and operation, road construction, discharge of fill material, siting and operation of aquaculture facilities, and stream channelization or diversion; and

(3) Any action carried out for scientific purposes or to enhance the propagation or survival of the species that is conducted in accordance with the conditions of a permit issued by one of the Services under section 10 of the ESA. Examples of such actions may include the river-specific hatchery conservation program at CBNFH and GLNFH, habitat restoration activities, and scientific monitoring programs.

Activities that could lead to violation of section 9 prohibitions against ''take'' of the GOM DPS of anadromous Atlantic salmon include, but are not limited to, the following:

(1) Unauthorized killing, collecting, handling, or harassing of individual GOM DPS Atlantic salmon. Examples of such actions may include targeted recreational or commercial fishing for GOM DPS salmon, and non-targeted recreational or commercial fishing for other species (bycatch),

(2) Siting or operation of an aquaculture facility without adopting and implementing fish health practices that adequately protect against the introduction and spread of disease or the destruction of habitat;

(3) Unauthorized destruction or alteration of spawning, rearing, or migration habitat. Examples of such activities may include erecting or operating structures that block migration routes (such as dams, culverts, or other barriers); instream dredging, rock removal, operation of heavy equipment, or channelization; riparian and in-river damage due to livestock; discharge of fill material; or manipulation of river flow;

(4) Discharge or dumping of toxic chemicals, silt, or other pollutants (*e.g.,* fertilizers, pesticides, heavy metals, oil, organic wastes) into the aquatic environment of the GOM DPS.

Other activities not identified here will be reviewed on a case-by-case basis to determine if violation of section 9 of the ESA may be likely to result from such activities. When there are questions about the effect of an action on the GOM DPS, the Services are available to provide technical assistance. We do not consider these lists to be exhaustive, and we provide them as general information to the public.

Critical Habitat

Section 4(b)(2) of the ESA requires us to designate critical habitat for threatened and endangered species ''on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact, of specifying any particular area as critical habitat.'' This section grants the Secretary of the Interior or of Commerce discretion to exclude an area from critical habitat if the Secretary determines ''the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat.'' The Secretary may not exclude areas if exclusion ''will result in the extinction of the species.'' In addition, the Secretary may 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 under Section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such a plan provides a benefit to the species for which critical habitat is proposed for designation (see section 318(a)(3) of the National Defense Authorization Act, Pub. L. 108–136).

The ESA defines critical habitat under section 3(5)(A) as: ''(i) the specific areas within the geographical area occupied by the species, at the time it is listed * * *, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * *, upon a determination by the Secretary that such areas are essential for the conservation of the species.''

Once critical habitat is designated, Section 7 of the ESA requires Federal agencies to ensure they do not fund, authorize, or carry out any actions that will destroy or adversely modify that habitat. This requirement is in addition to the other principal section 7 requirement that Federal agencies ensure their actions do not jeopardize the continued existence of listed species.

The Secretary of Commerce is designating critical habitat in a separate rulemaking.

Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review, establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554), is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. We obtained independent peer review of the scientific information compiled in the 2006 Status Review (Fay *et al.,* 2006) that supports this proposal to list the GOM DPS of Atlantic salmon as endangered.

On July 1, 1994, the Services published a policy for peer review of scientific data (59 FR 34270). The intent of the peer review policy is to ensure that listings are based on the best scientific and commercial data available. During the public comment period for the proposed rule to list the GOM DPS of Atlantic salmon as endangered, the Services solicited the expert opinions of four qualified specialists. These independent specialists represented expertise from the academic and scientific community. Out of the four reviewers solicited, two individuals completed a critical review of the proposed rule. Peer review comments are summarized and addressed in the public comment section of this rule, and the text of the final rule has been changed where necessary.

References

A complete list of the references used in this final rule is available upon request (see **ADDRESSES**).

Classification

National Environmental Policy Act

ESA listing decisions are exempt from the requirement to prepare an environmental assessment (EA) or environmental impact statement (EIS) under the National Environmental Policy Act of 1969 (NEPA) (NOAA Administrative Order 216–6.03(e)(1); *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981)). Thus, we have determined that the final listing determination for the GOM DPS of Atlantic salmon described in this notice is exempt from the requirements of NEPA.

Information Quality Act

The Information Quality Act directed the Office of Management and Budget to issue government wide guidelines that ''provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies.'' Compliance of this document with NOAA guidelines is evaluated below.

Utility: The information disseminated is intended to describe the species' life history, population status, threats, and risks; management actions; and the effects of management actions. The information is intended to be useful to state and Federal agencies, non-governmental organizations, industry groups and other interested parties so they can understand the listing status of the species.

Integrity: No confidential data were used in the analysis of the impacts associated with this document. All scientific data considered in this document and used to analyze the proposed action, is considered public information.

Objectivity: The NOAA Information Quality Guidelines require disseminated information to be presented in an accurate, clear, complete, and unbiased manner. This document was prepared with these objectives in mind. It was also reviewed by agency biologists, policy analysts, and managers and NOAA and Department of Commerce attorneys.

Administrative Procedure Act

The Federal Administrative Procedure Act (APA) establishes procedural requirements applicable to informal rulemaking by Federal agencies. The purpose of the APA is to ensure public access to the Federal rulemaking process and to give the public notice and an opportunity to comment before the agency promulgates new regulations. These public notice and comment procedures have been completed in this rulemaking.

Coastal Zone Management Act

Section 307(c)(1) of the Federal Coastal Zone Management Act of 1972 requires that all Federal activities that affect any land or water use or natural resource of the coastal zone be consistent with approved state coastal zone management programs to the maximum extent practicable. NMFS has determined that this action is consistent to the maximum extent practicable with the enforceable policies of approved Coastal Zone Management Programs of Maine. A letter documenting NMFS' determination and a copy of the proposed rule was sent to the coastal zone management program office in Maine. The specific state contact and a copy of the letter is available upon request. A copy of the final rule will be sent to the coastal zone management program office in Maine.

Executive Order (E.O.) 13132 Federalism

E.O. 13132, otherwise known as the Federalism E.O., was signed by President Clinton on August 4, 1999, and published in the **Federal Register** on August 10, 1999 (64 FR 43255). This E.O. is intended to guide Federal agencies in the formulation and implementation of ''policies that have Federal implications.'' Such policies are regulations, legislative comments or proposed legislation, and other policy statements or actions 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. E.O. 13132 requires Federal agencies to have a process to ensure meaningful and timely input by state and local officials in the development of regulatory policies that have federalism implications. A Federal summary impact statement is also required for rules that have federalism implications.

Pursuant to E.O. 13132, the Assistant Secretary for Legislative and Intergovernmental Affairs provided notice of the action at the proposed rulemaking stage and requested comments from the appropriate official(s) in Maine. Comments were received from Senators Snowe and Collins, Congressman Michaud, and from the State of Maine. Among other concerns, they stated that a threatened listing determination could be justified under the ESA and advocated that the Services suspend a decision on the Androscoggin until further genetic data could be gathered and analyzed. These comments were considered by the Services in preparing this final rulemaking action and are addressed in the Response to Public Comments section above. A Federal summary impact statement has been prepared and sent to the appropriate State officials.

Environmental Justice

Executive Order 12898 requires that Federal actions address environmental justice in decision-making process. In particular, the environmental effects of the actions should not have a disproportionate effect on minority and low-income communities. The final listing determination is not expected to have a disproportionately high effect on minority populations and low-income populations in Maine because the implications of this listing action do not adversely affect the human health of low-income, minority, or other populations or the environment in which these various populations live.

E.O. 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts shall not be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this rule is exempt from review under E.O. 12866. This rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

E.O. 13175—Consultation and Coordination With Indian Tribal Governments

E.O. 13175 requires that, if we issue a regulation that significantly or uniquely affects the communities of Indian tribal governments and imposes substantial direct compliance costs on those communities, we consult with those governments or the Federal government must provide the funds necessary to pay the direct compliance costs incurred by the tribal governments. This rule does not impose substantial direct compliance costs on the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13175 do not apply to this final rule. Nonetheless, we met with tribal governments potentially affected by this listing decision and to solicit their input on the proposed rule. We have given careful consideration to all written and oral comments received and will continue our coordination and discussions with interested tribes as we move forward specifically with implementing this final rule as well as salmon recovery and management in general.

List of Subjects

50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 224

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: June 11, 2009.

Samuel D. Rauch III,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

Dated: May 12, 2009.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

■ For the reasons set out in the preamble, 50 CFR parts 17 and 224 are amended as follows:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 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 § 17.11(h) revise the entry for ''Salmon, Atlantic'', which is in alphabetical order under FISHES, to read as follows:

§ 17.11 Endangered and threatened wildlife.

(h) * * *

* * * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
*		*	* * *		*	*	
FISHES							
*		*	* * *		*	*	
Salmon, Atlantic, Gulf of Maine.	*Salmo salar*.	U.S.A., Canada, Greenland, western Europe.	U.S.A., ME, Gulf of Maine Distinct Population Segment. The GOM DPS includes all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, and wherever these fish occur in the estuarine and marine environment. The following impassable falls delimit the upstream extent of the freshwater range: Rumford Falls in the town of Rumford on the Androscoggin River; Snow Falls in the town of West Paris on the Little Androscoggin River; Grand Falls in Township 3 Range 4 BKP WKR, on the Dead River in the Kennebec Basin; the un-named falls (impounded by Indian Pond Dam) immediately above the Kennebec River Gorge in the town of Indian Stream Township on the Kennebec River; Big Niagara Falls on Nesowadnehunk Stream in Township 3 Range 10 WELS in the Penobscot Basin; Grand Pitch on Webster Brook in Trout Brook Township in the Penobscot Basin; and Grand Falls on the Passadumkeag River in Grand Falls Township in the Penobscot Basin. The marine range of the GOM DPS extends from the Gulf of Maine, throughout the Northwest Atlantic Ocean, to the coast of Greenland. Included are all associated conservation hatchery populations used to supplement these natural populations; currently, such conservation hatchery populations are maintained at Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH). Excluded are landlocked salmon and those salmon raised in commercial hatcheries for aquaculture.	E	.....	NA	NA
*		*	* * *		*	*	

PART 224—ENDANGERED MARINE AND ANADROMOUS SPECIES

■ 3. The authority citation for part 224 continues to read as follows:

Authority: 16 U.S.C. 1531–1543 and 16 U.S.C. 1361 *et seq.*

■ 4. Amend the table in § 224.101, by revising the entry for ''Atlantic salmon'' in the table in § 224.101(a) to read as follows:

§ 224.101 Enumeration of endangered marine and anadromous species.

* * * * *

(a) *Marine and anadromous fish.*

* * *

Species [1]		Where listed	Citation(s) for listing determination(s)	Citation(s) for critical habitat designation(s)
Common name	Scientific name			
*	*	* * *	*	*
Gulf of Maine Atlantic salmon.	*Salmo salar*	U.S.A., ME, Gulf of Maine Distinct Population Segment. The GOM DPS includes all anadromous Atlantic salmon whose freshwater range occurs in the watersheds from the Androscoggin River northward along the Maine coast to the Dennys River, and wherever these fish occur in the estuarine and marine environment. The following impassable falls delimit the upstream extent of the freshwater range: Rumford Falls in the town of Rumford on the Androscoggin River; Snow Falls in the town of West Paris on the Little Androscoggin River; Grand Falls in Township 3 Range 4 BKP WKR, on the Dead River in the Kennebec Basin; the un-named falls (impounded by Indian Pond Dam) immediately above the Kennebec River Gorge in the town of Indian Stream Township on the Kennebec River; Big Niagara Falls on Nesowadnehunk Stream in Township 3 Range 10 WELS in the Penobscot Basin; Grand Pitch on Webster Brook in Trout Brook Township in the Penobscot Basin; and Grand Falls on the Passadumkeag River in Grand Falls Township in the Penobscot Basin. The marine range of the GOM DPS extends from the Gulf of Maine, throughout the Northwest Atlantic Ocean, to the coast of Greenland. Included are all associated conservation hatchery populations used to supplement these natural populations; currently, such conservation hatchery populations are maintained at Green Lake National Fish Hatchery (GLNFH) and Craig Brook National Fish Hatchery (CBNFH). Excluded are landlocked salmon and those salmon raised in commercial hatcheries for aquaculture.	65 FR 69469; November 17, 2000; *74 FR [Insert page number where the document begins]; June 19, 2009*.	NA
*	*	* * *	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. E9–14269 Filed 6–18–09; 8:45 am]

BILLING CODE 3510–22–P

Federal Register

Friday,
June 19, 2009

Part IV

The President

Notice of June 18, 2009—Continuation of the National Emergency With Respect to the Risk of Nuclear Proliferation Created by the Accumulation of Weapons-Useable Fissile Material in the Territory of the Russian Federation

Federal Register
Vol. 74, No. 117
Friday, June 19, 2009

Presidential Documents

Title 3—

The President

Notice of June 18, 2009

Continuation of the National Emergency With Respect to the Risk of Nuclear Proliferation Created by the Accumulation of Weapons-Useable Fissile Material in the Territory of the Russian Federation

On June 21, 2000, the President issued Executive Order 13159 (the ''order'') blocking property and interests in property of the Government of the Russian Federation that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons that are directly related to the implementation of the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 18, 1993, and related contracts and agreements (collectively, the ''HEU Agreements''). The HEU Agreements allow for the downblending of highly enriched uranium derived from nuclear weapons to low enriched uranium for peaceful commercial purposes. The order invoked the authority, *inter alia*, of the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.)* and declared a national emergency to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States posed by the risk of nuclear proliferation created by the accumulation of a large volume of weapons-usable fissile material in the territory of the Russian Federation.

The national emergency declared on June 21, 2000, must continue beyond June 21, 2009, to provide continued protection from attachment, judgment, decree, lien, execution, garnishment, or other judicial process for the property and interests in property of the Government of the Russian Federation that are directly related to the implementation of the HEU Agreements and subject to U.S. jurisdiction. 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 the risk of nuclear proliferation created by the accumulation of weapons-usable fissile material in the territory of the Russian Federation. This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
June 18, 2009.

[FR Doc. E9–14675
Filed 6–18–09; 11:15 am]
Billing code 3195–W9–P

Reader Aids

Federal Register

Vol. 74, No. 117

Friday, June 19, 2009

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **http://www.gpoaccess.gov/nara/index.html**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **http://www.archives.gov/federal__register**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JUNE

26077–26280 1
26281–26510 2
26511–26770 3
26771–26932 4
26933–27070 5
27071–27242 8
27243–27422 9
27423–27678 10
27679–27902 11
27903–28148 12
28149–28438 15
28439–28590 16
28591–28862 17
28863–29110 18
29111–29392 19

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

2 CFR

1 28149
182 28149

3 CFR

Proclamations:
8387 26929
8387 (Correction) 27677
8388 26931
8389 27067
8390 27069
8391 28593
8392 28595

Administrative Orders:
Memorandums:
Memo. of May 27, 2009 26277
Memo. of June 12, 2009 28591
Memo. of June 8, 2009 28863
Notices:
Notice of June 12, 2009 28437
Notice of June 18, 2009 29391
Presidential Determinations:
No. 2009-19 of June 5, 2009 27903
No. 2009-20 of June 12, 2009 28865
No. 2009-21 of June 12, 2009 28867

5 CFR

532 28597
1600 29111

Proposed Rules:
894 26302

7 CFR

28 26771
220 28154
301 ..... 26774, 27071, 27423
319 26511
457 ..... 26281, 28154
916 28869
917 28869
981 28872
1467 26281

Proposed Rules:
205 26591
319 27456
352 27456
360 27456
361 27456
920 26806
1205 26810
1209 26984
1220 27467

8 CFR

1 26933
100 26933
103 26933
204 26933
207 26933
208 26933
211 26933
212 26933
214 ..... 26514, 26933
216 26933
236 26933
244 26933
245 26933
248 26933
264 26933
274a 26514, 26933
301 26933
316 26933
320 26933
322 26933
324 26933
327 26933
328 26933
329 26933
330 26933
334 26933
392 26933

10 CFR

50 28112
52 28112
72 ..... 26285, 27423
170 27642
171 27642

Proposed Rules:
50 ..... 26303, 27724
52 27724
70 26814
72 ..... 26310, 27469
430 26816
431 26596
440 27945

11 CFR

9430 27905

12 CFR

225 ..... 26077, 26081
229 26515
337 ..... 26516, 27679, 27683
370 ..... 26521, 26941
619 28597
620 28597
621 28597
1410 28156

Proposed Rules:
34 27386
208 27386
365 27386
563 27386
610 27386

617 29143
761 27386
1212 27470
1230 26989
1233 28636
1731 28636
1770 26989

13 CFR

120 ....27243, 27426

14 CFR

23 26777
25 ....26946, 26948
34 26778
36 27076
39 ....26288, 26291, 27684, 27686, 27689, 27691, 27693, 27695, 27698, 27702, 27704, 27906, 27908, 27911, 27913, 27915, 27917, 28439, 29112, 29116, 29118, 29121, 29123, 29126
71 ....27076, 27077, 27078
95 26779
97 ....28156, 28158

Proposed Rules:

21 28449
23 26818
27 28449
39 ....26312, 26315, 26317, 26322, 26994, 27254, 27257, 27260, 27474, 27476, 27725, 27946, 29144, 29148

16 CFR

1500 27248

Proposed Rules:

321 ....26118, 26130
322 ....26118, 26130
437 29149

17 CFR

211 27427
239 26782
274 26782

Proposed Rules:

200 29024
232 29024
240 29024
249 29024
274 29024

19 CFR

101 28601
122 28601

20 CFR

Proposed Rules:

416 27727
617 27262
618 27262
665 27262
671 27262

21 CFR

510 26951
520 ....27706, 28874
522 26951
524 26782
558 27919

23 CFR

192 28441
470 28441
625 28441
634 ....28160, 28441
650 28441
655 28441
772 28441
971 28441
972 28441
973 28441
1206 28441
1208 28441
1210 28441
1215 28441

26 CFR

1 ....27079, 27080, 27868, 27920
20 ....27079, 27080
25 27080
602 27868

Proposed Rules:

1 27947
20 26597

28 CFR

0 29128
2 28602

Proposed Rules:

16 26598

29 CFR

4001 27080
4022 28161
4044 28161
4901 27080
4902 27080

30 CFR

49 28606

Proposed Rules:

74 27263
250 28639

31 CFR

30 28394
285 ....27432, 27707
356 26084
538 27433

Proposed Rules:

103 26996
285 27730

33 CFR

1 27435
25 27435
66 27435
70 27435
72 27435
100 27435
110 27435
117 ....26087, 26293, 26294, 26295, 26296, 26952, 27249, 27442
133 27435
135 27435
136 27435
137 27435
138 27435
155 27435
157 27435
161 27435
165 ....26087, 26089, 26297, 26782, 26785, 26786, 26954, 27435, 27932, 27934, 27936, 27938, 28163, 28165, 28609, 28612, 28614, 29129, 29131, 29134
166 27435

Proposed Rules:

100 ....26138, 26326, 27478
110 ....26328, 27000, 27948
117 26820
165 ....26138, 26823, 27481, 27953, 28199, 29151

36 CFR

223 26091
261 26091

Proposed Rules:

1253 27956

38 CFR

3 ....26956, 26958
4 26958
9 26788
38 26092

39 CFR

20 26959
3020 26789

40 CFR

35 28443
51 26098
52 ....26098, 26099, 26103, 26525, 27442, 27708, 27711, 27714, 27716, 28444, 28447, 28616
55 28875
62 ....27444, 27718, 27720, 27722
72 27940
73 27940
74 27940
77 27940
78 27940
112 29136
180 ....26527, 26536, 26543, 27447, 28616
300 26962

Proposed Rules:

51 ....27002, 28451
52 ....26141, 26600, 27084, 27731, 27737, 27738, 27957, 27973, 28467
60 28451
61 28451
62 27444
63 ....26142, 27265, 28451
81 ....27957, 27973
93 27085
191 28468
194 28468
300 27003
799 28654

42 CFR

412 26546

Proposed Rules:

8 29153
412 26600

44 CFR

64 ....26569, 28624
65 ....26572, 26577, 28627
67 ....28166, 28629

Proposed Rules:

67 ....26636, 26640, 28202

45 CFR

681 26793

47 CFR

73 ....26299, 26300, 26801, 26802, 27454, 27944
74 26300
90 27455
400 26965

Proposed Rules:

1 26329
64 28471
73 ....26826, 27484, 27985

48 CFR

Ch. 1 ....28426, 28434
2 26981
22 26981
25 28426
32 28430
43 28430
52 ....26981, 28426, 28430
53 28430
546 26107
552 26107

Proposed Rules:

2 26646
4 26646
12 26646
39 26646
52 26646

49 CFR

1 26981

Proposed Rules:

387 27485
541 27493
578 28204
581 28209

50 CFR

17 ....26488, 28776, 29344
216 26580
218 ....28328, 28349, 28370
224 29344
226 29300
635 ....26110, 26803, 28635
648 ....26589, 27251, 27252
660 26983
665 27253
679 ....26804, 26805

Proposed Rules:

17 ....27004, 27266, 27271, 27588
226 27988
229 27739
300 ....26160, 29158
622 ....26170, 26171, 26827, 26829
635 26174
665 29158
679 ....26183, 27498

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws.html*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO Access at *http://www.gpoaccess.gov/plaws/index.html*. Some laws may not yet be available.

H.R. 131/P.L. 111–25
Ronald Reagan Centennial Commission Act (June 2, 2009; 123 Stat. 1767)

Last List May 27, 2009

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.